

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

**SECOND APPEAL NO. 103 OF 2016**

SHRI. LAXIMAN SAVALKAR (DECEASED),  
THROUGH HIS LRS.,

... Appellant

Versus

FABRICA THE CHURCH OF ST. ANDREW,  
THROUGH PRESIDENT.,

... Respondent

Mr. Gaurish N. Agni, Advocate for the appellant.  
Mr. A. F. Diniz, Advocate for the respondent.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 16th December, 2016

P.C.:

This second appeal challenges the concurrent findings of the Courts below as regards the right of the appellants to occupy the suit premises. The Trial Court has rejected the claim of the appellants of being mundkars of the respondent and being in occupation of the suit premises in that capacity. The Appellate Court has confirmed the said findings.

2. The suit, as filed by the respondent against the appellants, was on the ground that one Joao Antonio Rodrigues who was the lessee in respect of the suit premises had illegally inducted the original defendant No.1 in the suit premises. The appellants herein are the heirs and legal representatives of original defendant No.1. The suit was filed after the death of the lessee Joao Antonio Rodrigues. The original defendant No.1

contested the suit, claiming that he had been occupying the suit premises, along with his family consisting of wife, two daughters, and two sons since the year 1969. He claimed that Joao Antonio Rodrigues was also residing by the side of the suit premises and he had proposed to construct a house jointly with original defendant No.1 because of his financial constraints. That is how the suit premises were constructed consisting of two independent units, one owned and occupied by Joao Antonio Rodrigues and the other by original defendant No.1 and his family. The written statement further states that original defendant No.1 got married in the year 1974 and continued to reside in the suit house along with his family.

3. In view of the claim of original defendant No.1 of being a mundkar, the Trial Court framed an issue in respect thereof being Issue No.5 and referred the same for decision of the Mamlatdar of Mormugao Taluka, Vasco da Gama. He, by his Order dated 30th November, 2012, after giving due opportunity of leading evidence and making submissions thereon, rejected the claim of original defendant No.1 of being a mundkar. On the basis of the decision of the Mamlatdar, the Trial Court proceeded to hear the suit and allowed the same by the Judgment and Decree dated 27th November, 2013.

4. Being aggrieved by the eviction decree, the appellants

preferred an appeal to the District Court. The appeal has been dismissed by Judgment and Order dated 29th December, 2014. About a year thereafter, i.e. in December, 2015, the appellants filed an appeal against the Order dated 30th November, 2012 passed by the Mamlatdar Mormugao, along with an application for condonation of delay. The appellants' application for condonation of delay is pending for consideration till date.

5. Mr. G. Agni, learned Counsel for the appellants submits that in view of pendency of the appeal against rejection of the appellants' claim of being mundkar, the present appeal needs to be admitted. He relies upon decision of the learned Single Judge of this Court in Shri Subha Venkatesh Kamat vs. Shri Vasu Naik and others, reported in 2001 (1) Goa L.T. 3 to submit that it has been held by our High Court that the contention as regards being a mundkar for claiming rights under the Mundkar Act can be raised even in execution proceedings. It is his argument that if the execution proceedings can be permitted to be defended by raising a plea of being mundkar for the first time, it would only be proper that the present appeal is admitted in view of pendency of the appeal preferred against the order of the Mamlatdar.

6. As on today, it cannot be even said that the appeal preferred against the order of the Mamlatdar is pending since the

delay in filing the appeal is not condoned. Consequently, the order of the Mamlatdar holds the field.

7. The second argument of Mr. Agni is that the suit as filed by the respondent is barred by law of limitation. He does not dispute that such an issue was not raised before the Trial Court. The contention came to be raised for the first time before the First Appellate Court and has been answered in favour of the respondent. At para 7 of the plaint, the respondent has stated that the cause of action for filing the suit arose on 20th November, 2000 when Joao Antonio Rodrigues, the lessee of the respondent in respect of the suit house expired. In view of that statement, the suit as filed has been held to be not barred by law of limitation. This view of the District Court is a correct view. It was the case of the respondent that original defendant No.1 was residing in the suit premises along with its lessee and had no independent rights thereto. On the death of the lessee, the respondent sought possession of the suit premises from all the occupants since the lease came to an end. There is no substantial question of law arising in the appeal for consideration of the Court. Besides, the view taken by the Courts below is a correct view. Hence, the appeal is dismissed.

SMT. R. P. SONDURBALDOTA, J.

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