

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 53 OF 2014**

SHRI RAVINDRA TULSHIDAS
DEULKAR AND 9 ORS.

... Appellants

Versus

SHRI FONDO RAMA DESSAI
PISSURLINKAR (SINCE DECEASED REP.
BY HIS LEGAL HEIRS) AND ANR.

... Respondents

Ms. N. Pimenta, Advocate for the Appellants.

Mr. S.G. Desai, Senior Advocate with Ms. K. Pednekar, Advocate for
the Respondents.

Coram:- F. M. REIS, J.

Date:- 7th April, 2016

ORAL ORDER :

Heard Ms. N. Pimenta, the learned Counsel appearing for the appellants and Mr. S.G. Desai, the learned Senior Counsel appearing for the respondents.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the respondents for declaration that the subject Lease Deed was null and void as well as for consequential reliefs came to be decreed.

3. Briefly the facts of the case are that the respondents filed a suit

inter alia contenting that the lease executed in favour of the appellants was vitiated by fraud as well as on the ground that such Lease Deed was cancelled after its execution. It is further the case of the appellants that taking advantage of the illiteracy of the appellants the respondents had purported to execute the Lease Deed in favour of the appellants to deprive the respondents of their right to the suit property. It is further the case of the appellants that the said Lease Deed was never acted and that the respondents continued to be in possession of the subject property. It is further their case that the respondents were given only provisional grant by the Government and, as such, based on such grant the respondents had no right to execute the lease in favour of the appellants. It is further their case that in view of the interference of the respondents the suit came to be filed by the appellants. It is further pointed out that there are no pleadings in the plaint to contend that the respondents are class 2 occupants of the subject property and, as such, Courts below were not justified to come to the conclusion that the respondents were class 2 occupants and, as such, not entitled to execute the subject Lease Deed. It is further their case that even while framing the issues there was no issue framed by the learned Judge as to whether the respondents were class 2 occupants of the subject property. The learned Counsel further submitted that both the Courts below have erroneously come to

the conclusion that the respondents were class 2 occupants of the property when there was no foundation to that effect in the pleadings of the respondents. The learned Counsel has thereafter taken me extensively through the judgments passed by the Courts below to point out that on this limited ground itself the finding of fact arrived at by Courts below are perverse and, as such, there are substantial questions of fact which arise in the above appeal. The learned Counsel further pointed out that the suit itself is barred by limitation and, as such, the Courts below were not justified to pass a decree in favour of respondents. The learned Counsel further pointed out that the Courts below have refused to examine the documentary evidence produced by the appellants such as charges paid for the tractor as well as the supplies made of the sugarcane to the prospective purchasers, while coming to the conclusion that the respondents were in possession of the subject property. The learned Counsel further pointed out that the findings of fact arrived at by the Courts below are perverse and, as such, there are substantial questions of law which arise in the present appeal for consideration.

4. On the other hand, Mr. S.G. Desai, the learned Senior Counsel appearing for the respondents has pointed out that it is the contention of

the respondent that the subject Lease Deed is a fraud committed on respondents and, as such, both the Courts below were justified to pass the impugned judgments. The learned Senior Counsel further pointed out that the concurrent findings of fact arrived at by the Courts below cannot be reappreciated by this Court under Section 100 of the Civil Procedure Code. The learned Senior Counsel has thereafter taken me through the findings of the Courts below to point out that both the Courts below have rightly considered the evidence as well as the material produced by the respondents to come to the conclusion that the Lease Deed stands vitiated.

5. I have considered the submissions and also gone through the records. With regard to the contention of the learned Counsel appearing for the appellants that there is no foundation in the pleadings that the respondents were class 2 occupants of the subject property, I find that on going through the pleadings of the plaint as a whole and the relief sought by the respondents, it clearly emerges that the claim of the respondents is that they were class 2 occupants of the subject property. Based on such pleadings, both the Courts below upon appreciating the evidence on record and going through the grant produced by the respondents have come to the conclusion that such grant was a

provisional grant and as the occupation of the respondent was of class 2 occupants the respondents were not entitled to execute the Lease Deed. This concurrent finding of fact arrived at by the Courts below cannot be reappreciated by this Court, in the present Second Appeal.

6. Apart from that, on perusal of the finding of the Courts below, I find that both the Courts upon appreciating the evidence on record have concurrently held that the respondents were always in possession of the property. It is well settled that finding on possession is a finding of fact which cannot be reappreciated by this Court unless perversity is pointed out in such finding. There is nothing disclosed by the learned Counsel for the appellants to point out that such findings arrived by the Courts were by misreading of evidence or by erroneously excluding any piece of material evidence. In such circumstances, I find that the contention of the appellants that the finding of the Courts below are perverse cannot be accepted.

7. Besides that both the Courts below upon appreciating the evidence have also come to the conclusion that the subject Lease Deed has not been acted upon nor there was any material on record to suggest that the appellants have ever cultivated the subject property. These

finding have also been rendered based on the deposition of DW1 in the cross-examination. These findings arrived at upon appreciating the evidence on record and relying on the material on record cannot be reexamined by this Court in the present Second Appeal under Section 100 of the Civil Procedure Code.

8. In such circumstances, as both the Courts below have concurrently come to the conclusion that the Lease Deed stands vitiated and that such Lease Deed has never been acted upon, I find that there are no substantial questions of law which arise in the present appeal for consideration. The grievance that no specific issue has been framed by the learned Trial Judge on that count would not make any difference as the findings of the Courts below are based on the pleadings and the material on record and as such would at the most be an irregularity which cannot vitiate the impugned judgment in view of Section 99 of the Civil Procedure Code.

9. In view of the above, I find no merit in the above appeal which stands accordingly dismissed.

F. M. REIS, J.

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