

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.585 OF 2023

Maxwell Dias And 3 Ors.

... Petitioners

Versus

State of Goa thr. Chief Secretary
And 46 Ors.

...Respondents

Mr John A. Lobo, Advocate *for the Petitioners.*

**Ms Sapna Mordekar, Additional Government
Advocate** *for Respondents No.1, 2, 3 and 4.*

**CORAM:
DATED:**

**PRAKASH D. NAIK, J
12th OCTOBER, 2023**

ORDER:

1. The petitioner no.1 is the original plaintiff and petitioner no.2, 3 and 4 are the original defendants no.20, 23 and 33 in Civil Suit No.15/2019 pending before the Court of District Judge-I, South Goa at Margao.
2. The petitioner no.1 filed reply dated 17.07.2023 whereby the application preferred by the petitioner no.2, 3 and 4 was supported and gave consent for allowing the said application.
3. The application was opposed by defendants no.1 to 4 vide reply dated 24.07.2023.

4. Vide order dated 28.07.2023 the application filed by the aforesaid petitioners/defendants was rejected.

5. Learned advocate for the petitioners, Mr Lobo, submitted that the learned Judge failed to appreciate that dismissing the application for transposing the defendants no.20, 23 and 33, would cause prejudice to the petitioners. The plaintiffs claimed co-ownership with the defendants and there cannot be any adversity to this admitted position. The original plaintiff/petitioner no.1 is the *dominus litis* and had given no objection for the application being allowed. The petitioner no. 1 is a senior citizen aged around 83 years. He is bedridden. In the plaint, the plaintiff had stated that defendants no.5 to 50 have common interest in the property. The defendants no.1 to 4 could not have opposed the application when the original plaintiffs had endorsed his reply in favour of application.

6. Mr Lobo has relied upon the decision of the Apex Court in the case of ***Sudhamayee Pattnaik and Others v/s. Bibhu Prasad Sahoo and Others¹***.

7. Learned Additional Government Advocate Ms Mordekar submitted that there is no infirmity in the impugned order dated 28.07.2023. There was no admission by the concerned defendants to the case set out by the plaintiff. No reasons were assigned for not impleading the said defendants as plaintiffs while filing the suit.

¹ 2022 SCC OnLine SC 1234

8. Order I Rule 10 of CPC is as follows:-

- 10. Suit in name of wrong plaintiff.--**(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
- (2) Court may strike out or add parties.--**The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.
- (3)** No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
- (4) Where defendant added, plaint to be amended.**—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
- (5)** Subject to the provisions of the Indian Limitation Act 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.'

9. The petitioner no.1 filed a suit. The petitioners no.2, 3 and 4 were impleaded as defendants no.20, 23 and 33. The petitioner no.1 is a senior citizen aged around 83 years. It is not in dispute that the pleadings in the suit indicate that the defendants no.5 to 50 had common interest in the property. The application was preferred by original defendants no.20, 23 and 33 to transpose them as plaintiffs. The petitioner no.1 is *dominus litis*. The suit was instituted for declaration and other reliefs. The petitioners no.2, 3 and 4 (defendants no.20, 23 and 33) while filing aforesaid application contended that the plaintiff is one of the owners of the property along with the defendants no.5 to 50. The plaintiff is aged around 83 years and bedridden and unable to attend the proceedings in person. In paragraph 61 and 62 of the plaint, it was stated that the defendant no.1 to 4 cannot claim any right over the private property belonging to the plaintiffs and the defendants no.5 to 50. The defendants no.1 to 4 are trying to interfere with the peaceful possession and enjoyment of the suit property belonging to the plaintiffs and other co-owners, i.e., defendants no.5 to 50. It was also contended that on account of old age and sickness of the plaintiff, it is not possible for him to prosecute the said suit in person. The defendant no.1 to 4 opposed the application by filing say. Whereas, the original plaintiff/petitioner no.1 consented for the application by stating that he admits contents of the application and defendants no.20, 23 and 33 are the co-owners of the suit property. The plaintiff is 83 years old and unwell and undergoing treatment for various health issues.

10. Learned Judge rejected the application on the ground that the defendants no.5 to 50 have not filed written statement admitting the claim of plaintiff to show that they have common interest in the litigation along with the plaintiff. There is nothing in the plaint to show as to why they were not impleaded as plaintiff while filing the suit. It is pertinent to note that the petitioner no.1 is a senior citizen facing health issues. There is clear averment in the suit that the property belongs to plaintiffs and defendants no.5 to 50. Amongst the said defendants the defendant no.20, 23 and 33 preferred an application to transpose them as plaintiffs which was supported by the original plaintiff. In the factual circumstances of the present case, the absence of written statement would not be a ground to refuse the relief sought in the said application.

11. In view of the above, the impugned order is required to be set aside and the prayers sought in application can be granted.

ORDER

- (i) Writ Petition No.585 of 2023 is allowed.
- (ii) The order dated order dated 28.07.2023 passed by the District Judge-I, South Goa at Margao on Exhibit-66 is set aside.
- (iii) The application preferred by the original defendants no.20, 23 and 33 for transposing them as plaintiffs stands allowed.
- (iv) The Petitioner no.1 is permitted to take requisite steps before the trial Court to transpose petitioner no.2, 3 and 4 (original defendants no.20, 23 and 33) as plaintiffs.

(v) Writ petition stands disposed of.

(PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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