

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 42 OF 2017

SHRI. NARAYAN ANDRADE @ FRANCISCO
ANDRADE @ FRANCISCO DOMINGOS
ANDRADE @ NARAYAN HADONKAR.,

... Appellant

Versus

SHRI. JOAO MANUEL PINTO AND ANR.,

... Respondents

Mr. S. M. Singbal, Advocate for the Appellant.
Mr. E. Dias, Advocate for the Respondent no. 1.

Coram:- F. M. REIS, J.

Date:- 20th April, 2017

ORAL ORDER

Heard Mr. Singbal, learned Counsel appearing for the Appellant and Mr. E. Dias, learned Counsel appearing for the Respondent no. 1.

2. The Appeal challenges the Judgments passed by the Courts below whereby the Suit filed by the Respondents for demolition and restoration of possession, came to be decreed.

3. Mr. Singbal, learned Counsel appearing for the Appellant, submits that both the Courts below have erroneously come to the conclusion that the Appellant was not the Mundkar of the suit house as, according to him, there was overwhelming evidence on record to suggest that the Appellant was residing in such house

since the year 1972. Learned Counsel further submits that the Appellant also produced house tax receipts in respect of house no. 105 to show that Appellant was in possession and in occupation of such house since the year 1972. Learned Counsel further submits that both the Courts below have erroneously mixed up the issue with regard to the claim of the Appellant in the ancestral house which is located in the property known as 'Vhodle Bhatt' where the father of the Appellant was a Mundkar and the rights therein had also devolved upon the Appellant. Learned Counsel further submits that as the Appellant was not residing in the ancestral house, the Courts below were not justified to deprive the Appellant of their legitimate claim to the subject house. Learned Counsel further pointed out that merely because the Appellant had a right to the ancestral house, this itself cannot defeat the claim of the Appellant as a Mundkar of the suit house as, according to him, the Appellant was residing in the suit house. Learned Counsel further pointed out that both the Courts below have also erroneously taken a view that the Appellant was not a Mundkar of the subject house as, according to him, Civil Court had no jurisdiction to decide such aspect. Learned Counsel has thereafter taken me through the issues framed by the Courts below as well as the finding of the Lower Appellate Court to point out that the Appellants were the Mundkars though Civil Court has no jurisdiction to decide such issue. Learned Counsel as such submits that there are substantial

questions of law which arise in the present Appeal for consideration.

4. On the other hand, Shri E. Dias, learned Counsel appearing for the Respondent no. 1, has pointed out that the subject matter of the suit is the house bearing no. 106. The alleged claim of the Appellant is to house no. 105 which is not the subject matter of the present Suit. Learned Counsel further pointed out that both the Courts below upon appreciating the evidence on record, have concurrently come to the conclusion that the Appellant was unlawfully occupying the subject house which came to be constructed without the consent of the Respondent about five years before the filing of the Suit. Learned Counsel further pointed that admissions of Dw.1 itself recorded by the Courts below would defeat the claim of the Appellants that they have any right to the subject house. Learned Counsel as such pointed out that the Appeal be accordingly rejected.

5. I have considered the submissions of the learned Counsel and with the assistance of the learned Counsel, I have also gone through the impugned Judgments and the records made available. On perusal of the findings of the Courts below, it has been concurrently held that the suit house bearing no. 106 was a structure constructed by the Appellants illegally and without the consent of the Respondents who are admittedly the owners of the

suit property. The Courts below also noted that the Appellant cannot be a Mundkar of such house as the Appellant himself claimed that they are occupying such house since the year 1982 on the basis of the permission granted by the Pires family who were the Predecessors in title of the Respondents herein. The Courts below also noted that considering the fact that the Appellant has accepted to be a Mundkar of the ancestral house at the relevant time, the Appellant cannot be Mundkar of the subject house which is admittedly House no. 106. In such circumstances, the finding of fact arrived at by the Courts below cannot be said to be perverse as such findings have been rendered based on the material on record. In the present case, the appellant has not brought any evidence to show that they have any right to the house bearing no. 106. The alleged claim of the Appellant, if any, is with regard to house no. 105 which is not the subject matter of the present proceedings.

6. Mr. E. Dias, learned Counsel appearing for the Respondent no. 1, has fairly accepted that the findings rendered in the impugned Judgment are referable to the suit house bearing no. 106.

7. In such circumstances, I find that the contention of Shri Singbal, learned Counsel appearing for the Appellant that the material as on record shows that the Appellant has a right to

occupy the suit house bearing no. 106, cannot be accepted. There is nothing on record which has been produced by the Appellant to suggest that the Appellant has any right to occupy the subject house. Admittedly, the Appellant became owner of the plot considering that he had a claim of mundkarship of an ancestral house which was located in 'Vhoddle Bhatt' of the same Village. There is no perversity in the finding of the fact finding Courts below. The substantial question of law proposed by the Appellant, would entail re-appreciation of evidence which exercise cannot be carried out in a Second Appeal by this Court under Section 100 of the Civil Procedure Code.

8. In such circumstances, I find that there are no substantial questions of law which arise in the present Appeal for consideration.

9. Appeal stands accordingly rejected.

F. M. REIS, J.

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