

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 64 OF 2017

SMT. DUMALINA MARIA FERNANDES
(DEC) AND 5 ORS.,

... Appellants

Versus

SHRI. LUIS CAETANO GUILHERME
WELLINGTON FERNANDES @ WELLINGTON
D'MELLO AND ANR.,

... Respondents

Mr. Anthony Joe D'silva, Advocate for the Appellants.
Mr. Abhay Nachinolkar, Advocate for the Respondents.

Coram:- F. M. REIS, J.

Date:- 3rd August, 2017

ORAL ORDER

Heard Mr. Anthony D' Silva, learned Counsel appearing for the Appellants and Mr. Abhay Nachinolkar, learned Counsel appearing for the Respondents.

2. The challenge in the above Appeal are to the Judgments passed by the Courts below whereby the suit filed by the Respondents came to be decreed, inter alia, directing the eviction and restoration of the possession of the subject property to the Respondents.

3. Mr. Anthony D'Silva, learned counsel appearing for the appellants submits that both the Courts below have erroneously come to the conclusion that the respondents have failed to

establish that the appellants are occupying the subject premises being a Mundkar and, as such, not protected under The Goa Daman & Diu Mundkars (Protection and Eviction) Act 1975. Learned Counsel further submits that the Courts below have erroneously taken a view that the appellants are not Mundkars of the subject dwelling house when the Civil Court has no jurisdiction to decide such issue. Learned Counsel further submits that it is the contention of the appellants that they are occupying the subject house with the consent of the mother of the respondents and, as such, the appellants are Mundkars of the suit house. It is further pointed out that the appellants have already initiated proceedings under the Mundkar Act for declaration and other reliefs and the findings in the present proceedings should not affect such claim of the appellants.

4. On the other hand, Shri Nachinolkar, Learned Counsel appearing for the respondents pointed out that the appellants were initially sleeping from 1978-79 on the footpath adjoining the suit building in the open space and that in the year 2003 the appellants trespassed into the land belonging to the respondents which led to the filing of the suit. Learned Counsel further pointed out that the appellants are trespassers in the property of the respondents and as such the Courts below have rightly decreed the suit filed by the appellants. Learned Counsel further submits that as there is no finding by the Courts below to the

claim of the appellants that they are Mundkars, the apprehension of the learned Counsel appearing for the appellants is totally misplaced. learned Counsel further submits that though the appellants claim that they have filed proceedings before the Mamlatdar, no official notice has been received from such Authority. Learned Counsel as such pointed out that the appeal be accordingly rejected.

5. I have duly considered the rival contentions. I have also gone through the records. Both the Courts below upon appreciating the evidence on record have come to the conclusion that the appellants have no right to occupy the suit house. The Courts below have also found that the appellants have failed to establish their claims that they were permitted to occupy the suit house. The concurrent findings of fact arrived at by the Courts below on the basis of the material on record cannot be faulted as they are based upon appreciating the evidence on record and the documentary evidence produced by the parties. This Court in a Second Appeal cannot re-appreciate the evidence unless there is any perversity. Looking into the pleadings of the parties and the findings of the Courts below, I find that there is no perversity in such findings which would call for interference of this Court. The title of the respondents is not in dispute but the only claim of the appellants is that they are the Mundkars of the subject house. The particulars thereof have not been disclosed in the written

statement filed by the appellants herein. In such circumstances, I find that there is no case for any interference in the present Second Appeal under Section 100 of the Civil Procedure Code.

6. With regards to the contention of Mr Anthony D'Silva learned Counsel appearing for the appellants that the findings of the Courts below would come in the way of the appellants initiating independent proceeding under the Mundkar Act, as rightly pointed out Mr Abhay Nachinolkar, learned Counsel appearing for the Respondents, there is no finding on such claim of the appellants. Apart from that, under Section 31(2) of the Mundkar Act, the jurisdiction to decide whether a person is a Mundkar or not is exclusively of the Mamlatdar and not of the Civil Court. Section 38 of the Mundkar Act also provides that the provisions of the Act shall have effect notwithstanding anything in any other law or custom or usage or decree or order of the Court of any Agreement or Contract, express or implied inconsistent with the provisions of the Act. As such, the apprehension of the learned Counsel appearing for the Appellants that any findings to that effect would come in the way of the Appellants in proceedings initiated by the Appellants is not at all justified. Any such proceedings shall be considered on its own merits in accordance with law.

7. In view of the above, there is no case made out for any

interference in the impugned Judgments. There are no substantial questions of law which arise in the present Appeal. The Appeal stands accordingly rejected.

F. M. REIS, J.

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