

CNR: GANG01-000855-2018

IN THE COURT OF THE DISTRICT JUDGE-2, MAPUSA.

(Before Mr. Ashley L. C. Noronha, District Judge-2, Mapusa-Goa.)

Civil Suit No. 8/2018

1. Mr. Tilgo Datta Gaddi,
Son of late Shri Datta Gaddi,
Aged about 67 years,
married,
Indian National,
and his wife,
2. Mrs. Sunanda Tilgo Gaddi,
Wife of Mr. Tilgo Datta Gaddi,
Aged about 65 years,
married, Indian National,

Both R/at H. No. 10, Gaddiwada,
Karapur, Sanquelim, Goa.

... Plaintiffs

V e r s u s

1. State of Goa,
Through the Chief Secretary,
Secretariat,
Porvorim, Bardez, Goa.
 2. District Rural and
Development Agency,
Through its Director,
North Goa, Spaces Building,
7th Floor, Patto, Panaji – Goa.
 3. Block Development Officer,
Office of Block Development Officer,
Bicholim, Goa.
 4. Village Panchayat Karapur- Sarvan,
Through its Secretary,
Karapur,
Taluka of Bicholim – Goa.
- ... Defendants

Learned Advocate Shri Deepak Gaonkar present for the Plaintiffs.

Learned Advocate Ms. S. Kamat present for the Defendant nos.
1, 2 and 3.

Learned Advocate Shri S. Rane present for the Defendant no.4.

ORDER

(Delivered on this 26th day of the month of July of the year
2018).

This Order is on the application under Section 151 of the
Civil Procedure Code, filed by the plaintiffs, for discarding the
reply, written statement and the affidavit of the defendant no.4
dated 12.6.2018, which is filed on the same date 12.6.2018, at
exhibit 31.

2. Defendant no.4 filed reply at exhibit 33, opposing the same and prayed that the application be dismissed and the written statement and reply signed by the Sarpanch of defendant no. 4 be allowed to be withdrawn.

3. Arguments heard. Learned Advocate Shri D. Gaonkar argued for the plaintiffs. Learned Advocate Shri S. Rane argued for the defendant no.4.

4. Learned Advocate Shri D. Gaonkar for the plaintiffs submitted that the defendant no.4 on being served with show cause notice and summons in the present suit, appeared and filed its reply, and written statement dated 27.4.2018, which were placed on record on 30.4.2018 at exhibits D-14 and B-15 respectively. Learned Advocate for the plaintiffs submitted that the plaintiffs thereafter filed their affidavit-in-rejoinder on 5.5.2018 to the said reply and the written statement by the defendant no.4. Learned Advocate for the plaintiffs submitted that thereafter, on 12.6.2018, the defendant no.4 once again filed a fresh reply and written statement dated 12.6.2018 at exhibit D-28 and B-27 respectively, without disclosing to this Court about the earlier reply and written statement filed in the present suit.

5. Learned Advocate for the plaintiffs therefore, submitted that there are two replies to the written statement filed on behalf of the defendant no.4. Learned Advocate for the plaintiffs submitted that there cannot be two replies to the written statement on behalf of the defendant no.4 in the present suit, which is against the provisions of law.

6. Learned Advocate for the plaintiffs submitted that Order 8 Rule 1 of the Civil Procedure Code gives right to the defendants to file their pleadings by way of written statement only once, and at the most there can be an additional written statement in reply to any amendment to the plaint. Learned Advocate for the plaintiffs therefore, submitted that considering the facts and circumstances of the case, it is just and necessary in the interest of justice to discard the second reply and the written statement filed on 12.6.2018, since the reply and the written statement of defendant no.4 dated 27.4.2018 has already been filed on 30.4.2018.

7. Learned Advocate Shri S. Rane for the defendant no.4 submitted that the written statement and the reply dated 27.4.2018 has been signed and verified by the Sarpanch of the defendant no.4. Thereafter, upon an objection raised by the plaintiffs, a written statement and reply signed by the Secretary

of the defendant no.4 was filed on 12.6.2018. Learned Advocate for the defendant no.4 submitted that the written statement and the reply sworn by the Secretary of the Panchayat is to be considered, as the reply and the written statement of the defendant no.4, as the Panchayat is represented by its Secretary for all legal purpose and not by the Sarpanch. Learned Advocate for the defendant no.4 submitted that in the circumstances, the present application be dismissed and the written statement and reply signed by the Sarpanch for the defendant no.4 be allowed to be withdrawn.

8. As rightly submitted by learned Advocate Shri D. Gaonkar for the plaintiffs, Order 8 Rule 1 of the Civil Procedure Code gives right to the defendants to file the written statement only once, and at the most, an additional written statement in case of any amendment to the plaint. There cannot therefore, be two written statements and two replies on record on behalf of the defendant no.4, as found in the present case.

9. Infact, it was for the defendant no.4 to have sought leave of this Court before filing the second written statement and reply on 12.6.2018, as the written statement and reply of the defendant no.4 had already been placed on record on 30.4.2018. Leave now sought by the defendant no.4 in the reply at exhibit

33 cannot be considered as no prayer can be made by way of any reply to an application, except by way of a separate application to be filed by the defendant no.4.

10. In the circumstances, there is considerable merit in the submissions of learned Advocate Shri D. Goankar for the plaintiffs, that there cannot be two written statements and replies on behalf of the defendant no.4 on record. The leave now sought by the defendant no.4 in its reply at exhibit 33 cannot be considered.

11. However, in the circumstances, an opportunity is hereby given to the defendant no.4 to file a separate application for leave to discard any one set of the written statement and reply on or before the next date of hearing, failing which the present application will be allowed and the written statement and reply at exhibits B-27 and D-28 respectively shall stand discarded. No orders as to costs.

Order accordingly.

Mapusa.

Dated:26.07.2018.

lc*

(Ashley L.C. Noronha)
District Judge-2,
Mapusa - Goa.