
(2015) 02 BOM CK 0350
In the Bombay High Court
Case No : Writ Petition No. 285 of 2014

Mabel Reeves

APPELLANT

Vs

Confraria de Igreja de Cortalim and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2015) 6 ALLMR 167 : (2016) 1 MhLj 439

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : Valmiki Menezes, Advocate, for the Appellant; Bhargav Khandeparkar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.M. Jamdar, J.—By order dated 9 February 2015, the petition was directed to be taken up for final disposal. Respondents are served. Accordingly, petition is taken up for disposal. By this petition, the petitioner- plaintiff challenges the impugned order dated 15 April 2014 passed by the Civil Judge, Junior Division, Vasco rejecting the application filed by the petitioner under order 1 Rule 10(2) of the Civil Procedure Code for amendment of the plaint.

2. The petitioner had sought three amendments in the plaint. The first amendment was correction of the numbers of the defendants, second amendment was to state that one Alberto Reeves had acquired co-ownership right in the property after the death of his mother Mrs. Deodita, and his siblings, and the third amendment was to include a prayer that, in case the Court comes to the conclusion that defendants have no right and are in possession, possession of the property be delivered to the plaintiff.

3. To appreciate the nature of the amendments sought it would be necessary to take into consideration the pleadings of the petitioner in the plaint. The case of the petitioner as to how the property came to her as narrated by her is as

follows: Petitioner is the wife of late Mr. Walford Ladislau Reeves and daughter-in-law of late Mr. Alberto Francisco Licurcio Monte Varde de Santiago Vase Reeves and Mrs. Veronica Carmelina Paes. The late Mr. Alberto Francisco Licurcio Monte Varde de Santiago Vase Reeves was the son of late Mr. Ladislau Aureliano de Sacrafamilia Vas and late Mrs. Deodita Felix Idalina Rodrigues. The late Mr. Ladislau Aureliano de Sacrafamilia Vas and late Mrs. Deodita Felix Idalina Rodrigues had 8 children being, 1. Miss Bautriz Jessie Laura de Sacrafamilia Vas, 2. Jean Jose Telemaque Ladislau Santo Estevam Vas, 3. Bertina Francis Madeleine Nerissa Vas, 4. Alberto Francisco Licurcio Monte Verade de Santiago Vase Reeves, 5. Maria Verebina Clara S. Anna Vas, 6. Heraclino Roberto Ciriaco Vas, 7. Clara Madeleine Beringaria Vas and 8. Clarissa Augracia Virginia Vas. Miss Beatriz Jessie Laura de Sacrafamilia Vas, Miss Clara Madeline Beringaria Vas and Mr. Heraclino Roberto Ciriaco Vas were unmarried and expired without leaving behind any ascendants or descendants. The late Mr. Jean Jose Telemaque Ladislau Santo Estevam Vas was married to Florie Dias and had one child Mr. Joe Vas married to Mrs. Audrey Vas; Mrs. Bertina Francis Madeleine Nerissa Vas was married to one Mr. Furtado and have 5 children i.e. 1. Osie, 2. Gilbert, 3. Bazil, 4. Sigdul and 5. Eddie. The late Mrs. Maria Verbiana Clara S. Anna Vas was married to Mr. Vincent Alcacoas who had 2 children being Victoria married to the late Alexander Rodrigues and Sr. Vicencia Alcacoas. The late Clarissa A. Virginia Vas was married to late Ernesto Moranos and had 3 children i.e. late Mercedes Morenas, 2. late Mireles Morenas and 3. Zenaido Morenas. Mr. Alberto Francisco Licurcio Monte Varde de Santiago Vas e Reeves married to Mrs. Veronica Carmelina Paes and had one son, Mr. Walford Ladislau Reeves who was married to the petitioner. Upon the death of the late Mr. Ladislau Aureliano de Sacrafamilia Vas, Inventory Proceedings bearing Processo Emassado No. 94/7 were instituted and in the said Inventory Proceedings amongst other properties was listed the property under Item No. 17 being the property known as "Gustinichi Xira" or "Nagoavadeachi Xira" bounded on the East by the Fabrica de Igreja de Cortalim; by the West Roque Rosario Mesquita; on the North by the waterway of Comunidade of Cortalim and on the South by the hilltop which property is registered in the Matriz Records under No. 467 and is hereinafter referred to as the "said property". However, no record is found to be available with the petitioner presently showing that this said property is registered in the Land Registration Office of Salcete at Margao. 2/6th portion of the said property was allotted to the late Mrs. Deodita Felix Idalina Rodrigues and the remaining 4/6th was allotted to 1. Bertina Francis Madeleine Nerissa Vas, 2. Maria Verbina Clara S. Anna Vas, 3. Heraclino Roberto Ciriaco Vas and 4. late Clara Madeleine Vas being 1/6th share each. In the said Inventory Proceedings the property of the Inventariados/deceased was allotted in shares and fragmented portions. In order to consolidate the holdings and for better enjoyment of the same the children and the descendants of the late Ladislau Aureliano de Sacrafamilia Vas did an internal family exchange with delivery and possession and thereby the whole of the Item No. 17 "Gustinachi Xira" or "Nagoavadeachi Xira" came to be owned, enjoyed and possessed by late Mr. Alberto Francisco Licurcio Monte Varde de Santiago Vas

e Reeves. The said property has been partly surveyed under Survey No. 168/1 and partly under S. No. 167/2. The portion of the said property bearing S. No. 168/1 admeasures an area of 3,900.00 square metres out of which an area of 150.00 square metres was acquired for the purpose of constructing a road and the portion bearing S. No. 167/2 (part) admeasures an area of about 15,700.00 square metres and is more particularly described in the croqui plan annexed hereto and marked with the letters "A", "B", "C", "D", "E" and "F" and shaded in red colour. The total holding of the petitioner and respondents No. 7 to 10 is about 19,600 square metres presently.

