

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 131 OF 2011**

1. Mrs. Zubeda Khan, w/o late Shamsheer Khan, aged about 80 years, housewife,
 2. Mr. Nazim Khan, s/o late Shamsheer Khan, aged about 42, mechanic,
 3. Miss Amina Khan, d/o late Shamsheer Khan, aged about 35, unemployed,
All residents of H. No. 243 (old), (New)
House No. 466, Calcondem, Margao-Goa.
- Petitioners

Versus

1. Mrs. Reny Torcato and her husband,
 2. Mrs. Aurio Torcato,
 3. Mrs. Irene Lobo and her husband,
 4. Mr. Agostinho Lobo (all legal heirs of
Ida Coutinho and her husband),
All major in age,
(All resident of Flat TOIB, Building,
Kurtarkar Nagar, Fatorda, Margao,
Goa).
 5. Smt. Irene Sardinha, major in age,
resident of Antonetta Apartment, Borda,
Margao, Goa.
- Respondents

Shri P. P. Singh, Advocate for the Petitioners.

CORAM:- C.V. BHADANG, J.

DATE:- 1st November, 2017.

ORAL JUDGMENT:

The challenge in this petition under Article 227 of the Constitution of India, is to the concurrent finding of three Courts below holding that the petitioners are not the Mundkars in respect of the subject dwelling house.

2. The brief facts are that the petitioners filed an application under Section 8(A) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act, for short), for a declaration that they are Mundkars in respect of the suit dwelling house, situated in the property known as 'Calcondem Segunda Adicao' situated at Calcondem within the jurisdiction of Margao Municipal Council, described in the Land Registration Office at Salcete under No. 43-722 (new series), enrolled in the Land Revenue Office, surveyed under Chalta Nos. 151, 152, 153, 154, 248 of P.T. Sheet No. 260. The said property has been described as "suit property" by the petitioners in their application.

3. The said application was filed against the Mrs. Ida Coutinho e Barreto and Edward Baretto (since deceased). Subsequently, the present respondent nos. 1 to 4 were arrayed as party-respondents.

4. The case made out in the application was that there is a dwelling house situated in the suit property, surveyed under Chalta No. 151 and 153, which consists of a house having an area of 49 square metres and a bathroom of an area of 2.40 square metres (herein after referred to as the mundkarial

house), which was in possession of now deceased, Shamsheer Khan, the husband of the petitioner no. 1, since last more than 50 years, with the permission of the owner-Mrs. Maria Antoneta Miranda. The landlord had accepted the request of the petitioners to sell the said house to them (an area of 200 square metres of the suit property). An agreement for sale was executed by Maria Antoneta Miranda on 30.06.1989 in favour of the petitioner no. 2, he being the only male member in the family in the acquisition of 1989. The consideration of the agreement was partly paid initially to Maria Antoneta Miranda and thereafter her death, to her heirs late Manuel Sardinha and his wife Iren Rodrigues. It is submitted that house no. 466 (old house no. 219) is the mundkarial house, which was assessed by the Margao Municipal Council for the purpose of house tax in the name of Shamsheer Khan. It was further contended that Maria Antoneta Miranda or her heirs never informed the applicants that the property is sold to now deceased Ida Coutinho e Barreto nor Ida Coutinho e Barreto informed about the purchase of the property, till she issued a notice to the petitioners on 18.05.1996.

5. The original respondent no. 1-Ida Coutinho e Barreto filed the written statement and resisted the application. It was

contended that the petitioner no. 1 is merely a licensee and not a Mundkar and that the respondent no. 1 had already filed a case and the present application, filed by the petitioners was only with a view to delay the proceedings of the case, filed by the respondent no.1. All other adverse allegations were denied.

6. The parties led oral and documentary evidence. The learned Mamlatdar decided both theses cases i.e the one filed by Ida Coutinho e Baretto and the application filed by the petitioners by judgment and order dated 26.11.2004. The learned Mamlatdar dismissed the application, filed by the petitioners holding that the petitioners have failed to establish that the petitioners are Mundkars in respect of the suit dwelling house. The learned Mamlatdar allowed the application filed by Ida Coutinho e Barreto.

7. The petitioners challenged the same in appeal before the learned Deputy Collector at Margao. The learned Deputy Collector by judgment and order dated 28.11.2007, dismissed the appeal, which was further confirmed by the learned Administrative Tribunal vide judgment and order dated 15.09.2010 in Mundkar Revision Application No. 4/2008. This is how the petitioners are before this Court.

8. I have heard Shri Singh, the learned Counsel for the petitioners. None for the respondents. With the assistance of the learned Counsel for the petitioners, I have gone through the record and the order passed by the learned Mamlatdar, learned Deputy Collector and the learned Administrative Tribunal.

9. It is submitted by Shri Singh, the learned Counsel for the petitioners that the learned Mamlatdar could not have decided the application filed by the petitioners and the one filed by Ida Coutinho e Barreto by a common order. It is submitted that the learned Mamlatdar failed to properly appreciate the provisions of Section 8 of the Act and the fact that the provisions of the Act are a piece of beneficial legislation. It is submitted that the Courts below failed to properly consider the evidence on record. It is submitted that there is clear evidence to show that now deceased, Shamsheer Khan and after his death the petitioners, are residing in the suit house by way of fixed habitation as Mundkars. It is submitted that thus, the application filed by the petitioners for declaration as Mundkars, ought to have been allowed.

