

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**APPEAL FROM ORDER NO.39 OF 2015**

Mrs. Uma Mahesh Bandekar and others .. **Appellants**

**Versus**

Shri Vivek Sadanand Marathe and others .. **Respondents.**

...

Shri V. Pangam, Advocate for the appellants.

Shri C.A. Ferreira, Advocate with Shri V. Fernandes, Advocate for respondents.

**CORAM :NUTAN D.SARDESSAI, J.**  
**RESERVED ON :28/04/2016.**  
**PRONOUNCED ON :05/05/2016.**

**ORDER :**

1] This is an appeal from order at the instance of the original interested parties assailing the order dated 02/06/2015 passed by the learned IIIrd Additional Adhoc Senior Civil Judge, Margao in the Inventory Proceedings against the original Inventariante and other parties coming up for the disposal today.

2] The appellants challenged the impugned order as the learned IIIrd Additional Adhoc Senior Civil Judge had not considered their objections to the list of assets filed by the respondents qua the tenanted premises, their objections in respect of the area in question having been met by the learned

Trial Court in the impugned order.

3] Shri V. Pangam, learned Advocate for the appellants adverted to the objections filed to the revised list of assets pursuant to which the appellants were claiming the right in the tenanted premises, the partnership admittedly having ended on the death of the partners. The learned Trial Judge had erroneously found favour with the contention on behalf of the respondents that the married daughter had no right in the tenanted premises by considering the Apex Court judgment in **Rani Devi Vs. Bhole Nath [1991 STPL (LE)16264 SC]** when the Decree No.43525 applied to the case at hand. He placed reliance on the said Decree, Section 79 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter "the Act" for short) vis-a-vis the lease for Commerce or Industry, relied in **Gangadhar Narsingdas Agrawal Vs. Alina D'Costa E Pinto & ors. [1989 (2) Goa Law Times (118)]** to buttress his plea that the Decree Law was applicable and, therefore, the Trial Court was in error to hold that the appellants were not entitled to the premises in question which was claimed in the objections justifying a reversal of the impugned order.

4] Shri C.A. Ferreira, learned Advocate for the

respondents adverted to the paragraphs 8 and 9 of the impugned order, relied in **Mohammad Laiquiddin and another Vs. Kamala Devi Misra (Dead) by LRs. and others [(2010) 2 SCC 407]** , the definition of a tenant in terms of Section 2 (o) of the Act which excluded married daughters from the purview of the definition qua the tenanted premises and submitted that the appellant as the married daughter was not entitled to claim any right therein. The Decree No.43525 was not at all attracted to the case at hand and in terms of Section 59 of the Act, the applicability of the Decree stood excluded. He distinguished the judgment in Gangadhar Agrawal (supra) and concluded his argument that it was incorrect to submit that the Decree No.43525 was applicable to the case at hand and the appeal had therefore to be dismissed.

5] i would consider their submissions, the judgments relied upon including the Decree No.43525, the relevant provisions of the Act and the impugned order, formulate points for determination and answer appropriately for the reasons recorded hereinafter.

| Sr.<br>No. | Points                                                                                                               | Findings  |
|------------|----------------------------------------------------------------------------------------------------------------------|-----------|
| 1          | Whether the provisions of the Decree No.43525 were applicable to the case at hand and conversely that the provisions | Negative. |

of the Act did apply?

- |   |                                                                                                                          |                         |
|---|--------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 2 | Whether the learned trial Court fell in error in appreciating this aspect and ultimately to hold against the appellants? | Negative.               |
| 3 | Whether the impugned order justifies interference in appeal?                                                             | Negative.               |
| 4 | What order?                                                                                                              | As per the final order. |

**Points No.1 to 3:**

6] The Decree No.43525 governs the lease in respect of the Overseas buildings without detriment to the provisions of the Civil Code, either general or peculiar to the locative agreement which do not contradict it. Section 79 of the Act thereof provides that the lease does not lapse on the death of the lessee, his legal stand is conveyed to his heirs if the latter do not inform the lessor within the time-limit of 30 days that they renounce to it. The Act has been enacted to provide for the control of rents and evictions and of the rates of hotels and lodging houses and for the requisition of vacant buildings and shall come into force on such date as may be by the notification in the Official Gazette, appoint.

