

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 53 OF 2003.

Shri Santosh Shaba Gaonkar,
r/o Codar, Khandepar, Ponda. ... Petitioner.

Versus

1. Shri Datta Tukaram Prabhu,
r/at Near Hotel Kirti,
Nirankal Road, Ponda, Goa.
2. Village Panchayat of
Bethora - Nirancal -
Conxem, Codar.
3. Comunidade of Codar,
through its Attorney
Shri Pramod Ranganath Sinai
Priolkar, with office Opp.
Post Office, Ponda, Goa.
4. Administrator of Comunidades
of North Zone, Ponda and Tiswadi
Taluka, Near Church Square,
Panaji. ... Respondents.

Mr. Sudin M.S. Usgaonkar, Advocate for the Petitioner.

Mr. B.A. Sahakeri, Advocate for the Respondent No. 1.

Mr. S.N. Joshi, Advocate for the Respondent No. 2.

Coram: P.V. HARDAS, J.

Date: 28th February 2003.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith. By consent of parties, this petition is taken up for final disposal.

2. This petition has been filed by the original plaintiff in Regular Civil Suit No. 35/2002/C, being aggrieved by the Order, dated 2nd November 2002, passed by the Civil Judge, Junior Division, Ponda, rejecting the application filed by the petitioner/plaintiff under

Order I, Rule 10(2) of the Code of Civil Procedure.

3. By the said application, the petitioner sought the impleadment of two persons. The learned trial Court rejected the said application principally on the ground that there were no specific allegations against the parties sought to be added by the plaintiff.

4. I have heard Mr. Usgaonkar, learned counsel appearing on behalf of the petitioner, Mr. Sahakeri, learned counsel appearing on behalf of the respondent no. 1 and Mr. Joshi, learned counsel appearing on behalf of the respondent no. 2.

5. Mr. Usgaonkar has invited my attention to the application of the plaintiff under Order I, Rule 10(2) of the Code of Civil Procedure. At paragraph 8 of the said application, the plaintiff has made specific allegations, which read thus:-

"8. The entire episode therefore depicts an act of collusion between the Defendant No. 1 & 2 with the active participation of said Rauji Bombi Gaonkar which has made the Plaintiff apprehensive that said Rauji Bombi Gaonkar is collectively responsible for the said illegal construction alongwith the Defendant No. 1 & 2."

In paragraph 10 of the said application, the plaintiff has stated that the plaintiff is seeking relief against

the said persons as stated in the application for amendment of the plaint, which was filed in the Court.

6. From a perusal of the relevant paragraphs of the said application, I am satisfied that the plaintiff has made specific allegations against the parties sought to be added. The learned trial Court was, therefore, not correct in observing that in the absence of any specific allegations against the parties, the application could not be granted. From a perusal of the said application, it is clear that the presence of the parties sought to be added as defendants 5 and 6 are necessary in order to effectually and completely adjudicate the questions involved in the suit.

7. In the result, therefore, the Writ Petition is allowed. The impugned Order, dated 2nd November 2002, passed by the Civil Judge, Junior Division, Ponda, is hereby quashed and set aside and the prayer for impleadment of the parties made in the application under Order I, Rule 10(2) of the Code of Civil Procedure is, hereby, allowed. Rule made absolute with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.