

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.92 OF 1999

1. Shri Dattaram Vishnu Parab
(since deceased) represented
through:-
 - a) Jitendra A. Porob;
 - b) Virendra A. Porob;
2. Smt. Indira Dattaram Parab,
wife of petitioner no.1, major,
r/o Mapusa, Bardez, Goa.....PETITIONERS.

VERSUS

1. Shri Satish Vishnu Parab,
son of late Vishnu Dattaram
Parab, businessman, r/o
Mapusa, Bardez, Goa;
2. Smt. Sulochana Satish Parab,
wife of respondent no.1, major
of age, r/o Mapusa, Bardez, Goa;
3. Shri Vassant Vishnu Parab,
major of age, married,
businessman, Indian National;
4. Smt. Vassanti Vassant Parab,
major of age, housewife,
Indian National, r/o Comba,
Margao, Goa;
5. Shri Umesh Vishnu Parab,
major of age, married,
businessman, Indian National;
6. Smt. Ujwala Umesh Parab,
major of age, housewife,
Indian National, residing at
Margao, Goa;

Respondents nos. 2 to 6 are all
represented by their attorney
Satish Vishnu Parab;

7. Shri Narcinva V. Parab,
major of age, married,
service, Indian National;
8. Geeta Narcinva Parab,
major of age, housewife,

Indian National, r/o An-
sabhat, Mapusa, Bardez, Goa;

9. Deleted.

10. Shivraj A. Porob
and his wife

11. Sangita Shivraj Porob,
major of age, both resi-
ding at House no.149,
Mapusa Municipal Market,
Mapusa, Goa

...RESPONDENTS.

Shri Sudin Usgaonkar, Advocate for the Petitioners.

Shri J.P. Mulgaonkar, Advocate for the Respondents
No.1 to 6.

CORAM : A.S. AGUIAR, J.

DATED : APRIL 10, 2002.

ORAL ORDER

Heard the learned Advocates.

2. By the impugned Order dated 21st January, 1999, the Civil Judge, Senior Division, Mapusa has rejected the application for amendment to the counter-claim filed by the Petitioners herein/Defendants in the original Suit No.338/88/A. The application which is at page 80 seeks amendments to the counter-claim as set out in the application. Learned Advocate for the Petitioners concedes that the prayer for amendment at 9(c) has become infructuous and, therefore, does not press the same.

3. The Respondents objection is mainly to the amendment sought by the Petitioners to substitute the sum of Rs.6,73,233-00 in place of

the amount claimed in the counter-claim, namely, Rs.1,22,543-65 as set out in Para 46 of the counter-claim. The figure sought to be substituted, namely, Rs.6,73,233-00 is based on the Report of the Commissioner appointed by the trial Court in the said suit No.338 of 1988.

4. It is an admitted fact that the Commissioner was required by the trial Court to file the said Report for fixing the base price for auction of the property amongst the parties. The learned Advocate for the Petitioners points out that the said Report dated 30-9-1991 filed by the Commissioner showing the cost of the building at Rs.6,73,233-00 has been accepted by all the parties. However, learned Advocate for the Respondents, contends that serious prejudice would be caused to the Respondents if the amendment is allowed, since admittedly, the Defendants/Petitioners herein had restricted their counter-claim to the sum of Rs.1,22,543-65 which claim was based on material existing to their knowledge prior to the filing of the counter-claim. It is contended that the cost of construction shown

by the Commissioner in his Report cannot be used by the Petitioners as it is their case that the cost of construction was only Rs.1 lakh and odd. The Commissioner's report has no relevance as the Petitioner's claim is based upon the amount admittedly spent by the Defendants/Petitioners herein.

5. The reasoning of the learned trial Judge in the impugned Order rejecting the amendment application does not appear to be germane to the Respondents objection to the amendment application. However, I do not find any substance in the Respondents objection to the amendment application. I also do not find any ground of objection taken by the Respondents to the said application for amendment of any relevance. By permitting the amendment, no actual prejudice will be caused to the Respondents, as the Respondents will have the right to file their written statement denying the enhanced claim of the Petitioners and it will be for the Petitioners to substantiate their claim on merits.

6. In view of the above, the following Order:-

The impugned Order dated 21st January, 1999 is set aside. Application of the Defendants/Petitioners herein for amendment of the counter-claim is allowed, except Para 9) (C) of the amendment application. Amendment to be carried out within the week and amended copy to be served within one week thereafter.

7. Civil Revision Application stands disposed of.

(A.S. AGUIAR)
JUDGE.

ac.