4. The petitioner thus narrated the genealogy and traced how the property came to her. It was stated that the title was derived from late Walford Ladislau Reeves. It was also stated that one of the uncles had died without leaving any heirs, and as per the legal position prevailing in Goa, children of collaterals would derive interest in the property. It was stated that by family exchange property came to the share of the petitioner.

5. The respondents filed their written statement and contested the claim of the petitioner. According to the respondents the petitioner did not have any title to the property and the factum of Will was denied. The case of the respondents is that they are in exclusive possession of the property for over 100 years without any obstruction or interference from anyone. In the written statement there is no reference to any title document and ownership is ascertained on the basis of exclusive possession for 100 years.

6. An application was made by the petitioner for amendment of the plaint. The petitioner had sought three amendments in the plaint, as mentioned earlier.

7. Reply was filed by the respondents to the application for amendment. The respondents opposed the application on the ground that the suit was at the stage of evidence and if the amendment is allowed nature of suit would change. The Civil Judge held that the defendants sought to be added were not necessary and further they could not be co-owners as petitioner in her plaint had stated that she was the sole owner of the property. The learned Judge held that considering the stage of the suit such belated amendment without any reason for delay could not be granted. The learned Judge also held that if the proposed respondents had any right they could file the separate suit against the petitioner. On these grounds the application was rejected by the impugned order dated 15 April 2014.

8. I have heard Mr. Valmiki Menezes, the learned Counsel for the petitioner and Mr. Bhargav Khandeparkar, the learned Counsel for the respondents No. 1 to 4.

9. The first aspect that needs to be kept in mind is the nature of litigation. It is a dispute amongst family members. Family tree is placed on record. It shows that the dispute is between the descendants of Mr. Ladislau Vas and Mrs. Deodita. The family members are embroiled in a litigation in respect of the suit property. It is always desirable that the litigation between family members is conclusively put at rest. Litigation between family members affects the entire family emotionally

and financially. One of the ways the dispute is conclusively resolved to is consider all permissible challenges in one suit rather than driving the parties to different litigation in respect of the same family property. The learned Judge while rejecting the application has observed that the proposed defendants could always file a separate civil suit against the petitioner. Such course of action would militate against the above object.

10. The amendment sought is about inclusion of the proposed defendants and seeking possession from them, if it is held that they have no right to the property. While rejecting the application the learned Civil Judge has not noticed the averments in the plaint already on record. The defendants who were stated to be joined are narrated in the family history and their names and relation is also specified. As the family chart and the plaint would show that the manner in which the property has travelled is quite complex. Thus after narrating the history in the plaint the petitioner has moved the amendment to join the proposed defendants. Consequently as the relief of the petitioner in the plaint is for declaration and possession, a relief is also claimed against the proposed defendants.

11. To my mind the amendment does not change the nature of the claim made by the petitioner. Though the petitioner has stated that by way of partition the petitioner has received the property in the plaint there is no positive assertion that the defendants proposed to be joined do not have any share in the property. Inclusion of these defendants will not change the nature of the relief or the suit. It was not necessary for the learned Civil Judge to enter into the merits of the claim to ascertain whether petitioner would succeed against proposed defendants. On reading the plaint as a whole, it is clear that the proposed defendants could not be termed as total strangers to the property. Though Mr. Khandeparkar, the learned Counsel for the respondents has tried to support the findings of learned Civil Judge that the proposed defendants are not necessary that was not the ground taken by the respondents in their reply before the Court below.

12. Mr. Khandeparkar relied upon decision of the Apex Court in the case of P.A. Jayalakshmi Vs. H. Saradha and Others, . The Apex Court in this decision has laid down that unless the Court finds that amendment carried out could not have been made earlier with due diligence, the Court should not grant such amendment, and it is question of jurisdiction of the Court. In the present case, the names of the proposed defendants are already mentioned in the plaint and it was only after the petitioner realised that the proposed defendants could have a share in the property the application for amendment was moved. Mr. Menezes has submitted that the petitioner will not lead any additional evidence and will go on with the suit with the evidence already led. Thus the amendment sought will not delay the suit as no further evidence will be led. Keeping nature of the litigation in mind, complexity of the claim and the fact that defendants are already mentioned in the plaint, certain latitude is needed to be given to the

petitioner, especially when no prejudice is pleaded by the respondents. The only objection in the reply was regarding delay.

13. In the facts and circumstances of the case, therefore, if the amendment is refused on the ground that it is moved belatedly there will be one more round of litigation amongst the family members, who are already named in the plaint, in respect of the same property. As regard the argument of Mr. Khandeparkar that after adding the defendants they will file additional written statement and try to cover lacunas in the case of the petitioner, no such contention was taken in the reply nor argued before the Court below. In any case, if the proposed defendants try to do the same, the respondents can always object as per law.

14. In the circumstances, I am of the opinion that the learned Civil Judge has taken rather technical approach to the case and not considered the nature of litigation and the various aspects which should have been considered while exercising the discretion. The learned Civil Judge was therefore in error in not exercising the jurisdiction to allow the amendment in the present case. Petition therefore deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs. Interim relief granted earlier stands vacated. All contentions as regard the amended portion on merits are kept open. Parties shall appear before the learned Civil Judge on 23 February 2015 at 10.00 a.m. Amendment to be carried out within two weeks from 23 February 2015.