

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 779 OF 2015

SMT.THEREZA CORDO (SINCE DECEASED)
THROUGH LEGAL HEIRS., ... Petitioner
Versus
MR.VENKATESH LOTLIKAR (SINCE
DECEASED) THROUGH HIS LEGAL
HEIRS., ... Respondent

Mr. J. J. Mulgaonkar, Advocate for the petitioners.
Ms. S. Pereira, Advocate for the respondent nos. 1 to 5.

Coram:- F. M. REIS, J.

Date:- 13th December, 2016

ORAL ORDER :

Heard Mr. J. J. Mulgaonkar, learned counsel appearing for the petitioners and Ms. S. Pereira, learned counsel appearing for the respondent nos. 1 to 5.

2. The challenge in the above petition is to an order passed by the learned Mamlatdar which was confirmed by the learned Dy. Collector whereby an application filed by the respondents to register them as mundkars came to be allowed.

3. Mr. Mulgaonkar, learned counsel appearing for the petitioners has submitted that there are no particulars supplied by the respondents to substantiate their claim that the premises were

given by the petitioners to the respondents for their residential purpose. It is further pointed out that the premises were given originally for the purpose of running a hand-loom business which the respondents thereafter started using for residence after the year 1975. The learned counsel further pointed out that there is nothing on record to show that the respondents were allowed to occupy the subject premises for the purpose of residence to come within the definition of 'Mundkar' under Section 2(p) of the Mundkar Act. The learned counsel has thereafter taken me through the judgment passed by the learned Dy. Collector to point out that the point for determination no.2 would not arise as according to him the petitioners accept that the respondents were occupying the northern portion of the subject premises. The learned counsel further submits that as there is no material on record to show that the respondents were occupying the subject premises on the appointed date for the purpose of residence, the learned Dy. Collector was not justified to pass the impugned order. The learned counsel further pointed out that as far as the southern portion is concerned, it is the contention of the petitioners that the respondents had trespassed into such premises four years before the filing of the registration application. The learned counsel as such points out that the impugned order passed by the learned Dy. Collector deserves to be quashed and set aside.

4. I have duly considered the submissions of the learned counsel and I have also gone through the records. The impugned order is in proceedings for registration under Section 29 of the Mundkar Act. It cannot be disputed that such proceedings are of a summary nature and as such the contention of the learned counsel appearing for the petitioners that there are no pleadings put forward by the respondents to contend that they started occupying the subject premises for residential purpose cannot be accepted. The learned Dy. Collector while examining the contention of the rival parties has noted that the petitioners themselves have admitted that they were receiving rent from the respondents in currency which was prevailing prior to December, 1961. Though it is contended by the learned counsel appearing for the petitioners that such rent was for the purpose of hand-loom business, there is no material produced on record to that effect. The very fact that the petitioners are accepting that they were receiving rent in the currency which was prevailing before December, 1961 would itself suggest that the respondents were occupying the premises during that period. Apart from that, the learned Dy. Collector on the basis of the factual aspect on record has come to the conclusion that the petitioners have failed to establish their stand that the northern portion was given for hand-loom business. Considering that the procedure to be followed in registration application under Section 29 of the Mundkar Act, is of a summary nature, the question of any

elaborate pleadings or evidence to be adduced by the parties would not at all be necessary to decide such application. After all it is now well settled that registration of mundkar only draws a presumption which the party can rebut in accordance with law. In such circumstances, there is no failure of justice to the petitioners which would call for interference by this Court in the impugned order.

5. The contention of the petitioners that there was trespass by the respondent four years prior to the filing of the registration application deserves to be discarded as there are no particulars of such alleged trespass in the reply filed by the respondents. Apart from that, it is admitted by the learned counsel appearing for the petitioners that no complaint or proceedings were initiated by the petitioner on account of such trespass. In such circumstances, I find no jurisdictional error committed by the authorities below while passing the impugned order. There is no merit in the above petition which stands accordingly rejected.

F. M. REIS, J.

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