

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 20 OF 2009**

1. Narayan Ganpat Umariye,
aged 64 years, agriculturist,

2. Gajanan Ganpat Umariye,
aged 56 years, businessman,
both r/o. Nauquinin – Curchorem,
Bicholim Taluka, Goa.

..... Appellants.

V/s.

1. Naguesh V. N. Satardekar,
major in age, r/o. Karapur,
Bicholim Taluka, Goa.

2. Bhago Bhairo Varak,
major in age r/o. H.No.295,
Vishwadi, Curchorem, Goa.

..... Respondents.

Mr. Amrut Kansar, Advocate for the appellants.

Mr. Prashant Vengurlekar, Advocate for the respondent No.1.

Mr. Shirin Naik, Advocate for the respondent No.2.

CORAM :- F.M. REIS, J.

Date : - 8th September, 2015.

ORAL JUDGMENT :-

Heard Mr. Amrut Kansar, learned Counsel appearing for the appellants, Mr. Prashant Vengurlekar, learned Counsel appearing for the respondent No.1 and Mr. Shirin Naik, learned Counsel appearing for the respondent No.2.

2. The above appeal came to be admitted by an order dated 6th August, 2010, on the following substantial questions of law :

1. When the owner of the suit property files a suit against the defendants for declaration and recovery of possession of the suit property, can the Mamlatdar decide under the Mamlatdar's Court Act that a third party who claims to be in possession of part of the suit property is in possession of the entire property ?
2. Whether the Trial Court was not bound to take into consideration that the order of the Mamlatdar under the Mamlatdar's Court Act was subject to the decision in the matter in the Civil Suit ?
3. Whether the First Appellate Court after coming to the conclusion that the Appellants were in possession of the suit property could dismiss the Appeal ?

3. Mr. Kansar, learned Counsel appearing for the appellants has pointed out that it is the case of the appellants that they are the tenants of the property bearing Survey Nos. 176/0 and 177/0 of Village Cudchirem, Bicholim Taluka. The learned Counsel further points out that the owner of the property was one Anant Umarye whose ancestors, had given such land on tenancy to the appellants. The learned Counsel further points out that the appellants who are in possession of the disputed property and, in fact, the survey records disclose the names of the appellants in the survey records. The learned Counsel further submits that the respondents filed proceedings under Section 4 of the Mamlatdar's Court Act, *inter alia*, claiming for an injunction and restoration of possession in terms of the said Act. The learned Counsel further submits that the learned Joint Mamlatdar, by Judgment dated 16th June, 1983, directed restoration of possession of the disputed area in favour of the respondents. The learned Counsel further submits that in terms of Section 21 of the Mamlatdar's Court Act, the findings in such judgment are not binding on the Civil Court. The learned Counsel, as such, points out that both the Courts below have erroneously relied upon the Judgment of the learned Joint

Mamlatdar whilst coming to the conclusion that the appellants have not established their possession. The learned Counsel, however, submits that in view of Section 105 of the Land Revenue Code, the possession is accepted to be with the appellants and consequently, the Courts below were not justified to refuse the relief of injunction. The learned Counsel further submits that as the appellants were in possession of the disputed property, consequently to refuse the grant of relief in favour of the appellants is not at all justified. The learned Counsel has extensively taken me through the Judgments of the Trial Court and the Appellate Court to point out that there is no independent appreciation of the evidence by the Courts below to come to the conclusion that the disputed property was not in their possession. The learned Counsel further submits that both the Courts below have erroneously relied upon the Judgment of the learned Joint Mamlatdar to non-suit the appellants on the ground that the appellants have failed to establish their possession over the suit property. The learned Counsel, as such, submits that the substantial questions of law be answered in favour of the appellants.

4. On the other hand, Mr. Prashant Vengurlekar, learned

Counsel appearing for the respondent No.1 supports the impugned Judgments. The learned Counsel has taken me through the Judgment of the learned Trial Court to point out that the learned Trial Judge has rightly come to the conclusion that the appellants have failed to prove their possession over the disputed property. The learned Counsel has also taken me through the Judgment of the learned Joint Mamlatdar Bicholim, dated 16th June, 1983 to point out that the learned Joint Mamlatdar, at the time of inspection, has clearly found that the disputed property consists of two portions, one arecanut portion and the other cajunut portion, and the respondents were in possession of cajunut portion. The learned Counsel further points out that the property surveyed under No. 177/0 is in possession of the respondents and, as such, the question of examining the validity of the impugned Judgments in the present appeal would not at all be justified. The learned Counsel further points out that there is no perversity in the findings of the Courts below and consequently, there is no substantial question of law which would arise for determination in the present appeal.

5. Mr. Shirin Naik, learned Counsel appearing for the

respondent No.2, however, points out that the portion of the disputed property surveyed under No. 176/0, towards north-east has been encroached upon by the respondent No.2 and the proceedings for regularisation are pending before the Competent Authority. The learned Counsel further points out that this itself suggests that the claim of the appellants is totally erroneous.

6. I have given my thoughtful consideration to the rival contentions and with the assistance of the learned Counsel, I have also gone through the records. There is no dispute that in terms of Section 21 of the Mamlatdar's Court Act, the findings rendered in a Judgment passed by the Mamlatdar while disposing of the proceedings under Section 4 of the Act are not binding on the Civil Court. In fact, the orders passed by the learned Mamlatdar would be subject to the Judgment passed by the Civil Court. In such circumstances, Mr. Kansar, learned Counsel appearing for the appellants is justified to contend that the Courts below are not entitled to base their findings in respect of the possession only on the findings arrived at in the Judgment of the learned Joint Mamlatdar, especially when the appellants were not parties to such proceedings. But, however, on

perusal of the findings of the learned Trial Judge, I find that there is no conclusive evidence produced by the parties to show that the alleged possession is referable to any legal title over the suit property. Both, the appellants, as well as the respondent No.1 claim to be tenants of one Anant Umariye. But, however, the said Anant Umariye is not a party, nor has he been examined to establish their respective claim of tenancy. Apart from that, there is no conclusive evidence produced on record to establish their alleged claim of tenancy in respect of the suit property. The respondent No.1 has also not produced any lease agreement or any other material to substantiate his claim of tenancy. In such circumstances, unless and until the claim of tenancy is adjudicated before the competent Court, the question of seeking any relief of permanent injunction from the Civil Court would not arise. The appellants and the respondents, if they so desire would have to resort to such remedy in the Civil Court only after their alleged claim of tenancy is adjudicated, in accordance with law. In such proceedings before the Competent Court, the issue of tenancy would have to be decided on its own merits, without being influenced by any of the findings arrived at in the impugned Judgments passed by the Courts below.

7. Subject to the above, the question of any interference in the impugned Judgments of the Courts below would not arise at all. The substantial questions of law are answered accordingly.

8. Subject to the above, the appeal stands accordingly rejected.

F.M. REIS, J.

ssm.