

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1003 OF 2017

VENKATESH SHANTARAM SARDESSAI., ... Petitioner

Versus

KRISHNA DATTA KERKAR AND 11 ORS., ... Respondents

Mr. Prasheen Lotlikar, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 28th November 2017

ORAL ORDER:

The petitioner is challenging the order dated 10.02.2017, passed below Exhibit 13-D, by the learned Senior Civil Judge at Bicholim, Goa in Tenancy Case No. 208/2015/A.

2. By the impugned order, application filed by the petitioner, for rejection of the plaint under Order VII, Rule 11(a) and (d) of the Civil Procedure Code (CPC, for short), has been dismissed.

3. The said tenancy case has been initiated by the petitioner, for declaration of his tenancy rights. The petitioner contended that earlier, in Regular Civil Suit No. 89/1997/C, an issue of tenancy, was framed and referred to the Mamlatdar. That reference was dismissed in default on 13.11.2007. Thus, according to the petitioner, the application for declaration of tenancy was incompetent, in view of the dismissal of reference in

the year 2007. This according to the petitioner is a ground for rejection of plaint under Order VII, Rule 11(a) and (d) of CPC. It is contended that the order dated 13.11.2007 would apply as res judicata.

On behalf of the petitioner, reliance is placed on the decision of the Supreme Court in the case of DEVILAL MODI Vs. SALES TAX OFFICER, AIR 1965 SC 1150, in which, the Hon'ble Supreme Court has held that no one should be made to face the litigation of the same kind, twice over.

4. The learned Trial Court refused to accept that the plaint does not disclose cause of action. Insofar as the ground of res judicata is concerned, the learned Trial Court found that the earlier reference before the Mamlatdar was not decided on merits and was dismissed in default and what Section 11 of CPC provides is that the previous suit or issue has to be heard and has to be finally decided.

5. I have considered the circumstances and the submissions made.

6. Under Order VII, Rule 11(a) of CPC (without going into the question whether, the provisions of CPC will apply with the same rigour to the proceedings initiated under the Tenancy Act), the plaint can be rejected, where it does not disclose the cause of

action and under Rule 11(d), the plaint can be rejected, if it is barred by any law. At this stage, it cannot be accepted that the application as framed and filed, does not disclose the cause of action. Insofar as the plaint being barred by any law is concerned, the only contention raised is that, dismissal of the earlier reference shall operate as res judicata. The learned Trial Court has held that the earlier reference was not decided on merits. I do not find that any exception can be taken to the said finding. Prima facie, considering the fact that the petitioner has already filed reply, to the main application for declaration, it would be appropriate that the learned Mamlatdar decides the application on its own merits. The question whether, the dismissal of the earlier reference operates as res judicata, can be appropriately framed. It would be open to the petitioner to request the learned Mamlatdar to frame and try it as a preliminary issue. If such a request is made, the Trial Court shall decide the same on its own merits and in accordance with law.

With this, I decline to entertain the petition, which is accordingly dismissed.

C. V. BHADANG, J.

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