

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.53 OF 2008**

The Comunidade of Pilerne,
Through its Attorney,
having its office at Pilerne,
Marra, Bardez, Goa.

.... Appellant.

V/s.

1. The State of Goa,
Through the Chief Secretary,
Secretariat Complex,
Porvorim, Bardez, Goa.

2. The Directorate of Agriculture,
Government of Goa,
Panaji, Goa.

.... Respondents

Mr. Y.V. Nadkarni, Advocate for the Appellant.

Mr. P. Dangui, Additional Government Advocate for the Respondents.

CORAM : F.M. REIS, J.

DATE : 8th JANUARY, 2016

ORAL JUDGMENT :

Heard Mr. Y.V. Nadkarni, the learned Counsel appearing for the appellant and Mr. P. Dangui, the learned Additional Government Advocate appearing for the respondents.

2. The above appeal challenges part of the judgment and decree dated 20/10/2007, as specified herein below passed in Civil Suit No.40/2005,

wherein the suit filed by the appellant was partly decreed and it was inter alia declared that the appellant was the owner of the property surveyed under no.210/1 of village Pilerne, Bardez, Goa and the respondent no.2 was held to be in lawfull possession of the subject property. The learned Judge has also directed the Revenue Authorities to include the name of the appellant in the occupants column and also to insert the name of the respondent no.2 in the tenants column.

3. Mr. Y.V. Nadkarni, the learned Counsel appearing for the appellant has pointed out that the appellant is restricting their challenge to the impugned judgment only to the extent that the learned Judge has no jurisdiction nor justified to issue direction to the Revenue Authorities to insert the name of the respondent no.2 in the tenants column. The learned Counsel further submits that in any event it is now well settled in the judgment of the learned Single Judge of this Court reported in ***AIR 2006 BOMBAY 241*** in the case of ***Smt. Anandi Bhicaro Veluskar V/s. Kustanand Vithu Veluskar & Anr.*** that the Civil Court has no jurisdiction to direct the Revenue Authorities to correct the revenue records. The learned Counsel, as such, pointed out that consequently the finding of the learned Judge that the respondent no.2 is a tenant of the disputed property and the directions to the Revenue Authorities to

correct the survey record deserves to be quashed and set aside.

4. On the other hand, Mr. P. Dangui, the learned Additional Government Advocate appearing for the respondents has submitted that it is the case of the respondents that they are in possession of the disputed property. The learned Additional Government Advocate fairly accepts that there is no pleading in the written statement to the effect that the said respondents were tenants of the disputed property. The learned Counsel further points out that in view of the judgment of the learned Single Judge in the case of *Smt. Anandi Bhicaro Veluskar* (supra), the Civil Court has no jurisdiction to direct the correction of the revenue records. The learned Counsel further pointed out that the question of granting any injunction as claimed by the appellant would not at all be justified as according to him the learned Judge has rightly come to the conclusion that respondent no.2 is in lawful possession of the suit property. The learned Counsel, as such, pointed out that the appeal be dismissed.

5. Upon hearing the learned Counsel appearing for the appellant and on perusal of the records, the following point for determinations arises in the above appeal:

Whether the learned Judge was justified to direct the Revenue Authorities to rectify the survey records and direct that the respondent no.2 be inserted as a tenant of the disputed property?

6. On perusal of the judgment of the learned Single Judge in the case of *Smt. Anandi Bhicaro Veluskar* (supra), the fact that the Civil Court has no jurisdiction to direct the Revenue Authorities to rectify the survey records is no longer res integra. The learned Single Judge has observed at para 6 thus:

6. I have considered the submissions made by the learned Counsel for the parties. I have also perused the records. Both the Courts below have rendered concurrent finding that the defendant is owner in possession of the suit property and the suit house existing therein, except one room in the suit house which is in permissive possession of the plaintiffs. This finding recorded is based on proper appreciation of evidence produced by both sides and, therefore, cannot be said to be perverse. However, I find considerable merit in the submission of Mr. Menezes that the appellate Court exercised the jurisdiction illegally in partly allowing the appeal filed by the plaintiffs by directing insertion of the names of the plaintiffs in Form I & XIV in other rights column as occupants of one room of the dwelling house situated in the suit property. Mr. Menezes is justified in placing reliance on the judgment in the case of **Narayan Mugu Teli (since deceased) vs. Ramchandra Mugu Teli and ors., (supra)**. In paragraph 10 of the said judgment, this Court while dealing with the provisions of the Maharashtra Land Revenue Code observed thus :

“... It is true that the prayer made in plaint is not properly worded. Instead of seeking a declaration of his title, the respondent No.1 has prayed for deletion of the names of the appellant and other

respondents from the record of rights in respect of the suit lands and to enter his name therein. It is neither the function nor the jurisdiction of civil court to issue direction for making or deleting entries in the record of rights. That is the function assigned to the revenue authorities under the Maharashtra Land Revenue Code. The proper relief which respondent No.1 could have prayed for was declaration of his title to the suit lands on the basis of the Will executed by deceased Mugu Balu Teli. Once he obtains such a declaration from the court, the revenue authority will have to make or correct the entries accordingly in the record of rights in respect of the suit lands. Although, therefore, the appeal is being dismissed, the order and decree passed by the courts below will have to be suitably modified."

In view of the ratio laid down by the learned Single Judge of this Court in **Narayan Mugu Teli's case (supra)**, the appellate Court could not have directed insertion of the names of the plaintiffs in the survey records. To that extent, the appellate Court has erred in law. Therefore, the Second Appeal No. 147 / 2 0 0 5 filed by the defendant deserves to be allowed. The substantial question of law framed is answered in favour of the appellant.

7. Taking note of the said observations of the direction of the learned Single Judge the direction in the impugned judgment to the extent that it directs the Revenue Authorities to rectify the survey record in respect of the property surveyed under no.210/1 of Pilerne Village showing the name of the plaintiff/appellant herein in the occupants column and that of the defendant no.2/respondent no.2 herein in the tenants column cannot be sustained and deserves to be quashed and set aside. Apart

from that, as there was no issue or claim by the respondents that the respondents were tenants of the disputed property a finding to that effect is not at all justifiable. In any case, such issue could not be decided by the Civil Court and any findings on that count would be without jurisdiction. To that effect, the impugned judgment passed by the learned Judge deserves to be quashed and set aside. The point for determination is answered accordingly.

8. In view of the above, I pass the following order:

O R D E R

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and decree to the extent it directs the Revenue Authorities to rectify the survey record in respect of the property surveyed under no.210/1 Pilerne Village and insert the name of the appellant in the occupant column and the name of the respondent no.2 in the tenants column is quashed and set aside.
- (iii) The remaining part of the judgment remains the same.
- (iv) The appeal stands disposed of with no order as to costs.
- (v) Decree be drawn accordingly.

F.M. REIS, J.

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