



Devendra/Niti

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.665 OF 2023**

TEODOLINDA DIAS MANDOLY

.... Petitioner

Versus

CONCEICAO BARRETO (SINCE DEC.)

THR LRS. & ORS.

....Respondents

...

Mr. Nigel Da Costa Frias with Ms. Maria Fernandes, Advocates for
Petitioner.

Mr. Tarshish Pereira, Advocate for Respondent Nos.1(a) to 1(f).

...

CORAM : S. G. CHAPALGAONKAR, J.**DATED : 28th SEPTEMBER, 2026.****FINAL ORDER:-**

1. The petitioner impugns order dated 28.08.2023 passed by Administrative Tribunal, Goa in Mundkar Revision Application No.37/2021, thereby upholding order dated 28.09.2021 passed by Deputy Collector in Case bearing No.SDO/SAL/MUND/APPL/14/2019, whereby Appeal filed by petitioner against judgment and order dated 30.04.2015 and order dated 23.09.2019 passed by Joint Mamlatdar-III, Salcete in Case No.JM-III/MUND-PUR/02/2008 has been dismissed.

2. The petitioner contends that late Felix Antonio Jose Dias Mandoly and Rosa Antonia Marca Diniz were her parents. The petitioner has four siblings. Her property known as Dias Vaddo Dhakti Bhati bearing Survey No.124/7 of village Cavelossim admeasuring 450 sq. meters was owned

by her father and uncle Dr. Antonio Dias Mandoly. They sold a part of property to one Mr. Nelson Felix Jacques vide registered sale deed dated 16.01.1979. The portion sold to Nelson Felix Jacques was partitioned from Survey No.124/7 and independently allotted Survey No.124/19.

3. Mr. Nelson Felix Jacques instituted Civil Suit No.13/1981 before Civil Judge Junior Division at Margao against original respondent Mrs. Conciecao Barreto alleging interference and disturbance in his possession and going on possession undertaken by him. In that suit Conciecao Barreto/original respondent filed written statement raising mundkarial right. In deference to pleadings, Civil Court framed issues as to:

“whether respondent herein proves that she is mundkar of property in Survey No.124/7 owned by petitioner’s parents and whether she is having her residential house in suit property”.

4. Issue was referred to Mamlatdar for adjudication under Section 32 of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 and Rules 1977 (Act of 1975, for short).

5. In proceeding before Mamlatdar, original owners of Survey No.124/7 i.e. Felix Dias Mandoly or Dr. Antonia Dias Mandoly were not made party. Further Nelson (original plaintiff) was shown as dead and by order dated 11.02.2001 petitioner and others were brought on record as legal heirs of Nelson. They were shown to be served by substitute service by paper publication in newspaper dated 28.02.2003. Accordingly, Joint Mamlatdar-III vide order dated 08.08.2008 passed in Case No.JM-

III/MUND/REG/8/99, positively answered Issue as referred by Civil Court. Eventually, declared respondent Conciecao Barreto as Mundkar of property.

6. Taking foundation from aforesaid order, respondents i.e. legal heirs of Conciecao Barreto initiated proceeding under Section 16 of Act of 1975 for purchase of mundkarial area of 300 sq. meters situated in Survey No.124/7 at village Cavelossim. Pertinently, in said proceeding also petitioner was shown as legal heirs of Nelson Felix (who was alive), whereas original owners were not added as party. Mr. Nelson Felix Jacques appeared in proceeding and submitted his reply that he is unconcerned with property in question and also do not know any person namely Nelson Felix Jacques (opponent no.1 shown therein). Eventually, respondent i.e. legal heirs of Smt. Conciecao Barreto filed application to correct name of opponent no.1 and replaced it by name of petitioner's father as opponent, which was allowed by order dated 30.04.2015. From title clause of order passed by Mamlatdar, such replacement is not discernible.

7. Pertinently, Felix Dias Mandoly i.e. petitioner's father had already expired on 23.07.1998. By final order dated 23.09.2019, respondents' application was allowed permitting them to purchase mundkarial area of 300 sq. meters out of Survey No.124/7 and pay purchase price of Rs.4050/- within period of six months from date of order.

