

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**SECOND APPEAL NO. 57 OF 2023
WITH
CIVIL APPLICATION NO. 97 OF 2023
IN
SECOND APPEAL NO. 57 OF 2023**

1 Shri Rajeev Madgaonkar (S.D.)

Through legal heirs, 66 years,

1(a) Smt. Sarita R. Madgaonkar,

Wife of late Rajeev Madgaonkar

Age about 61 years, housewife,

1(b) Mr Rohan R. Madgaonkar

Son of late Rajeev Madgaonkar

Age about 38 years, service,

1(c) Mr Sameer R. Madgaonkar

Son of late Rajeev Madgaonkar

Age about 37 years, service,

1(d) Mr Nitin R. Madgaonkar

Son of late Rajeev Madgaonkar

Age about 36 years, service,

All Resident of H.No.373,

Jaiwada, Candola

Marcel, Ponda Goa.

..... Appellants

Versus

M/s Madgaonkar Salvage

Through its partner

Shri Anil V. Madgaonkar

with its registered office at

Nizar Bhavan, 5th floor,

Menezes, Braganza Road

P.O. Box 143,

Panaji Goa.

.....Respondent

Mr Parikshit Sawant, Advocate for the Appellants.

Mr A. D. Bhohe and Ms A. Fernandes, Advocates for the Respondent.

WITH
WRIT PETITION NO. 1183 OF 2023 (Filing No.)

1 Smt. Sarita R. Madgaonkar,
Wife of late Rajeev Madgaonkar,
Age: 61 years, housewife,

2 Mr Rohan R. Madgaonkar,
Son of late Rajeevn Madgaonkar,
Age: 38 years, service,

3 Mr Sameer R. Madgaonkar,
Son of late Rajeevn Madgaonkar,
Age: 37 years, service,

4 Mr Nitin R. Madgaonkar,
Son of late Rajeev Madgaonkar,
Age: 40 years, service,
All residents of House No.373,
Jaiwada, Candola, Marcel,
Ponda Goa

..... Petitioners

Versus

1 M/s Madgaonkar Salvage
Through its partner
Mr Anil Madgaonkar,
Having their office at Nizari Bhavan
5th floor, Menezes Braganza Road,
Panaji Goa.

2 M/s Madgaonkar Farms,
Having their office at
Candola, Ponda Goa.

.... Respondents

Mr Parikshit Sawant, Advocate for the Petitioners.

Mr A. D. Bhohe and Ms A. Fernandes, Advocates for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 14th SEPTEMBER 2023

ORAL ORDER

1. Heard Mr P. Sawant, learned counsel for the Appellants/Petitioners in Second Appeal No.57 of 2023 and Writ Petition No. 1183 of 2023 (F). Mr A. D. Bhobe appears for the Respondent in the Second Appeal and Writ Petition.

2. The Respondent in the Appeal i.e. M/s Madgaonkar Salvage instituted Regular Civil Suit No. 33/1999/B in the Court of Civil Judge Junior Division, Ponda (trial Court) claiming that Rajeev alias Raju Madgaonkar (the predecessor in title of the Appellants'/Petitioners') was their employee and he was given the suit premises for accommodation as an employee of the firm and as a part of the condition of his service. The plaintiff claims that by letter dated 09.10.1997, Rajeev alias Raju Madgaonkar resigned from his services and confirmed that he would vacate the company premises where he presently resides within 90 days. This document is produced on record in the trial Court as Exhibit PW1/E.

3. In the suit, Rajeev alias Raju Madgaonkar, raised plea of mundkarship under the provisions of Goa Mundkars (Protection from Eviction) Act, 1975 (Mundkar Act). Accordingly, the issue was referred to the Mamlatdar.

4. Even before the Mamlatdar Rajeev alias Raju Madgaonkar filed an application claiming mundkarship of the suit premises. The Mamlatdar by judgment and order dated 30.03.2011 held against the Appellants/Petitioners who continued the proceedings as in the meanwhile Rajeev alias Raju Madgaonkar expired.

5. The Mamlatdar, in judgment and order dated 30.03.2011, held that the Petitioners/Applicants failed to establish that they were inducted in the suit premises prior to the appointed date of 12.03.1976. The Mamlatdar also held that since Rajeev alias Raju Madgaonkar was an employee, he was excluded from the definition of “*mundkar*” under Section 2(p) of the Mundkar Act.

6. The Appellants/Petitioners challenged the Mamlatdar’s order before the Deputy Collector by instituting Mundkar Appeal No.5/2011. The Deputy Collector dismissed this appeal by judgment and order dated 04.02.2014.

