

Joao Piedade Gonsalves And Ors Vs Messias Augustinho Sebastiao Pereira And Ors

Court: Bombay High Court (Goa Bench)

Date of Decision: Feb. 22, 2019

Hon'ble Judges: C.V. Bhadang, J

Bench: Single Bench

Final Decision: Partly Allowed

Judgement

C. V. Bhadang, J

1. Heard Mr. Arolkar, the learned counsel for the petitioners. None appears for the respondents.

2. By this petition, the petitioners/original defendant nos.3 and 4 are challenging the order dated 15/2/2016 passed by the trial court thereby allowing an

application Exhibit D-88 filed by the respondent nos.1 and 2 (original plaintiffs) for addition of parties.

3. According to the respondents/plaintiffs the suit was initially filed for permanent injunction and demolition and thereafter the plaint was amended

seeking a relief of declaration. It was contended that therefore the sisters of the plaintiffs and others need to be added as defendants nos.9 to 36 along

with their spouse/s. Indisputably the application was filed at a stage when the suit was fixed for final arguments. The learned trial court in para 6 of

the impugned order has held thus:

Upon perusal of the plaint, the relief of declaration was sought in the year 2012 and now when the matter was fixed for final arguments the plaintiffs

have filed the present application. There is no justification from the plaintiffs as to why this application for joining the parties was not filed at the

earliest given opportunity. Hence, I pass the following.

ORDER:

The present application stands allowed with a cost of Rs.1000/- to be paid to the defendant. The plaintiff to carry out the amendment to the plaint

within a period of four days.

4. From the perusal of the impugned order two things are clear. First, that there is no consideration whether the parties to be added are necessary or

proper parties and secondly the operative order allowing the application is clearly contrary to the finding and the observations in para 6 of the

impugned order.

5. In such circumstances, I find that it would be appropriate that the learned trial court reconsiders application Exhibit D-88 on its own merits. The

petition is partly allowed. The impugned order dated 15/2/2016 is hereby set aside. The application Exhibit D-88 is restored back to the file of the

learned trial court which shall decide the same afresh and in accordance with law. In the circumstances, Rule is made absolute in the aforesaid terms,

with no order as to costs.