

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 68 OF 2017

SHRI. DEU HARICHANDRA NAIK., ... Appellant
Versus
SHRI. MAHADEV PARAB (DECEASED)
THR. HIS LRS. AND 7 ORS., ... Respondents

Mr. Preetam Talaulikar, Advocate under Legal Aid Scheme for the Appellant.

Coram:- F. M. REIS, J.

Date:- 13th July, 2017

ORAL ORDER

Heard Mr. P. Talaulikar, learned Counsel appearing for the Appellant.

2. The challenge in the above Appeal is to the Judgments passed by the Courts below whereby a Suit filed by the Appellant for declaration of easementary right of access to the suit property and for permanent injunction came to be rejected.

3. Mr. Talaulikar, learned Counsel appearing for the Appellant pointed out that the suit property is surveyed under no. 7/3 of Assonora Village which, according to the learned Counsel, the Appellant has been declared as an Agricultural Tenant thereof. It is further pointed out that the Appellant has a mundkarial house existing in the suit property and, as such, have an easementary

right of access to go to the main road which is located on the northern side of the mundkarial house. It is further submitted that the Respondents have put up a construction on the northern portion of the property with the consent of the owner and have obstructed the access to go to the main road. The learned Counsel further submits that in any event the Appellant has thereafter been declared as a tenant by the Joint Mamlatdar in respect of the whole area of the property and, as such, the Appellate Court was not justified to come to the conclusion that the Appellant has failed to establish his claim of tenancy. Learned Counsel further pointed out that the Appellant has been using the right of access having a width of three metres which has now been reduced to 2.15 metres which is causing grave and irreparable prejudice to the Appellant. The learned Counsel as such pointed out that both the Courts have erroneously come to the conclusion that the Appellant is not entitled for any reliefs.

4. I have duly considered the submissions of the learned Counsel. I have also gone through the Judgments of the Courts below. Both the Courts below upon appreciating the evidence on record have come to the conclusion that the Appellant has failed to establish that the Appellant has acquired any easementary right of access as claimed under Section 15 of the Easement Act. Whilst coming to such conclusion, the Courts have found that the Appellant had land adjoining to the subject property which

belonged to their mother and, as such, the question of claiming any easementary right of access would not at all arise. In the present case, the claim of access by the Appellant is that they are Mundkars of the subject property. On perusal of the definition of the word 'dwelling house' as contained in The Goa Daman & Diu Mundkars (Protection and Eviction) Act, 1975, it clearly provides that it, inter alia, includes a customary right of access in favour of the Mundkars. In such circumstances, the Appellant at the most based on their claim that they are Mundkars of the dwelling house can be entitled as of right a customary right of access as reserved under the Mundkar Act. In such circumstances, I find that there is no infirmity committed by the learned Judge whilst coming to the conclusion that the Appellant has failed to establish their claim.

5. With regard to the next contention of the learned Counsel, the effects of the Judgment passed by the learned Mamlatdar, if not assailed by any aggrieved party before the Appellate Court, are not at all relevant for the purpose of deciding the matter in controversy in the above Appeal. Apart from that, the Courts below have noted that the declaration obtained by the Appellant clearly shows that the lands are leased to the Appellant and, as such, the question of relying upon such declaration to claim a right of easement based on the mundkarial right would not at all arise.

6. In such circumstances, I find that there are no substantial questions of law which arise in the present Appeal. The Courts below have rightly rejected the claim of easementary right of prescription as claimed by the Appellant. As pointed out herein above, the Appellant can claim their right of access under the Mundkar Act in accordance with law.

7. Appeal stands rejected accordingly.

F. M. REIS, J.

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