

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 1 OF 2010

1. M/s. Organ Realty Pvt. Ltd.,
47, Atlanta, Nariman Point,
Mumbai.
2. M/s. Sycamore Grownmore Pvt. Ltd.,
3. M/s. Conifer Textiles Pvt. Ltd.,
4. M/s. Wall Flower Agr. Tec. Pvt. Ltd.,
5. M/s. Pyramid Securities and
Consultancy Pvt. Ltd., (Ahmedabad)

All of the above are Private Limited Companies,
duly represented herein by their lawful Attorney
Shri Jayant Jadhav,
r/o Ahmednagar, Tambalkar Mala,
Gulmohar Road,
Ahmednagar, Maharashtra.

... Petitioners

Versus

1. Mr. Jose Maria Fernandes,
r/o H.No.178, Manshe Bhat,
Azossim, Ilhas Goa.
(since deceased) through his
legal representatives,
1(a) Mrs. Filomena Rodrigues e Fernandes,
(since deceased)
through her legal heirs, which are already on record as
1(b) Mr. Joao Fernandes @ John Fernandes,
1(c) Santana Silva w/o John Fernandes,

All of the above, r/o Azzosim,
Ilhas Goa.

2. Mrs. Lourenco Fernandes,
r/o Azossim, Ilhas Goa.
(Since deceased)
through legal representatives
2(a) Mr. Santano Fernandes,
2(b) Mrs. Joaquinha Fernandes,
2(c) Mr. Hermino Fernandes,
2(d) Mrs. Carmina Fernandes,
2(e) Mr. Alexander Fernandes,
All major of age,
r/o House No.87, Corpir,
Azossim, Ilhas Goa.

3. State of Goa,
through its Chief Secretary,
Secretariat, Porvorim Goa.

4. Dy. Collector, North Goa,
Panaji Goa.

5. Mamlatdar – Record of Rights,
North Goa, Panaji Goa.

... Respondents

Mr. V. A. Lawande, Advocate for the petitioners.

Mr. Rohit Bras De Sa, Advocate for the respondent nos. 1(b), 1(c)
and 2.

Ms. Susan Linhares, Addl. Government Advocate for the respondent
nos. 3 to 5.

Coram:- F. M. REIS, J.

Date:- 16th November, 2016

ORAL JUDGMENT:

Heard Mr. V. A. Lawande, learned counsel appearing for the petitioners, Mr. Rohit Bras De Sa, learned counsel appearing for the respondent nos. 1(b), 1(c) and 2 and Ms. S. Linhares, learned Addl. Government Advocate appearing for the respondent nos. 3 to 5.

2. The above petition takes exception to an order dated 23.10.2009 passed in Civil Suit No.3/2009 by the learned Ad-Hoc District Judge, FTC, Mapusa, whereby an application filed by the petitioners for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code came to be rejected.

3. Mr. Lawande, learned counsel appearing for the petitioners has pointed out that the respondent nos.1 and 2 have filed a suit inter alia seeking a claim of tenancy in respect of the subject property and based thereof the cancellation of the sale deed executed

in favour of the petitioners. The learned counsel further pointed out that the respondent nos.1 and 2 have also filed an application for declaration of tenancy before the learned Mamlatdar in terms of the Agricultural Tenancy Act, 1964 which now has been transferred to the Court of the Civil Judge Senior Division, Panaji. The learned counsel further pointed out that as the respondent nos.1 and 2 have already initiated proceedings under the Agricultural Tenancy Act, the question of proceeding with a suit would not arise as all issues and defence raised by the respondent no.2 would be examined by the authorities under the Tenancy Act and as such the learned Judge was not justified to pass the impugned order dismissing the application for rejection of plaint. The learned counsel has thereafter taken me through the impugned order to point out that the learned Judge has misconstrued the pleadings as well as the submissions advanced by the petitioners to pass an erroneous order. Mr. Lawande, learned counsel also pointed out that the suit itself was barred by limitation and as such the learned Judge was not justified to pass the impugned order.

4. On the other hand, Mr. Rohit Bras De Sa, learned counsel appearing for the respondent nos. 1(b), 1(c) and 2 has pointed out that the respondent nos.1 and 2 inter alia have also sought for cancellation of the sale deed which relief can only be granted by the Civil Court. The learned counsel as such submits that though the proceedings before the Authorities under the Tenancy Act of 1964 are concerning the claim of tenancy, nevertheless, the plaint cannot be rejected on an application under Order VII Rule 11 of the Civil Procedure Code as the relief sought to cancel the subject sale deed can be granted only by the Civil Court. The learned counsel as such submits that the above petition be rejected.

5. Ms. S. Linhares, learned Addl. Government Advocate however submits that based on the final decision before the authorities under the Agricultural Tenancy Act, the fate of the subject sale deed would have to be considered.

6. I have considered the submissions of the learned counsel and I have also gone through the records. The application filed by the

petitioners is under Order VII Rule 11 of the Civil Procedure Code. On plain reading of the plaint as well as the reliefs sought, I find prima facie that the relief of cancellation of the subject sale deed is a matter which would have to be considered by the Civil Court on its own merits in accordance with law. On this ground alone, the application under Order VII Rule 11 of the Civil Procedure Code cannot be entertained. But however, it is not disputed that the decision on the issue of tenancy which is pending before the concerned Court under the Agricultural Tenancy Act, 1964 would have a conclusive bearing on the ultimate decision to be taken by the learned Judge while disposing of the suit filed by the respondent nos. 1 and 2. It is also not disputed that the application for declaration of tenancy is pending before the concerned Court constituted under the Agricultural Tenancy Act, 1964. In such circumstances, I find that the suit filed by the respondent nos.1 and 2 being Civil Suit No.3/2009 would have to be stayed to await the final decision in the proceedings pending before the said Authorities under the Agricultural Tenancy Act on the issue of tenancy claimed by the respondent nos. 1 and 2. The learned Judge would have to proceed

with the suit based on such decision, on its own merits in accordance with law. Liberty to the petitioners after the ultimate decision before the concerned Court under the Tenancy Act to file a fresh application, if they are so advised which shall be examined by the learned Judge on its own merits in accordance with law. The petition stands disposed of accordingly.

F. M. REIS, J.

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