

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 42 OF 2015**

Mr. U. Aaron Raj,
son of late Mr. Udiyaar,
major of age, married,
Indian National, service,
Resident of House No.215/9,
Liwrament Wado, (Bella Vistawad),
Sangolda, Bardez Goa. ... Appellant

V e r s u s

1. Comunidade of Sangolda,
through its attorney,
having its office near
Village Panchayat of Sangolda,
Sangolda, Bardez Goa.
2. Administrator of Comunidade,
having office opposite
Civil Court, Mapusa,
Mapusa, Bardez Goa. ... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the appellant.

Mr. R. G. Ramani, Advocate for the respondent no.1.

Ms. P. Kamat, Addl. Government Advocate for the respondent no.2.

Coram:- F. M. REIS, J.

Date:- 17th March, 2017

ORAL JUDGMENT

Heard Mr. R. Menezes, learned counsel appearing for the appellant, Mr. R. G. Ramani, learned counsel appearing for the respondent no.1 and Ms. P. Kamat, learned Addl. Government Advocate appearing for the respondent no.2.

2. The above appeal came to be admitted by an order dated 22.07.2015 on the following substantial questions of law.

(i) Whether the Courts below were justified in holding that the jurisdiction of the Civil Court is impliedly barred, in view of the provisions contained in the Code of Communitade and in particular, Article 372-A thereof ?

(ii) Whether the Courts below were justified in appreciating the material at the stage of rejection of the plaint, under Section Rule 11 Order 7 of the Code of Civil Procedure ?

3. Mr. R. Menezes, learned counsel appearing for the appellant has taken me through the provisions of Article 372-A

of the Code of Comunidade which only enables the Comunidade to regularise the constructions which were put up prior to 15.06.2000. The learned counsel points out that there is no bar of jurisdiction for the Civil Court to examine the correctness or otherwise of the claim put forward by the appellant. The learned counsel further submits that the learned Judge has erroneously come to the conclusion that the suit filed by the appellant is barred in terms of Order VII Rule 11 of the Civil Procedure Code which led to the passing of the impugned order thereby rejecting the plaint filed by the appellant. The learned counsel further pointed out that it is the case of the appellant that he has been occupying the subject structure on the basis of the allotment to him under the twenty point programme and the material in support thereof has been clearly pleaded and placed on record. The learned counsel further pointed out that it is further the contention of the appellant that the intended action by the respondents is contrary to law and stands vitiated which forced the appellant to file the suit to seek a relief as prayed for in the plaint. The learned counsel thereafter has taken me through the

impugned judgment to point out that the learned Judge has erroneously come to the conclusion that the plaint filed by the appellant is barred and rejected the plaint on erroneous consideration. The learned counsel has thereafter taken me through the provisions of Order VII Rule 11 of the Civil Procedure Code to point out that the findings arrived at in the impugned judgment do not find place in any of such provisions to the learned Judge to reject the plaint. The learned counsel as such submits that both the substantial questions of law are to be answered in favour of the appellant.

4. On the other hand, Mr. R. G. Ramani, learned counsel appearing for the respondent no.1 submits that the suit itself is not maintainable looking into the reliefs sought by the appellant. The learned counsel pointed out that the view taken by the learned Judge to reject the plaint is essentially on the ground that there is no pleading in the plaint to suggest that the disputed structure was in existence prior to the cut off date as stipulated in Article 372-A of the Code of Comunidade. The learned counsel

further pointed out that the learned Judge also found that there is no material produced to substantiate the claim of the appellant that the appellant was occupying the subject structure under twenty point programme. It is further pointed out that as the action taken by the respondent no.1 was in pursuance of the order passed by this Court, the question of granting any injunction in view of the provisions of Section 41(h) of the Specific Relief Act would not arise at all. The learned counsel as such points out that though the learned Judge may not be justified to hold that the Civil Court has no jurisdiction, nevertheless, according to him considering that the suit itself is barred by law and the reliefs sought are not maintainable, the learned Judge was justified to pass the impugned judgment.

5. The learned Addl. Government Advocate appearing for the respondent no.2 adopts the contentions of Mr. Ramani, learned counsel appearing for the respondent no.1.

6. I have given my thoughtful consideration to the rival

contentions and I have also gone through the records. On perusal of the records, I find that the learned Judge has rejected the plaint on the ground that the suit was barred under the provisions of the Code of Comunidade. On going through the provisions thereof, there is no bar of jurisdiction for the Civil Court to examine the dispute raised by the appellant as against the Comunidade. Mr. Ramani, learned counsel appearing for the respondent no.1 fairly accept the said position and as such the finding of the learned Judge on that count is not at all justified.

7. But however, on going through the plaint, I find that allegations therein are vague. In such circumstances, Mr. Ramani, learned counsel appearing for the respondent no.1 may be justified to contend that on the basis of vague pleadings in the plaint, such plaint does not disclose a cause of action. In such circumstances, I find that looking into the provisions of Order VII Rule 13 of the Civil Procedure Code which clearly provide that the rejection of the plaint does not preclude the plaintiff to file a fresh plaint subject to the terms stipulated therein, not

interfering in the impugned judgment at this stage would not lead to any failure of justice to the appellant in the present appeal. In the peculiar facts and circumstances of the case, reserving a liberty to the appellant to invoke the provisions of Order VII Rule 13 of the Civil Procedure code to file a fresh plaint subject to the conditions as stipulated therein, I find that there is no case made out for any interference in the impugned judgment. Needless to say, in case the appellant files a fresh plaint, the learned Judge shall consider such plaint on its own merits in accordance with law without being influenced by any observations in the impugned judgment. All contentions of the respondents, if any, to such pleadings are left open in the light of the observations made herein above and subject to the liberty as reserved herein above.

8. The appeal stands disposed of accordingly.

F. M. REIS, J.

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