7] Section 2 (o) defines a "tenant" means any person by

whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or **unmarried daughter** or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.”

8] Section 59 of the Act deals with the repeal and savings which is the relevant clause in connection with the case under consideration and read thus:-

“(1)As from the date on which this Act is brought into force in any local area, the provisions of Decree No.43525, dated the 7<sup>th</sup> March, 1961, and Legislative Diploma No.1409, dated the 14<sup>th</sup> February, 1952 and the corresponding provisions of any other law for the time being in force shall stand **repealed** in that area.”

9] Therefore, a bare reading of this provision coupled with the definition of a tenant would belie the contention of learned Advocate Shri V. Pangam for the appellants that the Decree No.43525 applied to the case at hand vis-a-vis the right of the

appellants qua the tenanted premises.

10]            Mohammad Laiquiddin (supra), held that where there were only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which says otherwise. Nothing substantially turns on this judgment vis-a-vis the case carved out by the parties when admittedly the partnership stood dissolved and the appellants were admittedly not claiming any right in the partnership but the tenanted premises held by the partnership of the two partners both of whom had admittedly expired and the partnership had come to an end.

11]            In Gangadhar Agrawal (supra), the respondents had leased their property with the exclusion of an area 6000 sq. metres leased to one Raghuvir Naraina Lotleicar in favour of the appellant on the payment of the annual rent of ₹4600/- and which was to remain in force for a period of three years. The lease enabled the appellant to construct the structures of a temporary or non-permanent nature which was thereafter renewed for a further period of three years. The appellant had committed the default in the payment of rent, built a permanent structure and thereupon the respondents terminated the lease and initiated the eviction proceedings. The Trial Judge applied

the provisions of the Portuguese Decree No.43525 and decreed the suit giving rise to the First Appeal before the Court of the Judicial Commissioner of Goa, Daman and Diu. A learned Single Judge of the High Court which was formed by them in 1982 concurred with the findings recorded by the Trial Judge and dismissed the appeal giving rise to the Letters Patent Appeal.

12] In Gangadhar Agrawal (supra), it was contended on his behalf that the Portuguese Decree No. 43525 stood repealed with effect from 30/09/1969 in view of the enactment of the Act and Section 59 thereof. Their Lordships of this Court did not concur with the contention of the learned Advocate inasmuch as the provisions of the Act did not apply to the premises which were not buildings and thereupon there was a fair concession by the learned Advocate on behalf of the appellant that the lease in that case was of an open plot of land which would not attract the expression "building" under Section 2(e) of the Act and, therefore, the repealing provision of Section 59(1) of the Act would not cover the premises which are not buildings and in respect of those premises, the provisions of the Portuguese Decree No.43525 would continue to apply even after 1/10/1969. This judgment, therefore, with respect does not at all support the contention of learned Advocate Shri V. Pangam on the extension of and the applicability of the Decree No.43525 to the present

case at hand.

13] Moreover, in terms of Section 2(o) of the Act, the married daughter would not qualify as a tenant in terms of the Act and, therefore, on that premise too, the finding of the learned Trial Judge finding favour with the contention of the respondents that the married daughter had no right in the tenanted premises cannot at all be faulted. Therefore, looking at the impugned order any which way, the finding rendered by the learned IIIrd Adhoc Senior Civil Judge does not call for any interference in this appeal from order.

14] In the result, i pass the following order:-

**Order**

The appeal is dismissed with no order as to costs.

NUTAN D.SARDESSAI, J

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15] At this stage, Shri V. Pangam, learned Advocate for the appellants, prayed for a stay of the operation of this order. Shri C.A. Ferreira, learned Advocate for the respondents strongly opposed the grant of the stay. i do not find any merit in the request for the stay, hence, disallowed.

16] Parties to act on the authenticated copy of this order.

NUTAN D.SARDESSAI, J

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