

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 727 OF 2017

JOSE SALVADAR LUIS BORGES (DEC)
THR. HIS LRS.,

... Petitioner

Versus

MRS. YESHODI YESHWANT PARSEKAR
(DEC) THR HER LRS.,

... Respondent

Mr. Venkatesh Ameya Nayak Salatry, Advocate for the
petitioners.

Coram:- C. V. BHADANG, J.

Date:- 19th September 2017

P.C.

Heard the learned Counsel for the petitioners.

2. Concurrent finding of three Courts below, holding now deceased Yeshodi Parsekar, the mother of the respondent, as a mundkar in respect of the suit house, is challenged in this petition.

3. The only contention raised by the learned Counsel for the petitioners is that now deceased Yeshodi had filed an application under Section 29 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act, for short) for registration as a mundkar. In these proceedings, the original

applicant now deceased Yeshodi gave a statement on 30/03/1985 stating that she is residing in the suit outhouse since last 36 years and she will continue to reside in the outhouse during her lifetime and thereafter, her son will continue to reside in the suit outhouse during his lifetime. It is contended that this is an admission by the original applicant that she was not occupying the suit house as a mundkar, which aspect has not been considered by the Courts below.

4. With the assistance of the learned Counsel for the petitioners, I have gone through the order passed by the learned Mamlatdar as well as the judgment of the learned Deputy Collector in appeal and the judgment and order dated 06/02/2017 passed by the learned District Judge in Mundkar Revision Application No.4/2015, which clearly show that the aspect about earlier proceedings under Section 29 has been considered and dealt with. The learned District Judge has found and to my mind rightly so, that the proceedings under Section 29 of the Act i.e. for registration and the one under Section 8A of the Act, for declaration are distinct proceedings. That apart, the statement dated 30/03/1985 does not spell out any admission on behalf of the original applicant that she was residing as a caretaker. The contention was also raised before the Courts below that the proceedings for registration would operate as res judicata. The learned District Judge has found that there was no order passed

in these proceedings in view of the statement of the original applicant as well as the bhatkar. As such, there is no question of the said proceedings operating as res judicata. On carefully going through the impugned orders, I do not find that they suffer from any infirmity, so as to require interference under Article 227 of the Constitution of India. The petition is without any merit and is, accordingly, dismissed.

C. V. BHADANG, J.

SMA