

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 889 OF 2016

MR. GANPAT KOLVENKAR AND ANR., ... Petitioners
Versus
MRS. AUGUSTA LOPES (DEC) AND 2 ... Respondents
ORS.,

Shri Gaurish N. Agni, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 19th September, 2016

ORAL ORDER:

Heard Shri Agni, the learned Counsel for the petitioners, for sometime.

2. The petitioners are the judgment debtors, who are challenging the order dated 18.07.2016 passed by the learned Civil Judge Junior Division at Sanguem in Execution Application No. 3/2014, by which the warrant of possession of the suit dwelling house, has been issued against the petitioners.

3. In the year 2003, the respondents had filed Regular Civil Suit No. 36/2003 for eviction, possession and compensation in respect of the suit house. The case made out in the plaint was that the suit house is given on leave and license basis, which has been terminated. It appears that on behalf of the petitioners a contention about they

being mundkars was raised and issue in that regard came to be referred to the learned Mamlatdar in the year 2008.

4. As the petitioners, did not lead any evidence before the Mamlatdar, the learned Mamlatdar closed the evidence of the petitioners, which order was challenged by the petitioners before the Deputy Collector, who affirmed the same. The petitioners then challenged the said order before the Administrative Tribunal. By that time, the learned Mamlatdar had returned the reference. The petitioners did not challenge the said final order in the reference. This happens in the year 2010. Thus, the petitioners chose not to challenge the said order, by which the mundkarial reference was returned by the Mamlatdar, without any finding in favour of the petitioners. The Trial Court partly decreed the suit in favour of the petitioners. In the first appeal, the learned District Judge granted decree of eviction. The same was challenged before this Court in Second Appeal No. 107/2014. This Court by judgment and order dated 20.03.2015 has dismissed the appeal, after which the decree was sought to be executed, in which the impugned warrant of possession has been issued.

5. It is contended on behalf of the petitioners that a fresh application filed before the Mamlatdar for declaring the petitioners as mundkars, is pending. It is submitted that the earlier order passed by the Mamlatdar is not on merits and as such, the Executing Court

should stay its hands till the Mamlatdar decides the application now filed for declaration of the petitioners as mundkars.

6. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out. It is significant to note that in the suit filed by the respondent, a reference was made to the Mamlatdar in the year 2008, when the petitioners did not lead any evidence in support of their claim. The order passed by the Mamlatdar closing the evidence has been confirmed by the Deputy Collector in appeal. The reference was also returned by the Mamlatdar in the year 2010 and the petitioners did not take any steps for challenging the said order till today. The decree passed in the civil suit has been confirmed by this Court. A perusal of the judgment of this Court would show that on behalf of the petitioners, it was contended that they are tenants. It can thus be seen that the petitioners are taking pleas which may not go together and in view of the fact that the decree passed by the Civil Court has attained finality and that the petitioners have failed to take steps for challenging the order passed in year 2010, I do not find that any case for interference is made out. In such circumstances, I decline to interfere with the impugned order. The petition is without any merit and is accordingly dismissed. Thus, the Executing Court shall be free to execute the decree, in accordance with law.

Needless to mention that this Court has not expressed any opinion, on the merits of the application filed by the petitioners,

which is pending before the Mamlatdar.

C. V. BHADANG, J.

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