

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 51 OF 2015

Gulabi Somdas Naik

Major, married, Indian National,

residing at House No. 157/1,

Vollant, Betim, Bardez, Goa.

.....Petitioner

Versus

1. Mrs. Santanhinha Barreto
(since Deceased) Through
her Legal Heirs
 - (a) Mrs. Alvisa Barreto e Rodrigues,
daughter of Milagres Barreto,
married and her husband
 - (b) Mr. James Rodrigues,
major, married, both residing
Near New Municipal Garden,
Opp. Lakaki Laundry, Panaji, Goa.
 - (c) Mr. Carlos Barreto,
Son of Milagres Barreto,
Major, Indian National
and his wife.
 - (d) Mrs. Joyce Barreto,
major, Indian National and
Both residing at Near New
Municipal Garden,
Opp. Lakaki Laundry, Panaji, Goa.

- (e) Mr. Jose Ivo Gregorio Barreto,
son of Milagres J. S. Barreto,
married and his wife
- (f) Mrs. Erminda Barreto,
major, Indian National and
both residing above Neomi's
Beauty Parlour, First Floor,
Navelkar Legend,
Near Dempe College, Tonca,
Miramar, Panaji Goa. Respondents.

Mr. J. A. Lobo, Advocate for the Petitioner.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza, Advocate for Respondent no. 1a to 1f.

Coram:-N. M. JAMDAR, J.

Date:- 13 March 2015

ORAL ORDER :

By this petition, the petitioner challenges the order passed by the District Judge, North Goa, Panaji dated 17 October 2014 and the order passed by the Rent Controller dated 24 April 2010 directing the petitioner to vacate and hand over vacant and peaceful possession of the suit premises.

2. The respondents filed an application for eviction of the petitioner and her husband Somdas alias Somnath Naik under Section 22 (2) (a) (e) and 23(a) (i) (ii) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968

and Rules, 1969 (“the Rent Control Act”, for short). The property is situated at village Betim, Vollant. According to the respondents - landlords, the property was let out to the husband of the petitioner. The husband of the petitioner initially paid the rent, thereafter stopped paying rent. The Notice was sent to the husband of the petitioner which was replied stating that he has a dispute with the petitioner and his sons and he no longer stays with them and is not liable to pay any rent. The respondents thereafter issued the notice to the petitioner and demanded arrears of rent to the tune of Rs.13,500/- and since the rent was not paid the respondents filed an application for eviction of the petitioner.

3. In the proceedings, the husband did not file any written statement. The petitioner stated that the respondents have no locus standi to seek the eviction of the petitioner. It was contended that the application was in collusion with the husband, and the petitioner was a Mundkar and also that the petitioner was staying in a different house with which the respondents have no concern. The respondents placed on record their documents of title. The parties led oral evidence. After considering the evidence on record, the Rent Controller came to the conclusion that the petitioner had denied the title of the respondents and the denial was not bona fide. The Rent Controller also held that the plea of mundkarship had no substance as even the basic ingredient such as name of bhatkar was not satisfied. Accordingly, the Rent Controller held that the denial of title of the respondents was not bona fide and by order dated 24 April 2010 allowed the application. The

petitioner thereafter filed an appeal under the provisions of the Act which was heard by the learned District Judge, Panaji. The learned District Judge came to the conclusion that nothing was produced on record by the petitioner to substantiate her claim as the mundkar or that the suit premises are different. The learned District Judge did not find any error in the order passed by the Rent Controller and accordingly dismissed the appeal by order dated 17 October 2014. Thus, both the Authorities under the Act concurrently found that the petitioner is liable to be evicted from the premises.

4. The petitioner has thereafter approached this Court in writ jurisdiction. It is settled that while exercising writ jurisdiction it is only to be seen whether there is any fundamental error or perversity in the approach of the Authorities of Court whose orders are under challenge, and not to re-appreciate the evidence on record.

