

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 184 OF 2017**

Shri Paulo Salvador Mascarenhas,
84 years of age, Indian National,
Occupation : Retired Agriculturist,
Son of late Salvador Manuel Mascarenhas,
Through his Power of Attorney holder
Shri Antonio Lucio Joao Mascarenhas,
Alias Anthony Mascarenhas,
Resident of Surbanwada, Pernem Goa. Petitioner

V e r s u s

1. Sita-Devi alias Jaya R. Deshprabhu,
Age about 86 years,
Wife of late Raghuraj V. Deshprabhu
(since deceased)
2. Devendra R. Deshprabhu
and 10 others. Respondents

Mr. Ganesh R. Naik, Advocate for the Petitioner.

Mr. S. Munj, Advocate for Respondent nos.2, 3, 4 & 5.

Mr. R. Rao, Advocate for Respondent no.7.

CORAM: C. V. BHADANG, J.
DATE: 28TH NOVEMBER, 2017.

ORAL ORDER:

Heard Shri Naik, the learned counsel for the petitioner, Shri Munj, the

learned counsel for respondent nos. 2 to 5 and Shri Rao and the learned counsel for respondent no.7.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the concurrent finding of three Courts below, refusing to grant temporary injunction to the petitioner.

3. The petitioner had filed an application for declaration as a tenant under section 7 r/w Section 14 of the Goa, Daman and Diu Agricultural Tenancy Act 1964 (Act, for short), in which the petitioner sought temporary injunction restraining the respondents from interfering with his possession and cultivation of the suit property i.e. land bearing survey no.407/2 at Pernem. The case made out by the petitioner is that the deceased father of the petitioner Salvador Mascarenhas was a tenant of the suit field. After the death of his father in the year 1974 the petitioner has inherited the tenancy rights to the exclusion of other legal representatives, who are the respondent nos.8 to 11. The respondent nos. 8 to 11 claim that their father was allowed to pluck the fruits of two jack fruit trees and one mango tree existing near the old house exclusively for consideration of Rs.5/- . The learned Mamlatdar found that the petitioner had failed to produce any documents of partition, judicial or otherwise to show that the tenancy rights of the subject land were allotted

to him after the death of his father. Secondly, the Mamlatdar has found that the receipts towards payment of the rent does not contain any survey number and the statement by the sole witness Bhaskar Kotkar also cannot be relied upon, considering the fact that in the Affidavit dated 14/8/2006 said Bhaskar has stated that he does not know the contents of his Affidavit dated 10/11/2006.

4. It is submitted by Shri Naik the learned counsel for the petitioner that it is not necessary for the petitioner to produce the receipts or any lease deed. It is submitted that the father of the petitioner was holding the lease which is described as “Khoti” and finds place in Form No. I and XIV of the subject land. Reliance is placed on the decision of this Court in the case of **The Secretary of State For India Vs. Faredoon Jijibhai Divecha (1934) 36 BOMLR 761** particular, by para 6 of the judgment, to show the meaning of the term “Khoti”. Reliance is also placed on the decision of this Court in the case of **Ravindra H. Bhandari and anr. Vs. Surya Jeno Mashelkar and others (2001) SCC Online Bom. 684**, in which this Court has held that the absence of licence for distilling liquor would not be decisive to show that the petitioner was not in possession of the land.

5. I have carefully considered the circumstances and the

submissions made and I do not find that any case for interference with the concurrent findings recorded by the three Courts below is made out.

6. Although prima facie at this stage, the name of the father of the petitioner is recorded in the Other Rights Column in Form I and XIV as Khoti, the petitioner has not shown that he has inherited the tenancy rights to the exclusion of other heirs.

7. This Court in the case of **Faredoon Jijibhai Divecha (supra)** has held that the term “Khot” was a general expression used to connote “a farmer of revenue” and is to be distinguished from the term “Khot” as used in reference to persons holding a special tenure known as Khoti tenure in Ratnagiri district governed by their own usage and for which a special Act was passed in 1880 known as the Khoti Settlement Act. This Court further held that the purpose of such grants was to encourage the cultivation and general development of these villages through the leaseholders whose interest was to derive more revenue by means of extensive cultivation so as to give them as much profit as possible after paying the fixed amount which they had to pay to the Government. It is difficult to know as to how the judgment can take the case of the petition any further. As noticed earlier, the petitioner has not shown that he has inherited the tenancy rights of his father to the

exclusion of the other heirs.

8. What the learned Mamlatdar has held at this stage is that the petitioner has failed to show that he has exclusively inherited the tenancy rights to the exclusion of the other heirs. In fact as noticed by the learned Mamlatdar, the respondent nos.8 to 11 have claimed that their father was only allowed to pluck fruits on payment of Rs.5/-. Even so far as the production of rent receipts is concerned, the learned counsel for the petitioner has referred to a solitary receipt dated 31/12/1982 (at page 54 of the compilation), which does not mention any survey number. If according to the petitioner he is cultivating the land and taking the cashew crops, there are no documents produced at this stage to show sale of any cashew crops or extraction of liquor. The petitioner could have at least produced the documents of the sale of the cashew nuts in order to prima facie show that he is in cultivating possession of the suit field as a tenant. That has not been done.

9. The case of **Ravindra Bhandari (supra)** turns on its own facts.

10. I have carefully gone through the orders passed by the Courts below and I do not find that they 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. The observations made herein are of a prima facie nature and shall not be binding at the trial of the main application.

C. V. BHADANG, J.

Ap/