

(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.  
IN THE HIGH COURT OF BOMBAY AT GOA  
APPELLATE SIDE

WRIT PETITION NO. 45 OF 2004

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Office Note, Office Memoranda  
of Quorum, appearances, Court's  
orders or directions and  
Registrar's orders.

Court's or Judge's Orders

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

Mr. Shivan Dessai, Advocate for the  
respondents.

CORAM : N.N. MHATRE, J.

DATE : FEBRUARY 27, 2004

P.C.:

This petition is directed  
against the order of the Civil  
Judge, Sr. Division at Margao,  
disallowing an application for  
amending the written statement filed  
by the petitioners. The  
respondents/plaintiffs had filed a  
suit for declaration, permanent  
injunction and recovery of damages.  
The property which the respondents  
claimed was surveyed under  
No.57/1(part), 63/1

(part), 68/1(part), 69/1, 2, 3 and 70/1 (part) of Village Canacona. In the written statement filed by the petitioners, they had contended that they have right over the property surveyed under No.63/1. As regards Survey No.57/1 (part), the defendants, i.e. the petitioners herein stated that it belongs to some other persons. A Commissioner was appointed for identifying the property. The Commissioner has identified the same and has found that part of Survey No.57/1 was in occupation of the defendants, i.e. the petitioners herein. Accordingly, the defendants filed an application for amending the written statement as per the Schedule annexed to the application. By this amendment, the petitioners sought to add and insert words "57/1(part)". Other consequential amendments were also sought.

2. The trial Court disallowed

this application on the ground that the amendment application failed to show the Court how the dispute between the parties could be resolved. This amendment was also disallowed. The plaintiffs only claimed a part of Survey No.57/1 and not the entire land. Taking exception to the order, the Petitioners filed the present petition.

### 3. Heard Advocates.

4.The amendment sought by the defendants, i.e. the petitioners herein is a consequence of the Commissioner's Report. The petitioners being tribal probably did not know the boundaries of the suit property. In any event, no prejudice will be caused to the respondents if the application is allowed. The application, in fact, was filed in view of the Commissioner's Report which has

identified the property.

5. The impugned Order is, therefore, set aside. The petitioners are permitted to amend their written statement. The amendment to be carried out within four weeks from today.

NISHITA MHATRE, J.

ssm.