

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**WRIT PETITION NO. 617 OF 2017**

MR. MAHADEV HUMRASKAR & ANR. ... PETITIONERS

Versus

MR. VINCENTE IVO DE BRAGANZA & 5 ORS., ... RESPONDENTS

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Shri Rama Gajanan Rivankar, Advocate for the Petitioners.

Shri Ashwin D. Bhobe with Ms. Shradha Bhobe, Advocate for the Respondents.

**CORAM:- C. V. BHADANG, J.**

**DATE: 16<sup>th</sup> AUGUST, 2017**

**ORAL ORDER:**

The challenge in this petition is to the part of the order dated 18.01.2017, passed by the learned Civil Judge Junior Division at Mapusa in Rent Application No. 18/2015/F. By the impugned order, the learned Trial Court has dismissed the application (Exhibit-15) filed by the petitioners/tenants, seeking framing of a mundkarial issue.

2. The brief facts are that Mr. Vincente Braganza alongwith his wife Mrs. Pamela Braganza and others have filed the aforesaid application, for eviction of the petitioners on various grounds, claiming that the petitioners are tenants in

respect of House No. 147, situated at Gaunsa Wado, Mapusa, Bardez, Goa. The petitioners filed written statement *inter alia* denying that the respondents (applicants before the Trial Court) are the owners/landlords in respect of the said residential house. The petitioners also claimed that there are no documents produced to show that they have a “link” with the original landlady Mrs. Lucia Braganza. Undisputedly, prior to the filing of the application by the respondents, the petitioners have filed an application before the Mamlatdar in the year 2012, against now deceased Mrs. Lucia Braganza, for their declaration as mundkars in respect of the suit house. Those proceedings are pending before the Mamlatdar.

3. The respondents filed an application (Exhibit-14) for framing of additional issues before the learned Trial Court. The petitioners also filed an application (Exhibit-15) for framing of the additional issue, viz. as to whether the petitioners prove that they are the mundkars of the suit premises.

4. The learned Trial Court has partly allowed the application (Exhibit-14) filed by the respondents, while dismissing the application (Exhibit-15) filed by the petitioners. The learned Counsel for the petitioners has restricted his

challenge to the part of the order, dismissing the application (Exhibit-15).

5. It is submitted by the learned Counsel for the petitioners that the learned Trial Court was in error in dismissing the application on the ground that mundkarial proceedings, before the Mamlatdar are not filed against the respondents (applicants before the Trial Court). He submits that after the death of Mrs. Lucia Braganza, some of the applicants have been brought on record as respondents before the Mamlatdar. He therefore submits that the Trial Court, ought to have framed the additional issue as claimed.

6. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondents that there are six applicants before the learned Rent Controller and all of them are not party-respondents in the application filed by the petitioners before the Mamlatdar. He has further pointed out the written statement, in which the petitioners have denied the ownership, as well as status of the respondents as landlords of the suit house. It is thus submitted that the petitioners cannot justifiably seek framing of the mundkarial issue. The learned Counsel has further pointed out that vide notice reply dated 29.06.1995, the

petitioners had sent rent in respect of the suit premises. That, notice is addressed to the respondent Anthony Braganza. It is further submitted that even assuming that the issue is framed as claimed, there is no provision akin to Section 32 of the Goa, Daman and Diu Mundkar (Protection from Eviction) Act, 1975 (Act, for short), for referring the said issue to the Mamlatdar and thus, the exercise would be superfluous.

7. I have carefully considered the rival circumstances and the submissions made. It appears that there are in all six applicants before the learned Mamlatdar, in which, Ivo Braganza, Maria Pamela Braganza and Mrs. Virga Braganza are brought on record, after the death of Mrs. Lucia Braganza. The learned Trial Court has noticed that the claim as to the mundkarial rights is not against the applicants (present respondents) but, against one Manuel Braganza and Mrs. Maria Lucia Braganza, who are the parents of the original applicant no. 1 (present respondent no. 1). Further, the case made out in the written statement would show that the petitioners had denied that the respondents are the owners/landlords of the suit house and they have also claimed that there is no link between Mrs. Lucia Braganza and the respondents. In view of this, the learned Trial Court has framed a specific issue no. 3. It also appears that by virtue of

notice reply dated 29.06.1995, the petitioners had tendered rent. Be that as it may, the learned Trial Court will have to look into the question about the landlord and tenant relationship between the parties, before granting eviction. Having regard to the fact that there is no provision for referral of issue of mundkarship akin to Section 32 of the Act, which is applicable to the proceedings before the Rent Controller, no purpose would be served by framing the issue. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

**C.V. BHADANG, J.**

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