

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 95 OF 2016

SHRI. PRAKASH RAMNATH NAIK
MADKAIKAR AND ANR.,

... Appellants

Versus

SHRI. RAMNATH RAGHU GAONKAR.,

... Respondent

Mr. Anthony D'Silva, Advocate for the appellants.
Mr. Almeida Coutinho Cleofato Garrett, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 6th October, 2016

P.C.:

Heard Mr. Anthony D'Silva, learned Counsel appearing for the appellants and Mr. C.A. Coutinho, learned Counsel appearing for the respondent.

2. The above appeal challenges the Judgment and Decree dated 30/09/2013, passed by the Adhoc District Judge, FTC-I, South Goa, Margao in Regular Civil Appeal No.108/2013 whereby the Judgment and Decree dated 30/09/2011, passed by the learned Civil Judge, Senior Division, Quepem, in Regular Civil Suit No.39/2005 was quashed and set aside and the matter was remanded to the learned Trial Judge to decide the suit afresh, after awaiting orders challenging the declaration of tenancy obtained by the respondent, now pending before the learned District Judge.

3. Mr. Anthony D'Silva, learned Counsel appearing for the appellant has pointed out that the basis of the claim of the respondent is a declaration fraudulently obtained by the respondent from the learned Mamaltdar, claiming to be the tenant of the subject property bearing Survey No.65/2 of Cacora Village. It is further pointed out that the learned Trial Judge has come to the conclusion that the appellants were in settled possession of the disputed structure and dismissed the suit filed by the respondent. It is further pointed out that the declaration obtained by the respondent is not binding on the appellants as, admittedly, the Comunidade who is the owner of the property, was not a party therein. The learned Counsel further submits that as such, as the basis of the claim of the respondent itself is under challenge, the learned Lower Appellate Court was not justified to remand the matter to the learned Trial Judge.

4. On the other hand, Mr. C.A. Coutinho, learned Counsel appearing for the respondent has pointed out that the subject structure itself is not in existence presently. It is further pointed out that the matter has already been remanded and that no prejudice would be caused to the appellants, as all their contentions can be examined by the learned Trial Judge based on the ultimate decision taken in the challenge to the declaration of tenancy filed by the appellants. As such, it is pointed out that there are no substantial questions of law which arise for consideration in the present second

appeal.

5. The challenge in the above appeal is to the order, remanding the matter to the learned Trial Judge. Admittedly the claim of the respondents is on the basis of the tenancy declaration which is under challenge before the Appellate Authority, now the District Court. The decision in such appeal would materially influence the ultimate decision which may be taken in the suit filed by the respondent. In such circumstances, I find that there is no reason to interfere in the impugned order passed by the learned Appellate Court, remanding the matter to the learned Trial Judge.

6. Be that as it may, after the tenancy issue is ultimately decided by the appellate Authority, the learned Trial Judge shall give an opportunity to the parties to lead evidence in support of their rival stands. The learned Trial Judge shall, thereafter, proceed to dispose of the suit without being influenced by the observations in the impugned Judgement passed by the learned Lower Appellate Court. Subject to the above, the appeal stands disposed of.

F. M. REIS, J.

ssm.