8. The petitioner filed Appeal vide Case No.SDO/SAL/MUND/APPL/14/2019 under Section 24 of Act of 1975 raising challenge to order dated 23.09.2019 passed by Mamlatdar allowing respondent to purchase mundkarial area from Survey No.124/7, which came to be dismissed, thereby upholding orders dated 30.04.2015 and 23.09.2019.

9. Aggrieved petitioner filed Mundkar Revision Application No.37/2021 before Administrative Tribunal at Goa, which came to be dismissed vide order dated 28.08.2023.

10. Mr. Frias, learned Advocate appearing for petitioner submits that there is no contest on point that land Survey No.124/7 of village Cavelossim was owned by petitioner's father late Felix Antonio Jose Dias Mandoly and his brother Dr. Antonio Dias Mandoly. Both of them were not party to Civil Suit bearing No.13/1981, wherein issue about mundkarial rights of Smt. Conciecao Barreto over Survey No.124/7 was framed and referred under Section 32 of Act of 1975 to Mamlatdar for adjudication. In Reference Proceeding before Mamlatdar they were not added as party and issues referred were decided behind their back. Even in subsequent proceeding under Section 16 of Act of 1975, whereby purchase right were declared in favour of respondents, they were not added as party and ultimately, declaration was granted. In absence of original owner being party to proceeding before Mamlatdar, decision on

issue as to mundkarial right or declaration of purchase right is invalid in law. The Appellate as well as Revisional Authority failed to appreciate aforesaid aspects of matter and rejected challenge raised by petitioner in Appeal or Revision.

11. Per contra, Mr. Tarshish Pereira, learned Advocate appearing for respondent no.1 supports impugned order contending that petitioner was brought on record as legal heir of Nelson Felix Jacques before Mamlatdar. She was served with notice of proceeding. However, failed to cause appearance. Now she cannot be permitted to raise plea regarding non-joinder of party.

12. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that admittedly land bearing Survey No.124/7 situated at village Cavelossim was originally owned by petitioner's father and uncle. The deceased respondent Conciecao Barreto while defending suit filed by Mr. Nelson Felix Jacques, took plea of her mundkarial rights over land Survey No.124/7. In that view of matter, Civil Court was pleased to frame an issue as to whether Smt. Conciecao Barretto is Mundkar of property in Survey No.124/7 belonging to Felix Dias Mandoly and Antonio Dias Mandoly i.e. Petitioner's father and uncle. The issue was referred to Mamlatdar in terms of Section 32 of Act of 1975. The proceeding was registered as Case No. JM-III/MUND/REG/8/99 before Joint Mamlatdar-III of Salcete

at Margao between Smt. Conciecao Barreto and Nelson Felix and parties to suit. After registration of said proceeding, Mr. Nelson Felix Jacques/ respondent no.1 before Mamlatdar was shown as dead and name of petitioner and others were brought on record as legal heirs of Nelson. On 28.02.2003 notices were shown to be served upon them by way of newspaper publication and ultimately issues referred were decided in favour of Smt. Conciecao Barreto holding that she is mundkar on Survey No.124/7 owned by petitioner's father and uncle.

13. Undisputedly, petitioner's father and uncle/Bhatkars were never made party to proceedings in suit or in reference of issue made under Section 32 of the Act of 1975. Petitioner's name was brought on record as legal heir of Nelson Felix Jacques, who was alive and unconcerned with Survey No.124/7. Apparently, by an ex-parte order dated 08.08.2008, Mamlatdar recorded the finding on issue declaring Smt. Conceicao Barreto as Mundkar over Survey No.124/7 owned by Petitioner's father and uncle.

14. In this backdrop, the declaration made under Section 8-A by Mamlatdar would be inconsequential or ineffective. Eventually, the decision on issue nos.5 and 6 referred by the Civil Court would be inconsequential so far as petitioner's right is concerned.

15. The record indicates that, taking foundation of Mamlatdar's order dated 08.08.2008 passed in Case No. JM-III/MUND/REG/8/99, thereby declaring Smt. Conceicao Barreto as mundkar, her legal heirs initiated proceedings under Section 16 of the Act of 1975 before Mamlatdar-III, Salcete in Case No. JM-III/MUND-PUR/02/2008. The title clause of the proceeding would show that again Mr. Nelson Felix Jacques was shown as the Respondent, and Petitioner and others were shown as his legal heirs. However, during pendency of the proceedings an application was moved to replace his name by name of Petitioner's father and uncle. There is nothing on record to show that Petitioner and others were served with the notice of proceeding in capacity of legal heirs of Mr. Felix Antonio Jose Dias Mandoly and Mrs. Rosa Antonio Mandoly Diniz/mundkars.

