

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 220 OF 2018**

VISHNU JAIRAM KALANGUTKAR (DEC)
THR. HIS LRS., NAMDEV V.
KALANGUTKAR.,

... PETITIONERS

Versus

ANANDIBAI MUKUND KALANGUTKAR
(DEC) AND 10 ORS.,

... RESPONDENTS

Shri Rama Rivankar, Advocate for the Petitioners.

Shri Rui Gomes Pereira, Advocate for the Respondent Nos. 2(a),
2(b), 3(b)(iii), 3(c)(i) and 3(c)(ii).

CORAM : C.V. BHADANG, J.

Date : 5th December, 2018

ORAL ORDER:

By this petition, under Article 227 of the Constitution of India, the petitioners are challenging the concurrent orders of three Courts below, refusing to accept their case of tenancy, in respect of land survey nos. 143/1 and 153/0 of village Latambarshem, Bicholim. Presently, there is no dispute insofar as land survey no. 144/6 is concerned.

2. The case made out by the original applicants, Vishnu Kalangutkar and Namdev Kalangutkar was that land bearing survey nos. 143/1, 144/6 and 153/0 were belonging to the

original opponent, Anandibai Kalangutkar. It was a barad land, where paddy was cultivated during monsoon and crops such as chauli, beans etc. were grown. It was the material case that there was a cattle shed and farm house existing in the land, built by the original applicants at their own cost somewhere in 1952. It is the case made out that the original applicants were in enjoyment and possession as tenants of the lands for more than 100 years i.e. since the time of their grandfather. However, the original opponent taking undue advantage of the absence of the applicants name in Form-III of the property survey no. 143/1 and 153/0 (part), filed a civil suit bearing no. 12/1983 and obtained the order for removal of the farm house and for restoration of the land to its original condition.

3. As noticed earlier, the respondents did not dispute the claim of the original applicants, insofar as land survey no. 144/6 is concerned. The claim in respect of the two lands i.e. survey nos. 143/1 and 153/0 (part) was specifically disputed.

4. The original applicant no. 2, Mukund Gawas examined himself as AW-1 alongwith Namdeo Calangutkar (AW-2), Kushta Ghadi (AW-3) and Krishna Fadte (AW-4), while the original respondents examined Purushottam Calangutkar (DW-1),

Somnath Naik (DW-2), Ganpat Kalangutkar (DW-3), Rauji Gawas (DW-4) and Shri Vithoba Gawas (DW-5).

5. The learned Mamlatdar on appreciation of the evidence came to the conclusion that the original applicants have failed to show the existence of any lease deed or evidence about payment of rent. The learned Mamlatdar also found that the case made out by the original applicants about payment of rent in kind was in respect of survey no. 144/6. In that view of the matter, the learned Mamlatdar dismissed the application, which was unsuccessfully challenged by the petitioners before the learned Deputy Collector and thereafter, in revision application before the learned District Judge. Hence, this petition.

6. I have heard Shri Rivankar, the learned Counsel for the petitioners and Shri Gomes Pereira, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. The only contention raised on behalf of the petitioners is that the Courts below have misdirected themselves in negating the claim of the petitioners, on the basis of there being no lease deed or any other document to prove their tenancy. It is

contended that under Section 4 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short), it is not necessary that there should be existence of a lease deed, in as much as all that is required under Section 4 of the Act, is that a person is lawfully cultivating any land belonging to another person on or after 1st July 1962 and before the commencement of the Act. It is submitted that such a person would be a “deemed tenant”, if such land is not cultivated by the owner personally. It is submitted that neither of the Courts below have considered the case of the petitioners, in the right perspective and in line with Section 4 of the said Act. Reliance is placed on the decision of this Court in the case of **Babu Hari Patil Vs. Rama Ananda Jadhav, 2005 (1) Mh.L.J. 1063** and in the case of **Jagannath Vithu Jadhav & Others Vs. State of Maharashtra & Others, 2013 (2) Mh.L.J. 285.**

8. On the contrary, it is submitted by Shri Gomes Pereira, the learned Counsel for the contesting respondents that the original application filed before the Mamlatdar lacks material particulars. It is submitted that the Courts below after appreciation of the evidence, have rightly come to the conclusion that the petitioners have failed to establish their case of tenancy. It is submitted that the revisional jurisdiction is limited and the

revisional Court has rightly refused to interfere with the concurrent findings recorded by the learned Mamlatdar and the learned Deputy Collector. It is submitted that this Court would be slow in interfering with such concurrent findings in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. Section 2(23) of the Act defines a tenant as under:

““tenant” means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is [or was] deemed to be a tenant under this Act”.

It can thus be seen that a tenant within the meaning of Section 2(23) of the Act means a person who on or after the date of commencement of the Act holds land on lease and cultivates it personally and includes the person, who is deemed to be a tenant under the said Act. It can thus be seen that Section 2(23) of the Act envisages two different categories. The first is in respect of a person who, on or after the date of commencement of the Act, holds land on lease. Under the later

part of the definition, a tenant includes a deemed tenant as defined under the said Act. Under Section 4 of the Act, a person who is lawfully cultivating any land belonging to another person on or after 1st July 1962, but before the commencement of the Act is deemed to be a tenant, if such land is not cultivated personally by the owner or other persons as set out in the said section, which includes the member of the owner's family.

10. In the present case, according to the petitioners, they have been cultivating the land since more than 100 years i.e. from the time of their grandfather. However, in this regard, it is significant to note that the applicant, who could have personal knowledge of such cultivation, failed to enter into the witness box for the reasons best known to him and in this regard, the learned Mamlatdar has found that an adverse inference needs to be drawn. It is true that the Courts below have also considered the fact about absence of lease deed to negate the case of the petitioners. However, the fact remains that the Courts below have concurrently found that there is no acceptable evidence about cultivation, which as per Section 4 of the Act would be required after 1st July, 1962 and prior to coming into force of the Act. The Courts below have also specifically found that there is evidence only regarding payment of the rent in kind pertaining

to land survey no. 144/6 (about which there is no dispute) and not land survey nos. 143/1 and 153/0 (part). Thus, it cannot be accepted that the case of deemed tenancy, as is referable to Section 4 of the Act has not been considered by the Courts below. In that view of the matter, no case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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