

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.27 OF 2009.

Smt. Rukmini Pandurang Naik,
Housewife, resident of H. No.81,
Haweli, Ponda Goa.

.....Petitioner.

Versus

Shri Uday Srinivas Vaidya,
major of age, married,
agriculture, resident of
H. No. 6, Haweli, Ponda, Goa.

.....Respondent.

Shri J. P. Mulgaonkar Advocate for the petitioner.

Shri A. Kamat, Advocate for the respondent.

CORAM : F.M. REIS, J.

DATE : 29th November, 2016.

ORAL JUDGMENT

Heard Shri J. P. Mulgaonkar, learned Counsel
appearing for the petitioner and Shri A. Kamat, learned
Advocate for the respondent.

2. The challenge in the above petition is to an order dated
5.12.2008 whereby an application dated 24.10.2008 filed by the
petitioner for stay of the suit came to be dismissed.

3. Mr. Mulgaonkar, learned Counsel appearing for the petitioner points out that purchase application is pending for consideration before the concerned Mamlatdar and according to him, the suit filed by the respondent is on the premise that there is an extension to the existing plinth area of the dwelling house. It is further pointed out by the petitioner that the alleged encroachment falls within the dwelling house in terms of the Mundkar Act the petitioner intend to purchase such area. The learned Counsel further points out that the question of proceeding with the suit filed by the respondent would not at all be justified. The learned counsel further points out as such, that the learned Judge has erroneously dismissed the application by refusing to exercise the jurisdiction vested in the Court to stay the suit. The learned Counsel further points out that it is the claim of the respondent that he is an agricultural tenant of the subject property.

4. On the other hand, Mr. A. Kamat, learned Counsel appearing for the respondent points out that there is no issue of mundkarship framed by the learned trial Judge and as such, the question of making any reference to the learned Mamlatdar by staying the suit would not arise at all. The learned Counsel

further points out that there is no jurisdictional error committed by the learned Judge while dismissing the application filed by the petitioner.

5. I have considered the submissions of the learned Counsels and I have also gone through the records.

6. The learned Judge in the impugned order has come to the conclusion that there is no mundkar issue framed or raised in the suit and as such, there is no reason to stay the suit and refer the issue to the learned Mamlatdar. The suit has been filed on the assumption that the petitioner has encroached into the property of the respondent. This aspect would have to be considered by the learned Judge on its own merits based on the evidence on record.

7. In such circumstances, as admittedly the petitioner has not obtained a purchase certificate from the Mamlatdar purchasing the mundkarial area, I find that there is no jurisdictional error committed by the learned Judge while passing the impugned order. The learned Judge has rightly dismissed the application filed by the petitioner.

8. For the reasons stated in the impugned order, I find no infirmity in the findings therein. Hence, petition stands rejected.

9. Rule stands discharged.

F.M. REIS, J.

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