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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.245 OF 2025

1. Mr. Pradeep Govinda Dhuri,
Aged 63 years,

2. Mr. Dinesh Govinda Dhuri,
Aged 59 years,

3. Mr. Sunil Govinda Dhuri,
Aged 58 years,

4. Mr. Sadanand Govinda Dhuri,
Aged 57 years,

All residents of Nerul, Maime Waddo,
Bardez, Goa.

... Petitioner.

Versus

1. Mr. Sertorio Antonio Remedios Pereira,
s/o. Late Vincente Pereira,
r/o. House no.795, Dandari,
Nerul, Bardez, Goa,
Through his constituted attorney
Mr. Assis Pereira, major of age
s/o. Sertorio A.R. Pereira
r/o. House o.795, Dandari,
Nerul, Bardez, Goa.
(since deceased through lrs.)

1(a) Mr. Minguel Pereira,
s/o late Sertorio Antonio R. Pereira
age 85 years, married

1(b). Mrs. Joaita Pereira,
w/o Minguel Pereira,
age 75 years, housewife,

1(c). Mr. Assis Pereira (since deceased)
s/o. Sertorio Antonio R. Pereira
age 74 years, married,

[Amended as per
order dated

1(c)(1) Mr. Verano Tony Nicholas Pereira, 29.01.2025]
s/o Mr. Assis Pereira, major in age,

1(c)(2) Mrs. Vanessa Almeida,
Major in age,

1(c)(3) Ms. Franzina Valentina Pereira,
d/o Mr. Assis Pereira,
major in age,

1(c)(4) Ms. Rosie Veronica Pereira,
Major in age /o Mr. Assis Pereira,

1(c)(5) Ms. Vineta Perpetua Pereira,
d/o Mr. Assis Pereira, Major in age,

All R/o No. 774, Near Tato Village,
Nerul, Darnadi, Reis Magos,
Tiswadi, Goa.

1(d) Mrs. Brigita Pereira,
w/o. Mr. Assis Pereira,
69 years, housewife,

1(e) Smt. Caitano Pereira,
s/o late Sertorio Antonio R. Pereira,
Age 70 years, married

1(f) Mrs. Juliana Pereira,
w/o Mr. Caitano Pereira,
65 years, housewife,

1(g) Mrs. Joana Pereira,
w/o late Damiao Gonsalves,
52 years of age, widow,

All are residents of House no.795,
Dandari, Nerul, Bardez Goa.

... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny, Mr. Sarvesh Sawant and Ms. Neha Shirgaonkar, Advocates for the Petitioner.

Mr Vledson Braganza, Mr. Bernard Fernandes and Mr Jeet Volvoikar, Advocates for Respondent No.1(a), 1(b), 1(d) to 1(g).

CORAM: VALMIKI MENEZES, J.

DATED: 2nd July, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is disposed of finally.
3. By this petition, the order dated 17.05.2024 passed by the Adhoc Civil Judge Senior Division, 'C' Court, Mapusa in Regular Civil Suit No.44/99/C whereby the Plaintiff's application under Order 1 Rule 10 CPC for impleadment of M/s. J.M. Realty

Management Pvt. Ltd. (J.M.) as a Defendant to the suit has been allowed. The background facts which are relevant to the disposal of this petition are as under:

- a) Regular Civil Suit No.44/99/C was filed by Respondent Nos.1(a), 1(b), 1(c), 1(c)(1) to 1(c)(5), 1(d), 1(e), 1(f) and 1(g) (Original Plaintiffs) for reliefs of permanent injunction to restrain the Petitioners, who are Original Defendants from interfering with the suit property. In para 2 of the plaint, the suit property is described as property under Survey No.99/7 of Village Nerul admeasuring 11,750 square metres. The cause of action as pleaded in the plaint was that the Plaintiffs were in possession of the suit property by virtue of a Sale Deed dated 15.01.1971 and further that the Defendants were attempting to trespass and interfere in the suit property, hence the injunction. A temporary injunction was also sought to restrain the Defendants from interfering with this property.
- b) The Defendants entered appearance in the suit and filed their Written Statement denying the claim of the Plaintiffs and setting up their own title in the suit property. Issues have been framed, however, trial in the suit has not commenced and the same has been pending for 26 years.
- c) By an application dated 02.07.2018, which is found at

