



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.413 OF 2025

1. Pereira Holdings Private Limited A company incorporated under the Indian Companies Act, with its registered Office at 501E, 5th Floor, Mathias Plaza Building 18th June Road, Panaji, Goa 403001.

2. Niraamaya Retreats Benaolim Private Limited Formerly known as Suryasamudra Holidays Resorts (Maharashtra) Pvt. Ltd. With its office at 54, Richmond Road Bangalore 560025

Both represented by their authorised representative, Director & CEO Allen Machado, son of late Edwin M. Machado, aged about 46, Office at No.54 Rockline Centre, Craig Park Midford Garden Road, Richmond Road Bangalore.

..... PETITIONERS

VERSUS

Devon Real Estate and Construction Pvt. Ltd. A company registered under the Companies Act With registered office at Kamat Centre, 2nd floor Dr. A.B. Road, Panaji, Goa, represented By its Director Mr. Justininho D'Costa Aged 70 years old Residing at Boarda, Margao, Goa.

.... RESPONDENT

Mr. C.A. Coutinho, Senior Advocate with Mr. Ivan Santimano, Advocate for the Petitioners.

Mr. Vledson Braganza with Mr. Vilas Pavithran, Advocates for the Respondent.

CORAM: VALMIKI MENEZES, J.

RESERVED ON: 11th JUNE,2025

PRONOUNCED ON: 17th OCTOBER,2025.

ORDER:

1. Registry to waive office objections and register the matter.
2. This Petition invokes the writ and supervisory jurisdiction of this Court under Article 227 of the Constitution of India, to challenge the order dated 05.08.2024 passed by the Court of Civil Judge Senior Division Margao, which allows application dated 18.10.2023 for amendment to the plaint at Exhibit-27.
3. Brief Facts as stated by the Petitioners:
 - a. It is the case of the Petitioners (Original Defendants No.1 and 2 in Special Civil Suit No.23/2017/I before the Civil Judge Senior Division Margao) that, pursuant to a notice dated 14.04.2012 being published by Sabu Peter Peres Da Costa, for sale of part of the property surveyed under No.370/1 admeasuring 6379 sq.mts with exclusion of an area of 1046 sq.mts to Damaciano, the Respondent (Original Plaintiff) responded, claiming a 10 mtrs wide motorable access through the property, which was reserved for them by one Mr.Fernando Peres Da Costa and vide MOU dated 23.07.2012, Petitioners assured a 4 mts kuccha access.

b. The Respondent thereafter filed a Special Civil Suit No.53/2012 in the Court of under article 2309 of the Portuguese Civil Code r/w section 34 of the Specific Relief Act, consequent to breach of the MOU, seeking declaration from the Court of Civil Judge Senior Division Margao for access to its enclaved property surveyed under No.370/1 of Benaullim village, which access was provided to it vide Sale deed dated 31.03.1999 and mandatory and permanent injunction restraining the Petitioners from interfering with the same.

c. However, the Respondent unilaterally withdrew the suit on 14.03.2013 on which an Instrument of Right of Way was executed between the parties to the suit therein. Thereafter, on 10.05.2017, the Respondent filed a Special Civil Suit No.23/2017/I, seeking specific performance and enforcement of the rights and obligations under the instrument entered between the Petitioners and the Respondent. The Petitioners filed their written statement on 18.03.2023, subsequent to which the Respondent filed an application (Ex-27) dated 18.10.2023 for amendment of the plaint. The Petitioners vehemently opposed the application vide its reply dated 03.01.2024 and the Court allowed the said amendment vide its order dated 05.08.2024, impugned herein.

SUBMISSIONS:

4. Learned Senior Counsel, Mr. C.A Coutinho, Senior Advocate for the Petitioner advanced the following submissions:

a. That the impugned order should not have allowed the amendment as it changes the nature of the suit and claims relief which the Respondents had given up pursuant to the Instrument of Right of Way, filed in Suit no.53/2012/A.

b. That the Respondent's claim in the amendment is time barred and is an abandoned plea which it cannot revive by filing another suit. The counsel submits that the suit seeks to enforce the Instrument of right of way, which is an agreement between the parties, and an enforcement of such contract would be ex-facie time barred.

5. Learned Advocate for the Respondent Mr. Vledson Braganza made the following submissions;

a. That the discretion exercised by the trial court whilst passing its order was based upon the provisions of law.

b. That the order being passed under Order VI Rule 17 CPC, there was no infirmity in the same, that calls for interference in jurisdiction under Article 227 of the Constitution of India.

6. The passing of the Impugned order requires to be viewed in relation to the facts and circumstances under which the first suit of the year 2012 came to be withdrawn. The first suit was filed by the Plaintiff seeking a right of way in terms of Article 2309 of the Portuguese Civil Code, claiming the suit property to be landlocked. During the course of that suit, the present Petitioners, through whose property the right of way was claimed negotiated a settlement with the Plaintiff by an Instrument Of

Right Of Way dated 14.03.2013, which was registered and which provided that the Plaintiff would withdraw its claim over the property mentioned in Schedule III and IV of the agreement to claim a right of way of 10 mts motorable access through property under survey no.370/1 of length of 30 mts. The agreement further provided that the Petitioners would provide an access to the property of the Plaintiff and ensure such access in terms of Article 2309 of the Portuguese Civil Code.

7. Pursuant to this agreement which is nothing but a declaration by the Petitioners that the Plaintiff has a right of access over the properties stated in the agreement, and which agreement declares the existence of the Plaintiff's access in terms of Article 2309, the Plaintiff filed an application dated 14.03.2013 in the first suit seeking to withdraw the suit based upon the registered declaration. The amendment now sought to be made to plaint which is allowed by the impugned order seeks to incorporate these very facts by way of a prayer and specific paragraphs, which the Petitioners claim are beyond limitation, on a premise that the agreement is a contract which cannot be enforced since it is barred by limitation.

8. Perusal of the agreement/ instrument dated 14.03.2013 would reveal that the same is nothing but a declaration of the Right to access of the plaintiffs under Article 2309 of the Portuguese Civil Code, and it is not a contract which is enforceable and on which there was any consideration. The provisions of the limitations act to enforce contracts would therefore would not apply at all to the facts of the present case. The Impugned order has been therefore passed on the correct considerations, it does not call for any interference. The trial court has considered in paragraph 14 to 16 of

the impugned order the correct provisions of law, and the defences raised in the Written statement and has correctly allowed the amendment application. There is no cause for interference with the Impugned order, hence the Petitioner is dismissed.

9. Writ Petition is dismissed with no order as to costs.

VALMIKI MENEZES, J.