

(2011) 02 BOM CK 0096

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 645 of 2010

Mr. Sucorro Fernandes

APPELLANT

Vs

Mr. Menino Jose Crasto and Mrs.
Adelina Crasto

RESPONDENT

Date of Decision: Feb. 21, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Citation: (2011) 4 BomCR 501

Hon'ble Judges: A.P. Lavande, J

Bench: Single Bench

Advocate: T. Pereira, for the Appellant; S. Seth, for the Respondent

Judgement

A.P. Lavande, J.

By this petition under Article 227 of the Constitution of India, the Petitioner seeks leave to delete Article 226 from the cause title. Leave granted. Amendment to be carried out forthwith.

2. Heard Mr. Pereira, learned Counsel for the Petitioner and Mr. Shet, learned Counsel for the Respondents.

3. Rule. By consent, heard forthwith.

4. By this petition, the Petitioner challenges orders dated 25/11/2009 passed by the Additional Civil Judge, Senior Division, Margao in Regular Civil Suit No. 74/2003/I partly rejecting application for amendment and an application for production of the documents filed by the Petitioner. The Petitioner is the Plaintiff and the Respondents are the Defendants in the said suit.

5. The above suit was instituted by the Plaintiff on 25/3/2003. Written statement was filed on 14/8/2003. Issues were framed on 13/8/2004. Thereafter, on 1/11/2004

Affidavit-in-Evidence of the Plaintiff was filed.

6. It is the case of the Plaintiff that on 28/10/2004 there was a Court auction in which the Plaintiff purchased right to remaining 1/4 undivided right to the suit property. Initially, the Plaintiff claimed to be a co-owner of the suit property on the ground that he was the owner of 3/4 share in the suit property. The Plaintiff purchased 1/4 undivided share of the suit property in the said auction held on 28/10/2004 and the title document was registered on 2/11/2004.

7. It appears that although Affidavit-in-Evidence was filed thereafter no further progress was made in the suit.

8. On 17/8/2009, two applications bearing exhibit Nos. 32-D and 33-D were filed by the Plaintiff seeking to amend the plaint and to produce additional documents. The said applications were opposed by the Defendants. By the impugned order, the trial Court has partly allowed the application and has permitted the Plaintiff to carry out amendment in paragraph 19 and 22 and rejected introduction of paragraph 12-A and amendment of paragraphs 3 and 13 in the plaint on the ground that the trial has already started and, as such, the amendment could not be permitted in terms of Order 6 Rule 17 of CPC On the same ground one document at serial No. b pertaining to purchase of 1/4 right of the suit property by the Plaintiff has been disallowed.

9. Mr. Pereira, learned Counsel appearing for the Petitioner submitted that the document in relation to the auction conducted on 28/10/2004 was registered on 2/11/2004, i.e after filing of the affidavit-in-evidence by the Plaintiff and as such, the trial Court could not have disallowed the amendment of paragraph 3 and 13 and introduction of paragraph 12-A in the plaint. Learned Counsel further submitted that on the same ground the trial Court could not have rejected the prayer of the Plaintiff to rely upon the document at serial No. (b) which pertained to registration of the document pursuant to purchase by the Petitioner in the Court auction. In so far as delay in filing the applications is concerned, Mr. Pereira submitted that mere delay would not be a ground to disallow the application for amendment and the Defendant could be compensated by warding appropriate costs.

10. Mr. Seth, learned Counsel appearing on behalf of the Respondents supported the impugned order.

11. Having heard the learned Counsel for the parties and having perused the record, I am of the considered opinion that the amendment in paragraphs 3 and 13 and introduction of paragraph 12-A in the plaint sought by the Petitioner and consequential reliance upon document of the registration dated 2/11/2004 at serial No. (b) of the application ought to have been allowed by the trial Court. The fact remains that the Affidavit-in-Evidence was filed on behalf of the Plaintiff on 1/11/2004 and the document in relation to the auction was registered on 2/11/2004. Obviously, therefore, the cause of action for seeking amendment and for production of document arose after filing the affidavit-in-evidence of the Plaintiff. Therefore, I

am of the considered opinion that the trial Court ought to have allowed the applications seeking amendment and to rely upon additional document. The delay in filing the applications can be taken care of by awarding appropriate costs in favour of the Defendants.

12. In view of the above, the impugned order dated 25/11/2009 rejecting prayer for amendment to paragraph 3 and 13 and introduction of paragraph 12-A in the plaint is quashed and set aside and the application for amendment is allowed. On the same ground the order dated 25/11/2009 rejecting the application for seeking to produce document dated 2/11/2004 is quashed and set aside and the Plaintiff is permitted to rely upon the said document. The Plaintiff shall pay costs of Rs. 5000/- (Rupees five thousand only) to the Defendants. The costs shall be deposited in the trial Court within a period of two weeks from today. Liberty to the Defendants to withdraw the costs after they are deposited.

13. The Plaintiff shall carry out amendment to the plaint within a period of three weeks after the costs are deposited.

14. Rule is made absolute in the aforesaid terms.