7. The Appellants/Petitioners challenged the Deputy Collector’s order dated 04.02.2014 by instituting Mundkar Revision No.3/2014 before the Administrative Tribunal, Goa. This was dismissed by judgment and order dated 29.02.2016.

8. Thus, the Mamlatdar, Deputy Collector and Administrative Tribunal have concurrently held that Rajeev alias Raju Madgaonkar was not mundkar in respect of the suit premises. There are findings of fact recorded by the three authorities which suffer from no perversity whatsoever.

9. The Appellants/Petitioners did not even challenge the Tribunal's order dated 29.02.2016 for almost seven years until this petition was instituted on 03.05.2023. This petition was instituted because in the meanwhile, based upon the judgment and order of the Mamlatdar, Deputy Collector and Administrative Tribunal, the trial Court decreed Regular Civil Suit No.33/1999/B and the First Appellate Court dismissed the Appellants/Petitioners Regular Civil Appeal No.37/2019 vide judgment and order dated 13.05.2022.

10. After the Second Appeal was instituted on 20.08.2022, the Appellants/Petitioners realized that the Second Appeal, in all probabilities, would be dismissed for want of challenge to the Tribunal's order. Therefore, after almost seven years, the writ petition was instituted to challenge the Tribunal's order.

11. However, even if the most liberal view is taken and the Writ Petition No.1183 of 2023 (F) instituted after almost seven years is to be entertained, still, there is no case whatsoever made out to interfere with the concurrent findings recorded by the Mamlatdar, Deputy Collector and the

Administrative Tribunal. The findings suffer from no perversity and no error of law was also pointed out.

12. Section 2(p) of the Mundkar Act defines the mundkar in the following terms:

“2(p) “mundkar” means a person who, with the consent of the bhatkar or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include—

(i) a person paying rent to the bhatkar for the occupation of the house;

(ii) a domestic servant or a chowkidar who is paid wages and who resides in an out-house, house-compound or other portion of his employer’s residence;

(iii) a person employed in a mill, factory, mine, workshop or a commercial establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment, in connection with his employment in such mill, factory, mine workshop or commercial establishment; and

(iv) a person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a care-taker of the said house or for purposes of maintaining it in habitable condition.”

13. For a person to be declared as mundkar, such a person must establish that such person was residing in the dwelling house with the consent of the bhatkar (landlord) or the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar. The Explanation

provides that a person shall be deemed to be lawfully residing with the consent of the bhatkar in a dwelling house if such person resides in it for a period exceeding one year prior to the appointed date and the bhatkar has not initiated any proceedings, during the said period of one year, to evict such person from the dwelling house, through a competent court of law, on the ground that such person was a trespasser or, having so initiated such proceedings, does not succeed in obtaining a decree for the eviction of such person.

14. Section 4 of the Mundkar Act which deals with the bar to eviction of the mundkar from a dwelling house and restoration of possession where such mundkar has been evicted contrary to the provisions of the Mundkar Act. Such protection is extended to the mundkar in possession of a dwelling house on or before the appointed date. Some special provisions are also made favouring mundkars who were in occupation of the dwelling house on 04.02.1971 but were evicted from the dwelling house thereafter but before the appointed date i.e. 12.03.1976.

15. In the present case, the Appellants/Petitioners neither pleaded nor proved induction and consequently possession prior to the appointed date i.e. 12.03.1976. Therefore, the authorities need not have even gone into the issue of whether Rajeev alias Raju Madgaonkar was excluded from the definition of “*mundkar*” because he was employed in the commercial establishment and was residing in the premises belonging to the owner or the person in charge

of the commercial establishment in connection with his employment in such a commercial establishment. But having gone into, findings have been recorded which suffer from no serious infirmities.

16. Besides, it does not appear that there were any bonafide in the plea of mundkarship raised by Rajeev alias Raju Madgaonkar and continued by his legal representatives. The resignation letter which is admitted in evidence at Exhibit PW1/E, shows that Rajeev alias Raju Madgaonkar tendered his resignation and even confirmed that he would vacate “*company premises*”, where he presently residing within 90 days.

17. Apart from vaguely stating that this was a fabrication, there was no further explanation as to how, in the context of a letter dated 09.10.1997 and several other documents forming part of the evidence on record, Rajeev alias Raju Madgaonkar could claim that he was a mundkar in respect of the suit premises. The plea was raised only to delay the proceedings in the civil suit to the extent possible. In delaying the proceedings, and continuing in possession, Rajeev and his legal heirs have succeeded.

18. For the above reasons, no case is made out to interfere with the concurrent judgments and orders of the Mamlatdar, Deputy Collector, and Administrative Tribunal. Accordingly, the Writ Petition No. 1183 of 2023 (F) is liable to be dismissed and is hereby dismissed.

