

CIVIL REVISION APPLICATION NO.120 OF 2000

Mr. Santana Fernandes,
major of age,
Advocate,
resident of Pixem Dongri,
Vasco-da-Gama, Goa.

... Applicant.

versus

1. Mr. Cristo D'Souza,
major of age, service,
residing at Pixem Dongri,
Vasco-da-Gama, Goa.

2. Mrs. Mary D'Souza,
major of age, housewife,
residing at Pixem Dongri,
Vasco-da-Gama, Goa.

3. Mr. Caetano D'Souza,
major of age, service,
residing at Pixem Dongri,
Vasco-da-Gama, Goa.

4. Mrs. Bela D'Souza,
major of age, housewife,
residing at Pixem Dongri,
Vasco-da-Gama, Goa.

... Respondents.

Mr. R. Satardekar, Advocate for the Applicant.

Respondents absent despite service.

CORAM: P. V. HARDAS, J.

DATED: 28TH JANUARY, 2002.

ORAL JUDGMENT

This Civil Revision Application has been filed by the Applicant/Original Plaintiff being aggrieved by the Order passed by the Civil Judge, Junior Division, Vasco-da-Gama, in Civil Miscellaneous Application No.301 of 1999 arising in Regular Civil Suit No.8 of 1990, rejecting the application for amendment, being Civil Miscellaneous Application No.301 of 1999.

2. Mr. R. Satardekar, the learned Advocate appearing for the Applicant has urged that the learned Trial Court had earlier allowed the Plaintiff to amend the plaint. Thereafter, when the amendment application was under consideration of the learned Trial Court, the Defendants/Non Applicants surreptitiously placed potted plants and planted additional plants towards the North East of the Plaintiff's house adjoining the foundation of the Plaintiff's house and because of profuse watering of the said plants the roots have gone under the said foundation and has resultantly weakened/damaged the foundation. Accordingly, the amendment application was moved seeking to amend the plaint. The learned Trial Court by its Order dated 1st April, 2000, has dismissed the application filed by the Applicant/Original Plaintiff on the ground that in the amendment application, the Plaintiff/Applicant had not stated the date when the alleged plants were planted and also that the application appeared to be a ruse to delay the progress of the trial.

3. This Revision Application came to be admitted by this Court on 7th September, 2000 and an interim stay to the further proceedings before the Trial Court came to be granted.

4. While rejecting the application for amendment, the Trial Court has held that this was a frivolous amendment which was filed by the Plaintiff to delay the progress of the trial. From the record, it appears that the amendment application came to be moved as a sequel to an earlier application which the Court had allowed. Certain additional facts were sought to be placed on record by the Plaintiff. In such circumstances, the amendment application of the Plaintiff could not be said to be frivolous. The learned Trial Court was also not justified in holding that the filing was a ruse to delay the further proceedings before the Trial Court.

5. From the Order of the learned Trial Court, it appears that the Trial Court has not exercised its discretion judiciously in rejecting the application. Therefore, in my opinion, the learned Trial Court ought to have allowed the application.

6. In view of this, Civil Revision Application No.120 of 2000 is allowed. The Order of the learned Trial Court impugned in the revision is hereby quashed and set aside and the application of the Plaintiff for amendment is allowed. The Applicant/Plaintiff shall carry out the amendment within 15 days from the receipt of the writ of this Court.

7. In the result, Civil Revision Application is allowed with no order as to costs.

(P. V. HARDAS)
JUDGE