

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 837 OF 2015

M/s. Meher Farms Pvt. Ltd
with registered office at 7,
Mangirish, 520 Lady Jamshedji Road,
Mahim (W), Mumbai-400 016, and
Local office4 at C/o Etak Corporation Ltd.,
Shop No. 12, New Market,
Margao, Salcete, Goa
Through its Authorised Signatory
Mr. Francis Dias, Major of age,
R/o. H. No. 932, Maddant Vaddo,
Cortalim, Goa.

..... Petitioners
Original Plaintiffs

V e r s u s

Sociedade Patriotica Dos Baldios
Das Novas Conquistas,
A Society Registration Act,
Through its General Secretary
Mr. Cedric Carvalho, Major of age,
R/o. Hotel Arcadia,
Near Panaji Town Police Station,
Panaji, Goa.

..... Respondents
Original Defendants

Ms. A. A. Agni, Senior Advocate with Ms. K. Govekar, Advocate for the Petitioners-
Plaintiffs.

Mr. A. D. Bhobe, Advocate for the Respondents-Defendants.

Coram:- K. L. WADANE, J.

Date of reserving Judgment :- 8th December, 2015

Date of pronouncement of Judgment:- 7th January, 2016

JUDGMENT

Heard Ms. A. Agni, learned Senior Counsel appearing for the
Petitioners/Plaintiffs and Shri A. D. Bhobe, learned Counsel appearing for the
Respondents/Defendants.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

3. The present Writ Petition is filed by the original Plaintiffs challenging the Order passed by the Adhoc District Judge-1 (FTC) North Goa, Panaji, in Misc. Civil Appeal no, 46 of 2014 dated 14.07.2015, by which the Appeal of the Plaintiffs against the Order of rejection of the temporary injunction application filed by the learned Trial Court is dismissed.

4. The brief facts of the case as stated are as follows:

The parties are referred to as their original status.

It is the case of the Plaintiff that the Plaintiff is a Company registered under the Companies Act, 1956, having its office at Mumbai and Goa. The Plaintiff further pleaded that to expand its business, the property belonging to the defendant was taken under a registered Lease Deed dated 26.07.1979 w.e.f. 01.07.1978. The subject matter of the said Lease Deed is an agricultural land admeasuring 1,77,113 square metres situated at Village Uguem locally known as "*Culna*". The Plaintiff had taken the suit property for the purpose of cultivation of crops, vegetables, fruits, dairy farming and livestock breeding and the other agricultural activities. According to the Plaintiff, the lease period had expired on 30.06.1996 and the lease was not renewed. Still the Plaintiff remained in possession of the suit property even after expiry of the Lease Deed. According to the Plaintiff, they had set up a cheese factory by incurring heavy expenditure for purchasing and installing

various types of machineries and equipments and necessary permission/licences were obtained from the Village Panchayat of Uguem and Health Services. The Plaintiff further stated that they even paid house tax of the suit premises and also paid rent from time to time to the Defendants. The claim of the Plaintiff is that it is in continuous and exclusive possession over the suit property and the name of the Director Mr. Irani has been recorded in Form I and XIV in respect of the suit property. The Plaintiff stated that the rent was paid to the Defendants from time to time. The Plaintiff further stated that in the month of September, 2013, some persons came to the suit property and started ploughing the land with the help of tractor. The Plaintiff thereafter lodged a complaint with the police.

In short, it is the case of the Plaintiff that the Plaintiff is in possession over the suit property on the basis of the Lease Deed and even expiry of the Lease Deed, the Plaintiff remained in possession over the suit property.

5. The Defendant appeared and submitted its written statements and denied almost all the contents in the plaint as well as in the application for temporary injunction. In short, the defence of the Defendant is that after the expiry of the lease period, the Plaintiff abandoned the suit property and since then the Defendant is in actual/physical possession over the suit premises and presently the Defendant is doing agricultural activities. The Defendant further contended that after expiry of the lease period on 30.06.1996, the Plaintiff had not renewed the Lease therefore, the interest, if any, in the suit property came to an end upon the expiry of the lease period of 18 years from July 1979 by efflux of time. The Defendant further submits that he is admittedly the owner of the suit property is in

possession and enjoyment of the same and that the Plaintiff has no right or interest to the said property. According to the Defendant, an attempt is made by the Plaintiff to grab the property by committing breach of the terms and conditions of the Lease Deed and defaulted in paying the rent to the Defendant.

6. It is further contended that in the Land Acquisition Case no. 28 of 2008, the Defendant was held to be in exclusive enjoyment and possession of the land and the representative of the Plaintiff Mr. Irani was party to the said Land Acquisition case. The Form I and XIV shows the name of the Defendant in the column of occupation and the name of the Plaintiff in other rights column having permanent option to renew the lease.

7. Considering the rival contentions of both the sides and considering the documents on record, the learned Trial Court has rejected the application for temporary injunction. The Appellate Court also rejected the Civil Misc. Appeal. Hence, the present Writ Petition.

8. I have heard the arguments of Ms. Agni, learned Senior Advocate appearing for the Petitioner/Plaintiff and Mr. A. D. Bhobe, learned Counsel appearing for the Respondent/Defendant. I have also gone through the records produced with this Petition. Considering the rival contentions of both the sides and upon hearing both the learned Counsel, the following point arises for my determination :

POINT FOR DETERMINATION

FINDING

(1) Whether the Plaintiff, prima facie, prove its possession over the suit property on the date of the filing of the suit ?