19. In so far as the Second Appeal is concerned, once the Appellants or their predecessor in title's plea of mundkarship stands validly dismissed, no error can be found with the concurrent judgments and decrees of the trial Court and the First Appellate Court in decreeing the suit and dismissing the Appellants' first appeal. Accordingly, no question of law much less any substantial question of law arises in the Second Appeal so as to warrant its entertainment.

20. Mr Sawant, however, submitted that in the plaint M/s Madgaonkar Salvage claims to be the owner of the suit premises but in the proceedings before the Mamlatdar, M/s Madgaonkar Salvage took up a plea that it was M/s Madgaonkar Farms, a partnership firm which was the owner of the suit premises. He submitted therefore that the suit instituted by M/s Madgaonkar Salvage was incompetent since M/s Madgaonkar Salvage was not the owner of the suit premises.

21. Mr Sawant relied on *Rishab Chand Bhandari and another Vs National Engineering Industry Limited*¹ to contend that the definition of "landlord" in Rajasthan Rent Control legislation was not interpreted literally by the Hon'ble Supreme Court. The definition of "landlord" included the person entitled to collect the rent in respect of tenanted premises. But the Hon'ble Supreme Court held that if a literal interpretation is to be adopted, it would result in strange consequences. It would mean that even if the owner,

¹ (2009) 10 SCC 601

who is the natural landlord, does not want to evict a tenant, his agent may do so. The Court held that if a literal interpretation leads to absurd consequences, it should be avoided and a purposive interpretation should be given.

22. The principle in *Rishab Chand Bhandari* (supra) is no manner attracted to the facts of the present case. Here the overwhelming evidence establishes that Rajeev alias Raju Madgaonkar was employed by M/s Madgaonkar Salvage and further Rajeev alias Raju Madgaonkar was given suit premises by M/s Madgaonkar Salvage even though M/s Madgaonkar Salvage may not have been the owner of the suit premises. The suit premises were given to Rajeev as a condition of his service and in relation to his employment. In such circumstances, M/s Madgaonkar Salvage's entitlement to institute suit to secure Rajeev alias Raju Madgaonkar's eviction could not be doubted. The trial Court and the First Appellate Court have held so and there is no case made out to take a different view, particularly since Rajeev alias Raju Madgaonkar and after him, his legal representatives never disputed that the suit premises were allotted by M/s Madgaonkar Salvage in connection with Rajeev alias Raju Madgaonkar's employment with M/s Madgaonkar Salvage. The ratio of *Rishab Chand Bhandari* (supra) therefore would not assist the case of the Appellants.

23. The Appellants only wish to create some confusion at this belated stage after the plea of mundkarship was turned down by the mamlatdar, Dy. Collector, and the Tribunal. The trial Court and the First Appellate Courts

have also held against the Appellants. The Petitioners/Appellants have no truck with M/s Madgaokar Farms. Once it was not disputed that Rajeev was the employee of M/s Madgavkar Salvage, and there is overwhelming evidence that the suit premises were given to Rajeev to stay during the tenure of his service, this latest plea cannot stand. Even the document at PW1/E written by Rajeev about handing over the possession of the suit premises to his employer M/s Madgavkar Salvage, is very clear. Rajeev's heirs neither dispute his employment or his resignation from M/s Madgavkar Salvage. Therefore, simply and vaguely styling this document as a fabrication would not be sufficient.

24. Besides, M/s Madgavkar Farms was impleaded as a Respondent in the Mundkar proceedings. Not even a claim was raised that Rajeev entered or was residing in the suit premises with the consent of M/s Madgavkar Farms. This belated plea, therefore, cannot be used to create confusion and delay the matters. Almost three quasi-judicial authorities and two judicial authorities have considered the Appellants/Petitioners case and no serious infirmity is even pointed out with such consideration.

25. Accordingly, no question of law arises much less any substantial question of law arises in the Second Appeal. There is no perversity in the finding of facts concurrently recorded by the trial Court and the First Appellate Court so as to give rise to any substantial question of law.

26. Mr Sawant pointed out that the Respondent has already given up the claim for mesne profit. Mr Bhobe confirmed this position.

27. Accordingly, this Second Appeal is liable to be dismissed and is hereby dismissed.

28. For all the above reasons, Writ Petition No. 1183 of 2023 (F) and Second Appeal No. 57 of 2023 are hereby dismissed.

29. The Civil Application No. 97 of 2023 does not survive the disposal of the Second Appeal and the same is also disposed of accordingly.

30. There shall be no order for costs.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
Date: 2023.09.21 10:34:50 +05'30'