

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 853 OF 2019

1. Mrs. Blossom Marian Caeiro
Barreto,
54 years of age, Daughter of Mr.
Joaozinho Caeiro Widow of late M
Miniato tris Barreto, and her daughter,

2. Miss. Courtney Jade Barreto,
20 years of age, Daughter of late Mr.
Miniato Iris Barreto,
Both residents of 2, Grodvenor 174/A,
St. Cyril Road, Bandra Mumbai —
400050 Maharashtra.

..... Petitioners

Versus

1. Miss. Tanya Ariadne Barreto,
36 years of age, Daughter of late Mr.
Miniato Iris Barreto,

2. Miss. Nadia Januar Barreto,
34 years of age, daughter of late Mr.
Miniato Iris Barreto, Both R/o 506-B
Concord, Lokhandwala Complex,
Andheri (W), Mumbai — 400058.

3. Mr. Darius Christo,
aged about 34 years, Son of Mr. Bob
Christo, R/o C/o 365/1, Bokachi Aradi,
Parra, Bardez, Goa.

..... Respondents

Ms S. Narvekar, Advocate for the Petitioners.

Mr B. Pacheco, Advocate for the Respondents.

CORAM : M. S. SONAK, J.

DATED : 3rd FEBRUARY 2023

ORAL JUDGMENT :-

1. Heard Ms Narvekar for the Petitioners and Mr B. Pacheco for the Respondents.
2. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioners are the original Plaintiffs in the suit. They challenge the order dated 18/7/2019 below Exhibits 91, 93 and 97. The order below Exhibit 91 partially rejects leave to amend the plaint. Order below Exhibits 93 and 97 dismissed the applications for impleadment of additional parties.
4. The Trial Court, in its order below Exhibit 91, has partially allowed the amendment even though the amendment was applied for after commencement of the trial. The amendment is allowed by way of additions as paras 4A, 5A and C, subject to payment of costs of ₹4,000/- because the Court found that the amendment was clarificatory in nature. However, if the application for amendment is perused, it is not as if the amendments which were

not allowed, were not clarificatory in nature. Accordingly, there was no reason to allow the application for amendment only partly. The entire amendment ought to have been allowed, possibly subject to payment of enhanced costs, because the costs of ₹4,000/- appear to be inadequate in this matter considering the stage at which the leave to amend was applied for.

5. In so far as joinder of parties is concerned, with respect, the reasoning of the Trial Court may not be correct. The Plaintiffs had sought to implead parties because one of the reliefs in the suit was for a declaration that the judgment and order passed in Regular Civil Suit No.218/2011 was not binding on them. The Trial Court has reasoned that no relief was applied to declare the said judgment and order null and void. The parties that were proposed to be added, were certainly proper parties, who would have a say on the reliefs claimed. Therefore, the application should not have been rejected, but could have been granted subject to payment of costs, considering at which stage the application was made.

6. Accordingly, the impugned order below Exhibit-91 is set aside to the extent it disallows a portion of the amendment. Leave is granted to amend the plaint as prayed for in Exhibit-91. Similarly, the impugned order below Exhibits 93 and 97 is also set aside and the applications at Exhibits 93 and 97 are allowed.

All this is subject to the Petitioners paying costs of ₹10,000/- to the Respondents. Such costs should be deposited before the Trial Court within four weeks from today. If the costs are not deposited, then, this Petition shall be deemed to have been dismissed with costs of ₹5000/-.

7. Rule is made absolute in the above terms.

8. All concerned to act based on an authenticated copy of this order.

M. S. SONAK, J.

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