

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 671 OF 2017

ROHIDAS KRISHNA NAIK AND ANR., ... Petitioners

Versus

RAMCHANDRA R. SAWKAR (DEC) THR.
HIS LRS., ... Respondent

Shri Preetam Talaulikar, Advocate for the Petitioners.

Shri Ashwin D. Bhobe, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 20th September 2017

ORAL ORDER:

The petitioners, are claiming to be the tenants in respect of 56,325/- square metres of land, bearing Survey No. 36/0 of village Vaddi, Talauli, Ponda, Goa.

2. The learned Mamlatdar under Section 18C of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short), has declared the petitioners to be the tenants in respect of the entire land. The respondents-landlords had filed a joint reply claiming that only an area of 4,746/- square metres, from out of Survey No. 36/0, is the agricultural land and rest of the land is rocky and unfit for cultivation. A perusal of the reply shows that the respondents have no objection for the petitioners being declared as tenants in respect of 4,746 square metres of land.

3. Before the learned Mamlatdar, only one of the co-owners, namely, Harshad Sawkar was examined in the form of a questionnaire. The other co-owners were not examined.

4. The order dated 01.10.1992, passed by the Joint Mamlatdar was challenged by the respondents, before the District Judge in Tenancy Appeal No. 122/2015. The learned District Judge by impugned judgment and order dated 27.04.2017, has allowed the appeal and has remanded the matter back to the learned Mamlatdar, with a direction to give the parties an opportunity to lead evidence and then to decide the matter afresh.

5. I have heard Shri Talaulikar, the learned Counsel for the petitioners and Shri Bhobe, the learned Counsel for the respondents and perused record.

6. The only contention raised on behalf of the petitioners is that the application under Section 18C of the Act, could not have been remanded on the ground that one of the co-owners was not examined. It is contended that there was a joint reply filed by both the co-owners. As such, the case of the other co-owner could not have been different, than the one who is examined.

7. Shri Bhobe, the learned Counsel for the respondents has pointed out that the admission on behalf of the respondents, as to the status of the petitioners, was only in respect of 4,746 square metres of land and not the entire land and the learned Mamlatdar has declared the petitioners to be the tenants in respect of the entire land, which is not correct.

8. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. As noticed earlier, in the joint reply filed by the landlords, it was admitted that the petitioners are tenants only in respect of 4,746 square metres of land and not the entire land. Thus, the learned Mamlatdar, without conducting an enquiry could not have declared the petitioner's, as tenants in respect of the entire land. The learned District Judge was therefore justified in remanding the matter for deciding it afresh after giving the parties an opportunity for leading evidence. The impugned order does not suffer from any infirmity, so as to require interference. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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