

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.328 OF 2013

ASDRUBAL D'SOUZA ...Petitioners

Versus

NATALINA FERNANDES AND ANR. ...Respondents

Shri Shivan Desai , Advocate for the petitioner.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Korgaonkar, Advocate for the respondent No.1

Ms. S. Linhares, Additional Government Advocate for the respondent No.2.

WRIT PETITION NO. 329 OF 2013

ASTRUBAL D'SOUZA ...Petitioner

Versus

MARIANO FERNANDES (SINCE ... Respondents
DECEASED) THROUGH HIS
LR's AND ANR.

Shri Shivan Desai , Advocate for the petitioner.

Shri Nigel Da Costa Frias, Advocate for Respondent No.1(B)
and 1(C)

Shri V. Sardessai, Additional Government Advocate for the
respondent No.2.

CORAM: NUTAN D. SARDESSAI, J.

Dated : 27th June,2018.

ORDER:-

1. Heard Shri Shivan Desai, learned Advocate for the petitioners, Shri J.E. Coelho Pereira, learned Senior Advocate for the respondent No.1 and Shri Nigel Da Costa Frias, learned Advocate for Respondent No.1(B) and 1(C) in the connected petition.

2. Having considered their arguments at length and without prejudice to their rights and contentions and keeping all the contentions open the impugned order is quashed and set aside with following directions:

i) The learned Mamlatdar shall deal with the two applications moved by the respondent No.1 in each of the petitions independently and grant liberty to the applicants before him to amend the application under Section 16 of the Act if so advised to incorporate the relief of declaration under Section 8A of the Mundkar Act,1975.

ii) The learned Mamlatdar shall conduct independent inquiry not only on the section 16 application but shall also look into the aspect whether units are one or two independent dwelling

houses as claimed by each of the respondents herein.

(iii) The learned Mamlatdar to consider the aspect of the relief under Section 8A simultaneously with that under Section 16 of the Act insofar as the declaratory relief is concerned considering that there is no dispute that their ancestor Diogo was a Mundkar of the original dwelling house.

(iv) The learned Mamlatdar to dispose off the proceedings within a year's time considering that the claims have been pending since 1990 /1995 at the instance of the contesting respondents herein.

(v) The learned Mamlatdar shall conduct the trial in both the cases simultaneously.

3. In these terms the petitions stand disposed off.

NUTAN D. SARDESSAI J.

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