

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.368 OF 2022

PEDRO JOSE PEREIRA (DEC.)

THR. HIS LRS.

....PETITIONERS

Versus

ANTONIO MARIANO DIAS @

ANTONIO MARIA DIAS (DEC.)

THR. HIS LRS. AND ANR.

....RESPONDENTS

Mr Amey Kakodkar, Advocate for the Petitioners.

CORAM: M. S. SONAK, J.

DATE : 7th JULY 2023

ORAL ORDER :

1. Heard Mr Kakodkar for the petitioners.
2. The petition challenges the order dated 31.12.2018, by which the learned Trial Judge permitted the plaintiff to amend the plaint even before the trial could commence in the suit.
3. Mr Kakodkar states that the amendment changes the entire nature of the suit from that of a suit for partition to a suit for declaration of exclusive ownership. He further states that the amendment involves withdrawals of admissions in the unamended

plaint. He submits that on these two grounds, leave to amend should have been declined.

4. At the outset, it is necessary to note that this was a case of pre-trial amendment. Secondly, the relief applied relates to the same suit property originally referred to in the plaint. Some additional properties may have been introduced but the dispute as regards the additional properties is between the same parties.

5. The Trial Court has exercised its discretion by observing that the proposed amendment will not change the fundamental nature of the suit and further the same will avoid multiplicity of proceedings. In the facts of the present case, it cannot be said that discretion has been unreasonably exercised.

6. In so far as withdrawal of admissions is concerned, it is necessary to note that in the reply now handed over by Mr Kakodkar opposing the application for amendment, there was not a whisper as regards this plea. The only objection raised was about changing the nature of the suit. This objection has been considered and rightly rejected by the Trial Court.

7. Even otherwise, merely because leave to amend is granted that does not mean that the opposite party is precluded from raising all or any legally permissible defences. The Trial Court has also clarified that

full opportunity would be granted to the defendants to file the additional written statement and raise all permissible defences.

8. There is no jurisdictional error or perversity in the impugned order. Accordingly, this petition is dismissed. There shall be no order for costs. Once again, it is clarified that all contentions of all parties on the merits of the matter are expressively kept open.

M. S. SONAK, J.

NITI K
HALDANKAR

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