

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.769 OF 2015**

M/s. Lakeview Mercantile Company
Represented by Shri Darius Khambatta,
Director

...Petitioner

vs.

Shri Pandurang Pereira & 8 Ors.

...Respondents

WITH**WRIT PETITION NO.1031 OF 2015**

Shri Pandurang Pereira & 8 Ors.

...Petitioners

vs.

M/s. Lakeview Mercantile Company
Represented by Shri Darius Khambatta,
Director

...Respondent

Mr. S. Usgaonkar, Senior advocate a/w Ms. Ujwala Aras and Ms. Vinita V. Palyekar for the Petitioner in WP No.769/2015.

Mr. R. G. Ramani for the Respondents in WP No.769/2015.

Mr. R. G. Ramani for the Petitioners in WP No.1031/2015.

Mr. S. Usgaonkar, Senior advocate a/w Ms. Ujwala Aras and Ms. Vinita V. Palyekar for the Respondent in WP No.1031/2015.

CORAM :- C. V. BHADANG, J

Reserved on : 17th JANUARY, 2017.

Pronounced on : 26th April, 2017.

(Through Video conferencing)

JUDGMENT:

. Both these petitions arise out of the order dated 25/5/2015 passed by the learned District Judge, North Goa, Panaji in Civil Miscellaneous Application No.127/2014. As such the Petitions are being disposed of by this common judgment.

2. For the sake of convenience the parties are referred to in their capacity as in W.P. No.769/2015. On 27/1/1999 the Respondent Nos.1 to 7 filed an application before the learned Mamlatdar under section 7 r/w section

4 of the Goa Daman & Diu Agricultural Tenancy Act 1964 ('Act' for short) which was registered as case No.TNC/Decl/Bam/11/99 before the learned Joint Mamlatdar. That application was filed against the Respondent Nos.8 and 9 seeking declaration that the Respondent Nos.1 to 7 are the tenants in respect of land surveyed under No.24/1 of village Bambolim Tiswadi Taluka, Goa. On 25/11/2002 the Respondent Nos. 1 to 7 filed an application under section 8-A of the Act against the Respondent No.8 and legal heirs of the Respondent No.9 seeking injunction restraining these Respondents from creating third party interest in the land surveyed under No.24/1 and restraining these Respondents from dispossessing the Respondent Nos.1 to 7 from the suit property.

3. The Petitioner purchased the subject land under a Sale Deed dated 26/2/2008 and claim to be in possession of the same.

4. The Respondent Nos.1 to 7 placed reliance upon a Sale Deed dated 28/7/1988 which mentioned that the Respondent Nos.1 to 7 are the tenants of the suit property. The learned Joint Mamlatdar by an order dated 19/8/2014 dismissed the application dated 25/11/2002 filed by the Respondent Nos.1 to 7 under section 8A of the said Act, inter alia on the ground that the names of these Respondents do not figure in Form I and Form XIV of the suit property and that these respondents have not produced any receipt with respect to the rent of Rs.7,000 which they claim to have paid. Aggrieved by the said order the respondent Nos.1 to 7 filed an appeal before the learned Deputy Collector, which appeal was eventually transferred to the court of the learned District Judge, North Goa, Panaji in view of the Goa Daman & Diu Agricultural Tenancy (Amendment) Act 2014. Some time in November 2014, the Respondent Nos.1 to 7 filed a fresh application for temporary injunction before the learned District Judge which came to be

registered as Civil Miscellaneous Application No.127/2014. The case made out in the application was that on 12/9/2014 the Panchayat members came to inspect the suit property and at that time these Respondents were informed that the Petitioner is intending to put up a project and carry out construction in the suit property, which would also involve cutting of the trees. The Respondent Nos. 1 to 7 claimed that they are tenants of the suit property and if the construction is made they would be dispossessed.

5. The Petitioner opposed the said application claiming that the Petitioner is owner of the suit property by virtue of the sale deed dated 25/2/2008 which was executed after verifying the title of the Respondent No.8 and 9 and on due diligence it was found that the Respondent Nos.8 and 9 had a clear and marketable title to the suit property and there were no tenants in the suit property.

6. The learned District Judge by order dated 25/6/2016 has partly allowed the application filed by the Respondent Nos.1 to 7 directing the Petitioner in W. P. No.769/2015 (the Respondent No.3 before the learned District Judge) not to change the nature of the land and to maintain and preserve the suit property in dispute till the disposal of issue of tenancy pending before the competent court. It is this order which is the subject matter of challenge in Writ Petition No. 769/2015. The Petitioners in Writ Petition No.1031/2015 are challenging the impugned order refusing to grant injunction restraining the Petitioner in WP No.769/2015 from interfering with the possession of the Respondent Nos. 1 to 7 over the suit property.