5. The learned Counsel for the petitioner submitted that before the ground of denial of title is invoked against the petitioner it has to be first established that there is a landlord tenant relationship and then it has to be seen whether the denial is bona fide. He submitted that the respondents have failed to prove that there was any landlord tenant relationship and there was no discussion as to this vital aspect. He relied on the decision of the learned Single Judge in the case of ***Smt. Sumati Naik V/s. Shri Dilip Fatarpekar*** reported in ***2002(1) Goa L.T. 38***. He also contended that merely because plea of mundkarship is taken that will not automatically result in

denial of title and for that purpose he relied upon the decision of Division Bench of this Court in the case of ***Delfina Gomes Pinto V/s. Safiabi wd/o Shaikh Abdul Razak*** reported in ***LAWS(BOM)2003-8-157***. The learned Counsel also submitted that the issue raised by the petitioner that the house where the petitioner is staying is different has also not been appreciated. He submitted that the rent receipts produced on record by the respondents were not proved in evidence. He further submitted that merely because the husband is not contesting the claim the right of the wife to assert her independent right is not taken away. For that purpose, he relied upon the decision of the Hon'ble Apex Court in the case of ***B.P. Achala Anand V/s. S. Appi Reddy*** reported in ***AIR (scw)-2005-0-934***.

6. It has to be noticed that the husband of the petitioner has not filed any written statement and on the contrary has accepted the landlord tenant relationship. It is the case of the respondents that the premises were let out to the husband of the petitioner. Under the Act “**tenant**” has been defined and it is only on the death of his surviving spouse or son, or unmarried daughter as the case may be get the right in the proeprty. Once the husband of the petitioner accepted the landlord tenant relationship there is no further question of proving the relationship, as far as the respondents were concerned. There was no need to lead any further evidence to establish the relationship.

7. As held by the Apex Court in the case of ***B.P. Achala Anand*** (Supra), even if the husband does not contest, after

deserting the wife, the wife can always contest the litigation. However, it will be incumbent on the wife to show her right in the property. The petitioner says that she is the Mundkar of the property and that is her independent right. Merely because it is said that she is Mundkar in house that does not automatically establishes the case. Primary ingredients to set up such a plea, must be present in the reply as well as in the evidence. The petitioner has stated that she is not aware of the name of the bhatkar except the surname. Even in oral evidence the same statement is repeated. The bare minimum for setting up a plea of Mundkarship is identification of bhatkar, even that is not done. In the absence of these particulars, the approach of the Court below that the plea is not even prima facie tenable cannot be termed as perverse. There is absolutely no reason why the petitioner could not even give these details.

8. As regards the contention that the houses are different, the petitioner has accepted that she was living with her husband before he left the premises. The husband, as stated earlier, has accepted the landlord tenant relationship. It is not the case of the petitioner that she had changed the house after her husband left her, therefore she continues to reside in the same house which the husband occupied as tenant. If she wanted to set up a plea of mundkarship she would have to prove the house in which her husband resided, she was a mundkar. Husband resided as a tenant in the house of respondent and he never denied it. The petitioner thus had to set up the plea against the respondents. The plea is not set up

against the respondents, but by a generic name Berreto.

9. In the case of ***Delfina Gomes Pinto*** (Supra), the tenant therein was paying the ground rent to the landlord and thus it was held that merely because the proceedings filed by him for declaration of Mundkarship went against him his plea could not be held bona fide and therefore no eviction was ordered.

10. In the present case, the petitioner has taken various defences however none of them have prima facie substance. Having established landlord tenant relationship with the husband, and the fact that she has not pleaded even primarily ingredient of claim of mundkarship, both the Courts below had no option but to hold that her stand that the respondents had no concern with the property was a clear denial of title and it was not bona fide. In the circumstances no fault can be found with the view taken by both the Courts below.

11. The only indulgence that can be shown to the petitioner is to grant her some time to vacate. The learned Senior Counsel for the respondents, states that six months time can be granted to the petitioner to vacate the premises.

12. Taking overall view of the matter I am of the opinion that the both the Courts neither committed any error nor any perversity. The Writ Petition is accordingly rejected. For a period of six months petitioner shall not be evicted, provided the petitioner files undertaking within a period of three weeks from today, along with affidavits of all adult members of the

family residing, in this Court, that they will not create any third party interest and hand over peaceful possession to the respondents. However, if such undertaking is not filed within three weeks, then the impugned orders will be open for execution.

N. M. JAMDAR, J.

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