

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 33 OF 2017

SHRI. RAMA MUKUND NAIK., ... Appellant
Versus
SMT. CHRISTALINA LUIS RODRIGUES
(DEC) THR. LRS. AND 2 ORS., ... Respondents

Mr. Abhay Nachinolkar, Advocate for the appellant.

Coram:- F. M. REIS, J.

Date:- 17th February, 2017

ORAL ORDER :

Heard Mr. A. Nachinolkar, learned counsel appearing for the appellant.

2. The challenge in the above appeal is to the dismissal of the application under Order 21 Rule 97 of the Civil Procedure Code filed by the appellant obstructing a decree in favour of the respondents/plaintiffs whereby the suit filed by the respondents against the original defendant nos. 6 and 7 came to be decreed. The suit was filed in the year 1979 on the ground that the respondent nos. 2 and 3 who were the defendant nos. 6 and 7 are illegally occupying the structure in the suit property. It was also the case of the respondent no.1 that the appellant was illegally occupying the property belonging to the respondent no.1. The appellant filed his written statement inter alia contending that he

is a tenant of paddy field portion of the property and that he is also the caretaker of the coconut grove and the mundkar of the structure existing in the suit property. The respondent nos. 2 and 3/defendant nos. 6 and 7 claimed to be the mundkars of the dwelling house and that as far as the suit structure is concerned, the said respondents were using it for keeping the agricultural implements. The issues were framed by the learned Trial Judge and referred to the learned Mamlatdar to examine whether the claim of the appellant that he was an agricultural tenant of the property was established and whether the respondent nos. 2 and 3 were mundkars of the disputed structure. The learned Mamlatdar after holding an inquiry under the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 came to the conclusion that the claim of the respondent nos. 6 and 7 that they had a fixed habitation in the suit structure cannot be accepted and that the respondent nos. 6 and 7 were not mundkars of the suit structure. The order passed by the learned Mamlatdar had attained finality and the proceedings were thereafter remitted to the learned Trial Judge. In the meanwhile, though the claim of the appellant as far as his contention that he was an agricultural tenant of the property was still pending before the learned Mamlatdar, as the relief sought against the respondent nos. 6 and 7 was to demolish the disputed structure wherein they were claiming to be the mundkars, the learned Trial Judge partly decreed the suit and directed that the structure be demolished.

The claim of the appellant that he was an agricultural tenant of the property was also under adjudication and as such, the appellant filed an appeal against the said judgment before the learned Lower Appellate Court which came to be dismissed. The Second Appeal preferred before this Court also came to be dismissed after making an observation that the decree is only against the respondent nos. 6 and 7 and there is no adjudication as far as the claim of the appellant that he was an agricultural tenant of the subject property which has not been decided as the matter was admittedly pending at that stage before the learned Mamlatdar. Thereafter, the respondent no.1 proceeded with the execution proceedings against the respondent nos. 6 and 7 with regard to the suit structure and a process for execution was issued in favour of the decree holder. But however, in the meanwhile, the appellant filed an application under Order 21 Rule 97 of the Civil Procedure Code to obstruct the demolition of such structure. The learned Trial Judge rejected the application filed by the appellant vide order dated 09.06.2014. Being aggrieved by the said order, the appellant preferred an appeal before the learned Lower Appellate Court which also came to be rejected by judgment dated 06.02.2017. Being aggrieved by the order and judgment passed by the Courts below, the appellant has preferred the present appeal.

3. Mr. Nachinolkar, learned counsel appearing for the

appellant has pointed out that the subject structure was a farm house which was existing in the tenanted land which was held to be belonging to the appellant pursuant to the declaration issued by the learned Mamlatdar. The learned counsel has further pointed out that though an appeal has been preferred by the respondent no.1 challenging the said order, there is no stay obtained by the respondent no.1 herein. The learned counsel further pointed out that in terms of the Agricultural Tenancy Act, said also includes the farm house and as such according to him the subject structure being a farm house also stands protected. The learned counsel further pointed out that while disposing of Second Appeal preferred by the appellant, there is a clear observation by this Court to the effect that the rights of the appellant with regard to the suit property has not been adjudicated. The learned counsel further pointed out that as the appellant is in possession of the suit structure, the question of proceeding to execute a decree in respect of the suit structure is not at all justified. The learned counsel as such points out that there are substantial questions of law which arise in the present appeal for consideration.

4. I have considered the submissions of the learned counsel and I have also gone through the records. While examining the appeal preferred by the appellant, by an order dated 27.06.2012 this Court has clearly observed that the appellant was taking

inconsistent pleas, as far as the claim in the suit filed by the respondent no.1. No doubt, it was also observed that there is no adjudication as far as the claim of tenancy of the appellant in respect of the property which is the subject matter of the suit. This observation was in the context that at that stage the issue referred to the Mamlatdar on the claim of tenancy was under consideration. On perusal of the order passed by the learned Mamlatdar, there is no reference made therein to the effect that the appellant had in fact constructed any farm house in the subject agricultural land as claimed by the appellant. Apart from that, when the issue of mundkarship was referred to the learned Mamlatdar, there was no contention raised by the appellant that no such issue has to be referred as the suit structure was part of the agricultural land wherein the appellant was claiming to be a tenant. In such circumstances, the contention of the learned counsel appearing for the appellant that the suit structure was in fact a farm house existing in the agricultural land is clearly an after thought which is raised to delay the execution in respect of the structure which was claimed to be part of his dwelling house as a mundkar. Once the claim of the respondent nos. 6 and 7 that they were mundkars was rejected by the learned Mamlatdar after holding a full fledged inquiry, it was not open to the appellant to now contend that such structure belongs to the appellant on a spacious contention that it was a farm house. There is no material produced on record to even prima facie establish that the suit

structure was constructed by the appellant to keep agricultural implements. Apart from that, the claim of the respondent no.1 is that the suit structure was being used by the respondent nos. 6 and 7 as a gada for business activity. The tenanted land cannot be used for commercial activity in view of the restrictions provided in the Goa Land Use Act. In such circumstances, the contention of the appellant that the suit structure is a farm house cannot be accepted.

5. In view of the above, I find that there is no substantial question of law which arises in the present appeal for consideration. The application filed by the appellant to obstruct the decree obtained by the respondent no.1 is an abuse of process of Court. Hence, the appeal stands rejected.

F. M. REIS, J.

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