Exhibit 14 of the Trial Court record, the Plaintiffs sought amendment of the plaint to incorporate additional facts and cause of action. The additional facts sought to be incorporated were that the suit property corresponds to a property admeasuring 19,500 square metres shown on a Cadastral Plan which corresponds not only to the original suit property under Survey No.99/7 but extends over a triangular portion of the property under Survey No.100/0 to the North/West of the drain which separates the two properties. The amendment sought to incorporate the fact that the suit property under Survey No. 99/7 and the part of Survey No. 100/0 all formed of one and the same property which was claimed by the Plaintiff. In the amendment application, it was also pleaded that the triangular portion of Survey No.100/0 which was sought to be incorporated by way of amendment as part of the suit property had been sold by the Defendants to J.M. by a Sale Deed dated 15.11.2007. In other words, the amendment application pleads the entire cause of action as a subsequent event therein a challenge to the Sale Deed of J.M. which partly covers land under Survey No.100/0.

- d) In this amendment application, the Plaintiff also sought addition of J.M. as party Defendant No.7 to the suit. Along with the application for amendment, the Plaintiff also moved

an application to rely upon documents constituting subsequent events, which include the Sale Deed in favour of J.M. This application was listed as Exhibit 15 before the Trial Court.

- e) By common order dated 29.08.2018, the Trial Court dismissed both, Exhibit 14 and Exhibit 15, holding that the application was belated and after making reference to the Judgment in another suit i.e. SCS No.14/2008/A filed by the Plaintiff against J.M., which was dismissed, held that the amendment could not be allowed.
- f) The order of 29.08.2018 came to be challenged before this Court in Writ Petition No.1129/2018 which was ultimately withdrawn by the Plaintiffs on 01.08.2019 with liberty to challenge the order dated 29.08.2018 of the Trial Court in a First Appeal, if a Decree in the present suit was passed against the Plaintiffs.
- g) Even then, the suit did not proceed for trial, but yet another application styled as under Order 1 Rule 10 CPC was filed before the Trial Court on 16.10.2019 on which the impugned order was passed.

SUBMISSIONS:

4. It is the submission of learned Senior Advocate Mr. Lotlikar for

the Petitioners that the application under Order 1 Rule 10 CPC, in the light of the earlier rejection by the Trial Court of an amendment to the pleadings, was not maintainable; it is further his contention that considering that there is no cause of action pleaded in the plaint, and the suit property being restricted to Survey No. 99/7, there was no cause for the Trial Court to consider that J.M. was either a proper or necessary party. It is further his contention that the Trial Court has not considered the application for amendment and the orders passed therein on 29.08.2018, and that the same had attained finality after the Writ Petition challenged in the same had been withdrawn on 01.08.2019. The contents that the principle of *dominus litis* would not apply at all in this case since the attempts to amend the plaint and to implead the very same party way back in the year 2018 had failed.

5. Per contra, Mr. Braganza learned Advocate appearing for the Original Defendants submits that the Plaintiff being *dominus litis* of the proceedings was free to move an application to implead J.M. as a party to the suit. He submits that the failure to amend the plaint would not come in the way of the Plaintiff to implead such party, since such party is a proper party to the proceedings. He relies upon the observations made by this Court in para 4 of the order dated 01.08.2019 granting the Plaintiffs permission to withdraw the petition reserving the right to challenge the order of rejection of the amendment in a First Appeal in case the Decree in the suit goes against the Plaintiffs.

CONSIDERATIONS

6. Perusal of the order of the Trial Court would reveal that the sole consideration for granting the application for impleadment is that the Plaintiff is *dominus litis* and the Plaintiff, considering the party to be impleaded as a proper party, it was the Plaintiff's prerogative to implead such party.