7. I have heard the learned counsel for the parties and perused the record. It is submitted by Shri Usgaonkar, the learned counsel for the Petitioner in WP No.769/2015 that the learned District Judge has found that

there is no prima facie case or balance of convenience in favour of the Respondent Nos.1 to 7. It is submitted that the learned District Judge also found that the necessary ingredients for grant of temporary injunction are 'utterly missing' in this case and as such could not have allowed the application directing the Petitioner to maintain and preserve the suit property till issue of tenancy as referred in LAC No.37/2002 is decided. It is submitted that Form I and Form XIV of the suit property does not record the name of the Respondent Nos.1 to 7 as tenants. It is further submitted that reliance placed by the Respondent Nos.1 to 7 on the sale deed dated 28/7/1988 is misplaced. The learned senior advocate has taken me through the recitals of the Sale Deed in order to submit that there is no admission as such contained in the Sale Deed about Respondent Nos. 1 to 7 being the tenants in respect of land surveyed under No.24/1. It is submitted that the learned District Judge has rightly refused to go into the provisions of section 21 of the Evidence Act holding that the recitals in the Sale Deed is not a piece of substantive evidence and the Respondent Nos.1 to 7 can not capitalize on the same. It is submitted that after so holding the learned District Judge could not have directed the Petitioner to maintain and preserve the suit property until the disposal of the issue of tenancy as referred in LAC No.37/2002.

8. On the contrary, it is submitted by Shri Ramani, the learned counsel for the Respondent Nos.1 to 7 (who are also the Petitioners in Writ Petition No.1031/2015) that the sale deed dated 28/7/1988 can be relied upon in view of section 21 of the Evidence Act. The recital in the sale deed is an admission which would be conclusive. It is submitted that the Respondent Nos.1 to 7 have clearly come out with a case that they were tenants in respect of the suit property and were paying rent of Rs.7,000/- p.m. in support of which a statement from the State Bank of India showing cheques which were encashed by the landlord were produced on record. It is submitted that the

learned District Judge could not have brushed aside this documentary evidence on the ground that no receipts were produced. He submitted that in the LAC No.37/2002 issue about the tenancy is referred to the Competent court and thus, the learned District Judge was justified in directing the Petitioner (WP No.769/2015) to maintain and preserve the suit property until the said issue is decided. It is submitted that the learned District Judge ought to have granted further injunction restraining the Petitioner from interfering with the possession of the Respondent Nos.1 to 7, over the suit property.

9. On hearing the learned counsel for the parties and on perusal of record, I find that the matter needs to be sent back to the Learned District Judge for deciding it afresh in accordance with law. Perusal of the impugned order paragraph No.9 to 12(which covers the substantial part of reasoning) would clearly show that the learned District Judge had come to the conclusion that three ingredients necessary for grant of injunction were not satisfied in this case.

10. In paragraph 13, the learned District Judge has found that it would be appropriate and expedient to direct the Petitioner(WP No.769/2015) who had purchased the property by virtue of Sale Deed dated 26/2/2008 to maintain and preserve the suit property and not to change the nature of the same until the rights of the Respondent No.1 to 7 and the Petitioners are adjudicated by the Competent Court in a reference arising out of LAC No.37/2002.

11. The Respondent Nos.1 to 7 have mainly placed reliance on the Sale Deed dated 28/7/1988 and section 21 of the Evidence Act. The learned District Judge has held that the recitals in the Sale Deed are not a substantive piece of evidence. Even on the count of possession, the learned District Judge

has found that the Respondent Nos.1 to 7 have not filed affidavit of independent persons in support of their case establishing their possession . Their names do not figure in Form I and Form XIV and hence presumption of possession contemplated under section 105 of the Land Revenue Code is not available. In paragraph 10, the learned District Judge has further found that the Respondent Nos.1 to 7 even did not furnish copy of Appeal Memo (filed before the learned Deputy Collector) and the application for interim relief to the Petitioner. It is well settled that before Court grants an order of injunction , three necessary ingredients viz. Prima facie case, balance of convenience and irreparable loss, are required to be proved.

12. The learned counsel for the parties had advanced arguments on the nature and effect of the recitals of the Sale Deed dated 28/7/1988, namely the Respondents being tenants of the suit property and the effect of section 21 of the Evidence Act. A perusal of the application filed by the Respondent Nos. 1 to 7 before the learned District Judge does not show that any reliance was placed on the fact of the issue as regards tenancy being referred to in LAC No.37/2002. It is also not known whether property bearing survey No.24/1 which is the subject matter of dispute is also the property in LAC No.37/2002. In these circumstances, in my view it will be appropriate if the learned District Judge reconsiders the application.

13. Before parting with the final order it is necessary to mention that the papers of the original Appeal filed by the Respondent Nos.1 to 7 challenging the order of the Joint Mamlatdar were not transferred to the learned District Judge. The Respondent Nos.1 to 7 filed a separate application for injunction which was registered as Civil Miscellaneous Application No.127/2014. It is evident that such an application for interim relief can only be entertained in some substantive proceedings either original or on appeal. In

such circumstances the learned District Judge shall ensure that the papers of the Appeal filed by the Respondent Nos.1 to 7 are secured from the Learned Deputy Collector and in the event if the same is not possible, to take steps for reconstruction of the same. The learned District Judge shall then proceed to hear the parties and shall decide the matter afresh and in accordance with law.

14. In the result, the following order is passed:-

- i) Writ Petition No.769/2015 and Writ Petition No.1031/2015 are partly allowed.
- ii) The impugned order dated 25/6/2015 is hereby set aside.
- iii) Miscellaneous Civil Application No.127/2014 is restored to the file of the learned District Judge, North Goa, Panaji for deciding it afresh and in accordance with law.
- iv) Parties to appear before the learned District Judge on 5/6/2017.
- v) Rival contentions of the parties are kept open.
- vi) In the circumstances, there shall be no order as to costs.

(C. V. BHADANG, J.)