NO

REASONS :

9. Ms. Agni, learned Senior Advocate appearing for the Petitioner/Plaintiff has argued that the Plaintiff is in continuous possession over the suit property since 1979 on the strength of the Lease Deed executed by the Defendant. According to Ms. Agni, learned Senior Advocate, the Plaintiff paid the rent amount to the Defendant from time to time and the lease Agreement between the parties is with permanent option to renew the Lease after its expiration. It is an admitted fact that the Plaintiff was in possession over the suit property till the expiration of the earlier lease period from 1979 to June 1996. It is also evidence from the record that the Plaintiff paid the rent amount of the Defendant till 1996. The dispute between the parties is in regards with the possession of the suit property after 1996. The claim of the Plaintiff is that it had continued to be in possession even after lease period is over and it is the case of the Defendant that after the lease period is over, the Plaintiff abandoned the suit property/premises and, therefore, the Defendant started cultivating the same. Therefore, very short question for determination is as to who was in possession over the suit property as on the date of the filing of the suit. In this behalf, it is material to refer to certain terms and conditions of the lease. The clause/Para 7 of the Lease Deed is

reproduced which reads thus :

“7. If the Lessee shall have duly preferred and observed the covenants, stipulations and conditions on the part of the Lessee hereinafter contained and shall at the end of the said term hereby granted be desirous of taking a new lease in respect of the demised land and the Lessee shall have given to the Lessors two months previous notice in writing before the expiration of the term hereby granted of their intention to renew the lease of the demised land and as in such event the Lessors shall and will at the costs and expenses in every respect of the Lessee grant to the Lessee a new lease of the demised land, for further terms of 18 years, on the terms, conditions and stipulation as may be agreed at that time it being the intention of the Lessors and of the Lessee that the Lessee shall have a permanent option to renew the lease for each term of 18 years at the time of the subsequent leases which may be executed hereinafter in pursuance hereof, for all such future renewals of the lease, the Ground Rent shall continue to be fixed by mutual agreement.”

10. From the contents of the above, it reveals that one of the condition of the lease was to give a two months previous notice in writing before expiration of the terms showing their intention to renew the lease of the suit property.

11. Admittedly, the Plaintiff had not issued any such notice before expiration of the earlier Lease on 30.06.1996. The Plaintiff had issued such notice in the year 2013. There are no documents on record to show that the Defendant

had accepted the rent after 1996. In the absence of any such document, it is very difficult to believe the version of the Plaintiff that the Plaintiff was in possession over the suit property after 1996 more particularly on the date of filing of the suit. Certain electricity bills and house tax receipts of the suit property after 1996 have been produced on record, however, these documents itself are not sufficient to hold that the Plaintiff was in possession over the suit property as on the date of the filing of the suit. Furthermore, it reveals from the record that an area of 5204 square metres was acquired and there was dispute between the parties. Therefore, there was reference under Section 30 of the Land Acquisition Act and while deciding the reference, the concerned Court had held that the Defendant was in possession of the acquired portion of the land. Ms. Agni, learned Senior Advocate appearing for the Petitioner/Plaintiff has argued that the Defendant was found to be in possession of the acquired land does not mean that he was in possession of the remaining portion of the suit property.

12. Mr. A. D. Bhobe, learned Counsel appearing for the Respondent/Defendant, has argued that the name of the Defendant is appearing in the column of occupation of Form I and XIV of the suit property. On perusal of Form I and XIV dated 28.08.2009, it reveals that the name of the Defendant is shown in the column of the occupant, and name of one of the Director of Plaintiff namely Mr. N. M. Irani, is shown in the column of other rights. This document, Form I and XIV clearly shows that the Plaintiff is in possession over the suit property. It is material to note that it is the case of the Plaintiff that there is a Cheese factory in the premises and Plaintiff is doing the business. However, to

show that the Cheese factory is running, no documents are produced on record except the electricity bill. On perusal of the electricity bill, it appears that meter reading of the said factory is Nil. If at all the Plaintiff was running the Cheese factory, then certainly the Plaintiff can show certain documents about the transaction/business i.e. sale or purchase of the goods and storage, however, no such documents are produced on record.

13. Ms. Agni, learned Senior Advocate appearing for the Petitioner/Plaintiff has relied upon the observations in a Judgment reported in **AIR 1989 SC 2097** in the case of **Krishna Ram Mahale(dead) by his LRs vs. Mrs. Shobha Venkar Rao**, wherein it is observed that *“It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.”*

14. Ms Agni, learned Senior Advocate appearing for the Petitioner/Plaintiff further relied upon the Judgment reported in **2015 (2) JT 540** in the case of **Shyam Lal vs. Deepa Dass Chela Ram Chela Garib Dass**, wherein it is observed at Para 6 thus :

“We have heard Mr. Parveen H. Parekh, learned Senior Counsel appearing for appellant and Mr. Manoj Swarup, learned counsel for the respondent. We have also perused the impugned Judgment and all the papers placed before us. The question that arises for consideration is as to whether the plaintiff-appellant became a trespasser after expiry of the lease period or

continued to be a tenant having protection for eviction under the tenancy laws.”

15. I have gone through the facts and observations of the above cited cases. The observations are inapplicable to the facts of the present case simply because here in the present case, the Plaintiff is unable to show his possession over the suit property as on the date of suit nor there is evidence to that effect.

16. From the pleadings of the parties and the documents on record, I do not think that the Plaintiff was/is able to show its possession over the suit property. Consequently, the learned Trial Court has rightly rejected the application for temporary injunction so also the Appellate Court has rightly confirmed the Order passed by the learned Trial Court. Consequently, there is no substance in the present Writ Petition. Therefore, it is liable to be dismissed and, accordingly, dismissed with costs. The observations made herein above are, prima facie, and the learned Trial Court shall dispose of the suit without influence by any of the observations made by this Court whilst disposing off the above Writ Petition.

17. With these observations, the Writ Petition is dismissed. Rule stands discharged accordingly.

K. L. WADANE, J.

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