

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 16 OF 2015

SMT. LEELA SHIVA SAWANT.

... Appellant

Versus

MR. RAMKRISHNA M. DESAI @
RAMAKRISHNA DESSAI @ RAMKRISHNA
MANJJI DESAI.

... Respondent

Mr. Jagannath Jayant Mulgaonkar, Advocate for the appellant.
Mr. Shivan Dessai, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 30th July, 2015

P.C.

Heard Shri Mulgaonkar, the learned Counsel for the appellant and Shri Dessai, the learned Counsel for the respondent.

2. By this appeal, the appellant/ defendant is challenging the order dated 29/10/2014 passed by the learned Senior Civil Judge at Mapusa in Special Civil Suit No.33/2014/C. By the impugned order, the application for Temporary Injunction filed by the respondent/ plaintiff has been allowed, thereby restraining the appellant or anybody on her behalf from interfering with the suit property (Survey No.244), Subdivision 20 of Village Mandrem.

3. It is undisputed that the respondent is the owner of the suit property. It is further undisputed that the appellant has filed proceedings under the Tenancy Act for declaring her as the tenant, which, according to the appellant, is pending before the Mamlatdar. It appears that the appellant had filed an application for Temporary

Injunction in the said proceedings before the Mamlatdar. By order dated 18/10/2000, the application for Temporary Injunction came to be rejected, with a finding that the appellant had not produced any material to prima facie establish the possession or his status as a tenant, in respect of the suit property. That order has not been challenged by the appellant.

4. It is submitted by Shri Mulgaonkar, the learned Counsel for the appellant that although the respondents are claiming that the suit property is barren land, the appellant had produced photographs to show that the land was being cultivated. It is also submitted that there is a Leave and Licence Agreement, a copy of which is produced in this appeal. It is submitted that thus there is prima facie evidence to show possession of the appellant and the impugned order is not legal and proper.

5. On the contrary, it is submitted by Shri Dessai, the learned Counsel for the respondent that way back in the year 2000, it has been held by the Mamlatdar that there is no prima facie material to show the possession and which order has attained finality. It is also submitted that the appellant has abandoned and/ or the proceedings before the Mamlatdar have abated. In so far as the Leave and Licence Agreement is concerned, it is submitted that the document is not executed and is only shown to be a draft of Leave and Licence Agreement. The learned Counsel has pointed out that the document Form No.I and XIV does not show that the appellant was a tenant or was in cultivating possession of the suit property. It is, therefore,

submitted that the impugned order is legal and proper.

6. On hearing the learned Counsel for the parties and on perusal of the record, I do not find that any case for interference is made out. Prima facie, at this stage, there is a finding recorded by the learned Mamlatdar on 18/10/2000 that the appellant had failed to produce slightest of the material to prima facie establish possession. That order has not been challenged. Even so far as the arguments based on photographs are concerned, it is difficult to place reliance on the photographs, in the absence of any evidence to connect the said photographs with the disputed land. Prima facie cultivating possession can be established on the basis of crop statement. In this case, Form No. I and XIV would show that the crop statement is shown as blank and does not show that the appellant is in cultivating possession of the suit field. Reliance placed on the so called Leave and Licence Agreement has only to be stated to be rejected, as admittedly, the document is not executed and is only a draft of the agreement.

7. I have perused the impugned order and I do not find that any case for interference is made out. The appeal is without merit and is consequently, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA