

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 400 OF 2018**

- 1) Ulashi Chandru Gomes,
alias Mamta Mohandas
Vadyenkar, of major age,
Indian National,
resident of Sirsat,
Chodan, Tiswadi-Goa.
- 2) Mohandas Vedyenkar,
of major age, Indian National,
resident of Sirsat Chodan,
Tiswadi, Goa.
- 3) Shali Gomes alias Shali
Ganesh Kundaikar,
of major age, Indian National.
- 4) Ganesh Kundaikar,
of major age, Indian National,
- 5) Shevtu Gaude alias
Shevtu Gomes alias
Sushani Shamsundar Khedekar,
of major age, Indian National,
- 6) Shamsunder Khedekar,
of major age, Indian National,

All residents of Khede,
Mardol, Ponda-Goa.
- 6 a) Nita Shamsundar Khedekar,
alias Shailee Sagar Gaude,
- 6 b) Sagar Gaude,
- 6 c) Nisha Shamsudnar Khedekar
alias Samiksha Sandeep Gawade

6 d) Sandeep Gawde,

6 e) Nitesh Shamsundar Khedekar,

6 f) Rohitas Nitesh Khedekar,

All of major age, Indian Nationals,
residents of Sushanti Shamsundar
Khedekar, Khede, Mardol,
Ponda-Goa.

7) Rama Gomes,

8) Seeta Rama Gomes,

9) Geeta Kashinath Gomes,

All of major age,
of major age, Indian National,
residents of Sirsat,
Chodna, Tiswadi, Goa.

10) Raghu Chandru Gomes,

11) Rupa Raghu Gomes,
Petitioner no.2 to 11 are
represented through POA
Ulashi C. Gomes,
both of major age,
Indian Nationals, residents of
House No.284, Curca
Caturi, Tiswadi-Goa

.... Petitioners

V e r s u s

1) Egidio Braganca,
of major age, Indian National,
resident of Shilpa Apartments,
Flat No.S-3, Second floor, Altinho,
Mapusa-Goa.

- 2) Pandit K. M. Tiwari,
- 3) Marcel A. Remedious,
- 4) Usha V. P. Verlekar,

All of major age,
Indian Nationals,
residents of Sonarbhat,
Verem, Reis Magos,
Bardez-Goa.
(Registered Addresses)

..... Respondents

Mr. Devidas J. Pangam, Advocate for the Petitioners.

Mr. Ryan Da Piedade Menezes, Advocate with Adv. Gina Maria Almeida for Respondent no.1.

Mr. J. Godinho, Advocate for the Respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 9th August 2018.

Oral Judgment:

Rule. The learned counsel for the respondents waive service. Heard finally by consent of parties.

2. The petitioners are the original respondents/interested party nos. 5 to 15 in L.A.C No.19/2010 on the file of the learned District Judge at Panaji. That is a reference under Section 30 of the Land Acquisition Act. The petitioners claim to be the successors of one Chondru Gomes of Curca. According to the petitioners, Mr. Chondru Gomes was declared as a tenant in respect of the suit property which is a cashew grove situated at Morombi O Grande of Mercês.

3. The present petition challenges three orders passed in LAC No.191/2010 which are as under:

(i) An order dated 15/2/2003 (Below Exhibit 110) dismissing the application for exhibiting the document namely, a declaration of tenancy dated 3/4/1978 passed by the Joint Mamlatdar of Tiswadi in Tenancy Case No. TNC/JT/MDAR/ADDL/1/ 77 .

(ii) An order dated 15/11/2017 (Below Exhibit 104) dismissing the application filed by the Interest Party no.14 and 15 to lead secondary evidence in respect of the following documents:

(a) Declaration of Chondru Gomes dated 14/3/1977 in Portuguese along with its English Translation.

(b) Letter dated 21/11/2003 issued by the Jt. Mamlatdar, Tiswadi;

(c) A Certificate dated 26/9/2008 issued by the Zonal Agricultural Officer Tiswadi, Goa.

(iii) An order dated 15/11/2017 (Below Exhibit 105) refusing the production of a certified copy of the order dated 26/6/2013 passed in Special civil suit no.2/2010/A by the learned Senior Civil Judge at Panaji (rejecting the application for temporary injunction filed by the plaintiff M/s. Manish Realtors).

4. I have heard Shri Pangam, the learned counsel for the petitioners, Shri Menezes, the learned counsel for the respondent no.1 and Shri Godinho, the learned counsel for respondent no.2.

5. It would be first necessary to consider the challenge to the order dated 15/2/2018 passed below Exhibit 110. It appears that M/s Manish Realtors (which is a proprietorship concern which is not a party to the reference before the trial court) had filed writ petition no.304/2010 before this Court seeking a declaration that the order dated 3.4.1978 passed by the Mamlatdar in Tenancy Case No.TNC/JT/MDAR/ADDL/1/77 is ultra virus to the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 and the rules framed thereunder. It was contended that there were no such proceedings ever filed before the Mamlatdar and the genuineness of the order dated 3.4.1978 was sought to be challenged therein. The Division Bench of this Court disposed of the writ petition on 23/6/2010. The Division Bench refused to entertain the petition, in view of the fact that Special Civil Suit no.2/2010/A filed by the petitioner M/s. Manish Realtors challenging the declaration allegedly granted by the Mamlatdar on 3.4.1978 was already pending. The Division Bench in para 6 of the judgment found that the question whether any such case was filed before the Mamlatdar and whether the said order exists, will have to be decided in the civil suit. It is in this view of the matter that the Division Bench declined to entertain the petition.

6. The learned trial court placing reliance on the decision of this Court in W.P. No.304/2010 has rejected the application (Exhibit 110). It is undisputed

that Special Civil Suit No.2/2010/A has subsequently been dismissed as withdrawn. A bare perusal of the order passed by the Division Bench of this Court would indicate that this Court has not expressed any opinion on the question of the genuineness or otherwise of the alleged order passed by the Mamlatdar on 3.4.1978. As noticed earlier, the Division Bench simplicitor refused to entertain the petition in view of the pendency of the civil suit filed by the petitioner Ms. Manish Realtors challenging the genuineness of the self same order passed by the Mamlatdar. In my considered view it was not open for the learned District Judge to read the order, in the manner it has been done, while rejecting the application (Exhibit 110). Furthermore, the civil suit filed by M/s. Manish Realtors has been dismissed as withdrawn. It is now well settled that mere marking a document as exhibit does not tantamount to its proof and a party who seeks to place reliance on any document has to establish and prove the same in accordance with law. In my considered view the learned trial court should not have refused to allow the production of the said document and marking it as an exhibit. In such circumstances, the order dated 15/2/2018 is hereby set aside. The Reference Court shall permit the production of the said document as sought in the application (Exhibit 110) subject to the proof of its genuineness and the probative value to be attached to such document.

7. This takes me to the second order dated 15/11/2017 (below Exhibit 104). As noticed earlier, by the said application, the petitioner was seeking permission to lead secondary evidence in respect of three documents, namely, a declaration of Chandru Gomes dated 14/3/1977, a letter dated 21/11/2003 issued by the Joint Mamlatdar of Tiswadi and the certificate dated 26/9/2008 issued by the Zonal Agricultural Officer. However, a perusal of the order dated 15/11/2017 below (Exhibit 104) shows that the learned trial court has considered the prayer as if it was seeking a permission to lead secondary evidence in respect of the laminated copy of the order dated 3.4.1978. In any event, the learned trial court taking a note of the decision of this Court in the case of **Kartik Gajadar Bhat Vs. Nirmala Namdev Wagh and anr.** (Writ Petition No.11151/2017) has held that no permission is required for leading secondary evidence and it is for the Judge recording evidence who must decide, if any objection is raised, whether or not to admit the secondary evidence or not. In any event the reference court shall go into the question as to whether secondary evidence needs to be permitted in so far as the documents referred to in the application Exhibit 104 are concerned at the time of hearing of the reference.

8. In so far as the third order dated 15/11/2017 (below Exhibit 105) and the challenge to the order dated 15/11/2017 is concerned, Shri Pangam, the

learned counsel for the petitioners, on instructions submits that he will not press the application (Exhibit 105) and the challenge to the order dated 15/11/2017 in view of the fact that subsequently the suit itself has been dismissed as withdrawn. In that view of the matter the challenge to the order dated 15/11/2017 does not survive.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-