

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 9/2017**

Antonio Vicente Nunes @ Anthony
Vincent Nunes, rep. by Attorney
Basilio Santana Castelino. ... Appellant

Versus

State of Goa, thr. the Chief
Secretary and 4 Ors., ... Respondents

Shri Basilio Santana Castelino, Power of Attorney holder of the
Appellant.

Ms. Susan Linhares, Additional Government Advocate for the
Respondent Nos. 1, 2 and 3.

Ms. Asha Desai, Advocate for the Respondent Nos. 4 and 5.

Coram : C.V. BHADANG, J.

Date : 31st January, 2018

ORAL ORDER:

Heard Shri Basilio Santana Castelino, the Power of Attorney holder of the appellant, Ms. Linhares, the learned Additional Government Advocate for the respondent nos. 1, 2 and 3 and Ms. Desai, the learned Counsel for the respondent nos. 4 and 5.

2. The challenge in this appeal is to the order dated 21.01.2016, passed by the Trial Court, rejecting the plaint under

Order VII, Rule 11 of the Code of Civil Procedure (Code, for short).

3. The appellant had filed Civil Suit No. 7/2015, seeking following reliefs:

"1. Under Section 31 of the Specific Relief Act 1963 to state that the judgment and order dated 07/10/2013 (7th October 2013) of the Mamlatdar of Mormugao Taluka in Case No. MUND/PURCH/SANC/1/2011 together with the Field Survey Report dated 03/07/2013 (3rd July 2013) forming part of the said case are adjudged null and void and cancelled.

2. To adjudge the total value of the suit property to be ₹ 3,38,400/- (Rupees Three Lakhs Thirty-Eight Thousand and Four Hundred only) as compensation payable by the Defendant 4 to the Plaintiff for a total area of land aggregating 282 sq. metres, comprising the 225 sq. metres in Survey No. 274/4 of Sancoale Village, Mormugao Taluka, Goa and the 3 metres motorable access (equivalent to 57 sq. metres of land) allowed in the Survey No. 274/3 of Sancoale Village, Mormugao Taluka, Goa, and

3. To evict the Defendants 4 and 5 herein from their encroachment in the property by the Survey No. 274/3 of Sancoale Village, Mormugao Taluka, Goa and demolish any structure erected therein."

4. The respondent nos. 4 and 5, filed an application under Order VII, Rule 11(a) of the Code, for rejection of the plaint, on the ground that it does not disclose cause of action.

5. The application was opposed on behalf of the appellant.

6. The learned Trial Court, on hearing the parties came to the conclusion that the plaint is liable to be rejected on two grounds i.e. it does not disclose cause of action and that it is barred under the provisions of the Goa Mundkar (Protection from Eviction) Act, 1975 (Act of 1975, for short). As a result, the plaint came to be rejected under Order VII, Rule 11 (a) and (d) of the Code.

7. The brief facts are that the father of the respondent nos. 4 and 5, namely, Shyam Naik (since deceased) was declared as a mundkar by an order dated 06.06.1981. The legal representatives of Shyam Naik, namely, Yadu Shyam Naik and Piru Shyam Naik filed an application for purchase, which was referred to the Lok Adalat. The Lok Adalat by an award dated 25.04.2013, allowed the application by consent of parties. The award of the Lok Adalat may be reproduced as under:

“The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

1. Both the parties agreed to dispose the application filed under Section 16(1) of the Goa Mundkar (Protection from Eviction) Act, 1975.

2. Opponents agreed to sell the available area in Survey No. 274/4 of Village Sancoale, Goa.

3. Opponents also agreed to provide motorable access to the mundkars through the southern side, of 3 metres width, touching the main highway from the plot.”

8. It may be mentioned that the applicants, Yadu Shyam Naik and Piru Shyam Naik along with the opponent Antonio Nunes and others, were parties and signatory to the said award. Incidentally, the present appeal is filed by Antonio Nunes. The Power of Attorney holder submits that the appellant is not questioning or challenging the award of the Lok Adalat. The only contention raised on behalf of the appellant is that the award of the Lok Adalat, could not have been executed by the Mamlatdar. It is submitted that the execution of the award and the demarcation proceedings, would require re-survey to be

done, as it would affect the properties of the appellant.

9. Be that as it may, the Mamlatdar took up the execution of the award passed by the Lok Adalat and by judgment and order dated 07.10.2013, the application filed by the respondent nos. 4 and 5, under Section 16(1) of the Act of 1975, for purchase of the mundkarial dwelling house, bearing House No. 115, surveyed under Survey No. 274/4 of Sancoale Village of Mormugao Taluka, was allowed. It is this order, which the appellant is seeking to question in the civil suit.

10. On hearing the Power of Attorney holder for the appellant and the learned Counsel for the respondents, I do not find that the impugned order needs any interference. The contention that the award of the Lok Adalat cannot be executed by the Mamlatdar, cannot be accepted for the reason that under Section 21 of the Legal Services Authorities Act, every award of the Lok Adalat is deemed to be a decree of the civil Court or, "as the case may be, an order of any other Court". It can thus be clearly seen that if, the matter was referred to the Mamlatdar by the Lok Adalat, the award of the Lok Adalat can be executed by the Mamlatdar. At the cost of repetition, it needs to be stated that the award of the Lok Adalat, is not challenged by the

appellant. Even otherwise, Section 32 of the Act of 1975, bars the jurisdiction of the Civil Court, in matters involving any issues, which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under the said Act. It can thus be seen that a civil suit, challenging the order passed by the Mamlatdar, under Section 16(1) of the Act of 1975, would be clearly barred.

11. The appeal is without any merit and is accordingly dismissed. Needless to mention that this shall not come in the way of the appellant from availing other remedy, if any, available in law. It is made clear that this Court has not expressed any opinion on the availability or the merits of any such remedy, if availed of.

In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.

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