16. Sub-Rule (13) of Rule 14 of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1977 prescribes the procedure to be adopted in case of death of any party if case is pending. Clause (a) of sub-rule 13 prescribes that the application is required to be made within a period of one month of death of any party and the Mamlatdar shall record finding as to the legal representatives of the deceased party and then enter on record the name of such representatives. Sub-Rule (14) prescribes that once Mamlatdar orders the name of any person to be added as the opponent or enters on record the name of any person as legal

representative of deceased party, he shall issue such person a notice as provided under sub-rule (7) and trial shall proceed on date fixed in such notice.

17. In present case, although the name of Nelson Felix Jacques was replaced by the name of Petitioner's father, title clause does not disclose such replacement or it cannot be gathered that Petitioner's name was incorporated as legal heir of original Bhatkars. In absence of Bhatkars or their legal heirs as parties in a proceeding under Section 16 of the Act of 1975, the rights of Mundkar to purchase the property cannot be decided. Sections 21 and 27 of the Act of 1975 show that all the inquiries and proceedings before Mamlatdar are deemed to be judicial proceedings and the Mamlatdar is required to exercise the powers under Code of Civil Procedure, 1908 as exercised by the Civil Court. It was therefore obligatory on the part of Mamlatdar to conduct the inquiry with due regard to the provisions of Civil Procedure Code and the relevant Rules of 1977 framed under Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.

18. The perusal of the order passed by the Appellate as well as Revisional Authority shows that the challenge raised by Petitioner to the order of Mamlatdar is rejected solely on the ground that Petitioner was shown as a party in the proceeding and she was given notice. However, fact remains that she was shown as legal heir of Nelson Felix Jacques and

not represented Bhatkars in relation to the land under Survey No.124/7 of which Respondents were seeking mundkarial right. The proceeding for declaration under Section 16 requires adjudication between the Mundkar and the Bhatkar. The declaration of the purchase right cannot be made in absence of the Bhatkar as a party to the proceedings. Undisputedly, the proceeding under Section 16 was initiated in the year 2008, without addition of Bhatkars as parties. The name of the Petitioner appeared as legal heir of Nelson Felix Jacques. Petitioner has specifically raised a plea of fraud in seeking declaration under Section 8-A. On 30.04.2015, the order regarding replacement of name of Nelson Felix Jacques was passed and name of Felix Dias Mandoly/Petitioner's father was brought on record. Petitioner was never served notice independently as legal heir of Felix Dias Mandoly.

19. In this backdrop, the reasoning adopted by both the Authorities that the Petitioner was served with the notice of the proceedings and she did not object to the inclusion of her name as legal representative of Nelson Felix Jacques, cannot be countenanced to hold that it disentitles her from raising objection to declaration. In result, orders impugned are liable to be quashed and set aside. Needless to state here, Respondents' right to prosecute claim for declaration under Section 16 by filing fresh proceeding in accordance with law is kept open.

20. Hence, Writ Petition succeeds and is allowed in terms of prayer clause (a), which reads as under:

“(a) For a writ of certiorari calling for the records and proceedings of Mundkar Revision Application No.37/2021 on the file of learned Tribunal, case bearing no.SDO/SAL/MUND/APPL/14/2019 on the file of Deputy Collector and case no.JM-III/MUND-PUR/2/2008 & case no.JM-III/MUND/REG/8/1999 on the file of the Mamlatdar and upon perusing the legality and propriety of the Impugned Order dated 28.08.2023 passed by the learned Tribunal in Mundkar Revision Application No.37/2021, be pleased to quash and set aside the Impugned Order and consequently set aside the order dated 28/09/2021 passed by the Deputy Collector in case bearing No.SDO/SAL/MUND/APPL/14/2019 and quash and set aside the judgment and order dated 30/04/2015 passed by the Mamlatdar in case no.JM-III/MUND-PUR/02/2008.”

21. Needless to state here that Respondent Nos.1(a) to 1(f) shall be at liberty to initiate fresh proceeding seeking declaration under Section 16 in accordance with law.

S. G. CHAPALGAONKAR