The learned Counsel has then referred to an agreement of sale dated 21.05.1977, executed by Maria Antoneta Miranda in favour of Ida Coutinho e Barreto, in order

to submit that any such agreement could not have been executed after Maria Antoneta Miranda executed the purported sale deed in favour of Ida Coutinho e Barreto on 02.05.1977. In short the contention is that an agreement of sale has to precede and not succeed a sale deed. It is thus submitted that this casts a doubt on the sale deed dated 02.05.1977, which was never brought to the notice of the petitioners, till issuance of the notice dated 18.05.1996. Except this, there are no other contentions raised.

10. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out. Indisputably Maria Antoneta Miranda was the owner of the suit property under a Will dated 06.09.1969, executed by Ms. Ana Severina Jovita Gomes. Manuel Sardinha happens to be the son-in-law of Maria Antoneta Miranda, while Irene Sardinha is her daughter. The respondent nos. 1 to 4 herein, are the legal representatives of now deceased Ida Coutinho e Barreto. Ida Coutinho e Barreto claims to have purchased the suit property from Maria Antoneta Miranda under a sale deed dated 02.05.1977. Ida Coutinho e Barreto claimed that the petitioners were residing as licensees in the suit house on a monthly compensation of Rs.

100/-. It was claimed that the petitioners failed and neglected to pay the said amount and by a notice dated 18.05.1996, their licence came to be terminated. The petitioners failed to vacate the suit house inspite of receipt of the notice on 22.05.1996 and on the contrary, taking undue advantage of the illness of Ida Coutinho e Barreto demolished the common wall and encroached in the store room and also constructed a bath room and changed the Mangalore tiles. It is with these allegations that Ida Coutinho e Barreto filed an application before the Mamlatdar for eviction of the petitioners, which was registered as Case No. JM-III/Mund/5/1997. The petitioners approached the Mamlatdar subsequently, seeking a declaration under Section 8 of the Act, which was registered as Case No. JM-III/Mund/14/2000.

11. The case made out by the petitioners before the Mamlatdar was that Shamsheer Khan was residing in the suit house as Mundkar of Maria Antoneta Miranda and after the death of Shamsheer Khan, it is the petitioners who are residing there as Mundkars. It was contended that the purported sale of the suit property in favour of Ida Coutinho e Barreto was never brought to the notice of the petitioners. It was also contended that Maria Antoneta Miranda had agreed to sell 200 square

metres of land along with the suit house to the petitioners and an agreement of sale to that effect was executed in favour of the petitioner no. 2-Mr. Nazim Khan on 25.09.1998 for Rs.20,000/- and the consideration was agreed to be paid in installments out of which, Rs.10,000/- was paid to Maria Antoneta Miranda. In the context of such a controversy, the learned Mamlatdar, in my considered view, was not only justified, but, bound to decide the two applications by a common order. This is because both the cases involved a common issue as to whether, the petitioners were Mundkars of the suit house, as claimed by the petitioners or whether, they were trespassers, as claimed by the respondents. Thus, the contention in this regard cannot be accepted.

12. A perusal of the order passed by the learned Mamlatdar indicates that the Mamlatdar after considering the oral and documentary evidence had come to the conclusion that the petitioners had failed to prove that they were residing in the suit house as Mundkars of Maria Antoneta Miranda. The learned Mamlatdar has found that the case set up by the petitioners as to the house number in respect of which they claim to be Mundkars was not consistent. The petitioners at one stage claimed the house number to be 464 and then

claimed that the house number is 466. It has also been found and rightly so, that the boundaries of the property purchased by Ida Coutinho e Barreto and the boundaries mentioned in the agreement of sale dated 25.09.1998, do not match. It would be significant to note that the said agreement nowhere makes a mention that the petitioners are in possession of the property, agreed to be sold to them and much less, as Mundkars. In fact, the said agreement is as vague as it could be. It does not give description of the property so as to identify the same with any amount of precision nor gives the area agreed to be sold, which is conspicuously kept blank. It only mentions that the property is agreed to be sold at Rs. 100/- per square metre. The Mamlatdar has then considered the evidence of the parties including that of one Kumud Kerker, who claimed that she and her family members are residing in the house as tenant of Maria Antoneta Miranda, a portion of which is occupied by the petitioners as Mundkars. The learned Mamlatdar has rightly found that it is inconceivable that the petitioners would be residing as Mundkars in a portion of the house, which is rented. In my considered view, the petitioners have failed to establish the necessary ingredients of being Mundkar under Section 2 of the Act.

13. The contention based on the agreement of sale dated 21.05.1977 (in favour of Ida Coutinho e Barreto) being subsequent to the sale deed dated 02.05.1977, cannot take the case of the petitioners any further. Firstly, this ground was never raised before any of the Courts below. It is not even raised in the petition. It was for the first time raised in the arguments at bar. For this reason alone, the same cannot be considered. Even assuming that it can be allowed to be raised, it pertains to the ownership/title of Ida Coutinho e Barreto over the suit property. The learned Mamlatdar cannot and could not have gone into any such question. Even assuming for moment that it casts suspicion on the sale deed dated 02.05.1977, it cannot prove that the petitioners are Mundkars of Maria Antoneta Miranda in respect of the suit house. The Courts below on appreciation of evidence have recorded concurrent finding against the petitioners, which does not call for interference in exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

The petition is accordingly dismissed. Rule is discharged with no order as to costs.

C. V. BHADANG, J.

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