There is no doubt that in normal course, the Plaintiff is *dominus litis* of the suit. However, the Plaintiff would be required to implead parties who would be bound by the Decree as necessary parties and parties who would appear before the Court and assist the Court in deciding the list between the Plaintiff and the necessary party as proper parties.

7. In the present case, the suit property, more so after the rejection of the amendment application, is restricted to Survey No. 99/7 of Village Nerul and does not extend to any part of Survey No.100/0, part of which is alleged to have been purchased by J.M.

8. The amendment application, which includes the prayer for impleadment of J.M. having been rejected and the petition against that order having also been rejected, the question of amending the plaint and including a cause of action against J.M. had become final. There being no cause of action of whatsoever nature pleaded in the suit against J.M., J.M. could never be impleaded as a necessary party to the suit.

9. The only question that remains is whether J.M. need be impleaded as a proper party to the suit. The tenor of the application for impleadment suggests that the only reason why J.M. was being sought to be impleaded was because they had executed the Sale Deed over a part of land under Survey No.100/0 which the Plaintiffs had earlier on, unsuccessfully attempted to include as part of the suit property. There is no reason why J.M. could be termed to be a proper party and necessary for the effective decision on the claim of the Plaintiff, which is restricted to a Decree of permanent injunction. The Plaintiff has not even sought a declaration of his title over Survey No.99/7, let alone the area allegedly sold to J.M.

10. The Trial Court has totally failed to consider the effect of rejection of the amendment application or the effect of withdrawal of the Writ Petition which threw a challenge to the order of 29.08.2018. In fact, there is not even a reference to the earlier applications and earlier orders of the Court, which it was obliged to consider before allowing the application. In my opinion, there is a grave error of law committed by the Trial Court in completely ignoring the earlier orders passed by the Court and the effect of rejection of the amendment which sought to include land under Survey No.100/0 as part of the suit property. The Trial Court has therefore acted in excess of jurisdiction cast upon it under Order 1 Rule 10 of CPC by directing impleadment of J.M. as a Defendant in the suit. J.M. is neither a proper nor a necessary party to the suit in the circumstances

discussed above.

11. Reliance placed on *Anil Kumar Singh v. Shivnath Mishra*, (1995) 3 SCC 147, by the Respondents in fact may aid the case of the Petitioners. In para 7 of the Judgment, the Supreme Court considers the powers of the Court to implead a party under Sub-Rule 2 of Rule 10 of Order 1 CPC and holds that a party could be added without application by either party to the suit, condition precedent being that the Court must be satisfied that the presence of a party to be added would be necessary in order to enable the Court to effectually and completely adjudicate upon all questions involved in the suit. The object of the Rule is to bring on record all persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence.

The Judgment further holds that a party defendant may be added to a suit even though no relief is claimed against him provided his presence is necessary for the decision on the question involved in the suit. It further held that in a suit for declaration, the Rule would apply to add parties who have a present or direct interest in the subject matter. In the present case, property under Survey No.100/0 is not the subject matter of the suit and J.M. is concerned with only part of the survey number, which is not even the suit property. As held by the Supreme Court in *Anil Kumar Singh* (supra), in the present case there is no present or direct interest of J.M. in the subject matter of the suit which is restricted to Survey No.99/7, the amendment application to

include Survey No.100/0 as part of the suit property having been rejected and attained finality. Thus, J.M. is neither a proper nor a necessary party to the suit, in these circumstances.

12. Consequently, the impugned order dated 17.05.2024 passed by the Trial Court is quashed and set aside. Consequently, application for impleadment of J.M. under Order 1 Rule 10 CPC at Exhibit D-24 stands dismissed.

13. Considering that the suit was filed in the year 1999 and the trial has not commenced, the Trial Court is requested to endeavour in disposing of the suit, as far as possible within a year from today.

14. Rule is made absolute in terms of prayer clause (a). No order as to costs.

VALMIKI MENEZES, J.