

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1035/2019

**CAMILO CAETANO AGNELO
D'SOUZA AND 12 ORS.**

... PETITIONERS

Versus

**JOSEPH ROSA DE LIMA
FERNANDES & 3 ORS.**

... RESPONDENTS

None for the Petitioners.

Mr. P. Talaulikar, Advocate for the Respondent No.4.

CORAM: M. S. SONAK, J.

DATED: 22nd February 2023

P.C.:

- 1.** None for the petitioners. Mr P. Talaulikar appears for respondent no.4.
- 2.** Based on the pendency of this petition, it is likely that the case before the Trial Court is not proceeding. Accordingly, no useful purpose would be served by simply adjourning the matter.

3. The challenge in this petition is to the Order dated 27.09.2019 by which the Trial Court has dismissed the application at Exh.41 seeking leave to amend the plaint. The application seeking leave to amend the plaint was filed before the trial in the suit commenced. The only ground on which the leave is being declined is that the proposed amendment seeks to take away the admission made by the plaintiff in paragraph 30 of the plaint. Upon perusing the plaint, the application for amendment, the reply opposing the application for amendment and the impugned order, I am satisfied that the impugned order warrants interference for the reasons indicated hereafter.

4. From the holistic reading of the plaint, it is apparent that the plaintiff had contended that the suit property admeasuring approximately 11,000 sq.mtrs. was not the subject matter of the Will dated 23.10.2003 and based upon this premise, certain reliefs were applied for in the plaint. However, in the concluding portion of paragraph 30 of the plaint, following averment was made:-

“This property which has an area of approximately 11000 square meters is also subject matter of the said Will dated 23/10/2003 and shall hereinafter be called the entire property.”

5. Upon realizing the obvious error in using the word “also” instead of “not” in the above portion of the paragraph 30 of the plaint, the plaintiff, without wasting any time and much before the trial in the suit could commence, applied for leave to amend by way of correction of typographical error that had crept in. The consequential prayer was also sought to be included.

6. The Trial Court, by the impugned order rejected the amendment by holding that the plaintiff was seeking to withdraw the admission made in the plaint. The Trial Court relied upon *M/s. Revajeetu Builders v/s. Narayanaswamy in Civil Appeal No.6921/2009 decided on 09.10.2009*.

7. On reading the plaint in its entirety, it is apparent that the use of the word “also” instead of “not” was a typographical error. There was no question of withdrawal of any admission as such but this was a case of mere correction of a typographical error. Therefore, the principles in *Revajeetu Builders (supra)* did not apply and the learned Trial Court was not justified in relying upon the said decision.

8. In any case, it is well settled that even an admission can be explained though it may not be withdrawn. From the context,

there was no admission as such. In any case, this was not a case of any wholesale withdrawal of a categorical admission.

9. Mr Talaulikar submits that by agreement of sale dated 04.10.1993 and Addendum dated 14.10.1993, the above area of 11,000 sq.mtrs. was agreed to be sold to the respondent no.3. Further, he points out that respondent no.3 was also placed in possession of this portion. He submits that this is the reason why the area of 11,000 sq.mtrs. was excluded. He submits that if the amendment is allowed, then, the basis of the petitioners' case in the plaint will materially change. He submits that this will also cause serious prejudice to the respondents no.3 and 4 who have already developed this portion of 11,000 sq.mtrs.

10. Though the amendment is allowed, that does not mean that the averments in the plaint, even after the amendment, are accepted as true and correct by this Court. Ultimately, all the defendants in the suit will have full opportunity of filing further written statement. Both the plaintiffs as well as the defendants will have full opportunity of leading evidence to make good their respective case. Therefore, by allowing this amendment, it is not as if any of the contentions legally available to any of the parties including the parties which are represented by Mr Talaulikar are

to be shut out. In any case, at the request of Mr Talaulikar, it is clarified that all contentions are kept open.

11. For all the above reasons, the impugned order is set aside. Leave is granted to amend the plaint as prayed for. However, the petitioners/plaintiffs shall pay costs of Rs.10,000/- to respondent no.4. This is because none of the other respondents have bothered to appear in this matter by engaging an advocate. Such costs can be deposited before the Trial Court at the time of or before carrying out of the amendment.

12. Since the petitioners have not appeared in this Court, the Registry to send an authenticated copy of this order to the Trial Court where the Special Civil Suit No.20/2019/III is pending i.e. the Court of the IIIrd Additional Ad-hoc Civil Judge Senior Division, at Margao. The Trial Court to fix the time within which such amendment can be carried out and costs deposited.

13. The petition is disposed of in above terms without any order for costs.

M. S. SONAK, J.