

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 924 OF 2015

SHRI.MOUZINHO SOUZA (DECEASED)
THROUGH HIS LEGAL HEIRS.,

... Petitioner

Versus

LATE SMT.ELIZA MASCARENHAS,
THROUGH HER LEGAL HEIRS AND 2
ORS.,

... Respondents

Mr. Menino Pereira, Advocate for the petitioners.

Coram:- C. V. BHADANG, J.

Date:- 20th June, 2016

P.C.

The learned Counsel for the petitioners, on instructions, seeks permission to withdraw the petition, with a request that the issue about the earlier order operating as res judicata be kept open.

2. It appears that the Courts below have concurrently held that the earlier application was one under Section 29(4) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (the Act, for short) for registration as a Mundkar and in view of the decision of this Court in SMT. GULABI DEVIDAS VS. PREMA GAONKAR, reported in 1995(1) G.L.T. 154, the said proceedings have only presumptive value and would not bar an application for declaration as mundkar under Section 8A of the Act.

3. The contention now raised is that although the earlier application was styled as one under Section 29(4) of the Act for registration, in fact, it was tried as an application under Section 8A of the Act. In

view of the fact that the petitioners are seeking withdrawal of the petition, it is not necessary to go into this aspect.

4. What has been held by the Courts below is that in view of the earlier order being one under Section 29(4), the same will not operate as res judicata in an application under Section 8A of the Act. The present petition arises only out of the order rejecting the preliminary objection. Thus, it will always be open to the petitioners to show at the trial of the main application that the earlier application was, in fact, tried and was decided as an application under Section 8A of the Act.

5. Subject to this, the Writ Petition is disposed of as withdrawn. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised.

C. V. BHADANG, J.

SMA