

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.333 OF 2017**

1. Shri Raghvir Babusoo Harmalkar
(since deceased),
address H.No.392/6A,
Oxel-Bmonwaddo,
Siolim, Bardez-Goa.
- 1(a) Smt. Teja Kanulo Naik,
Daughter of late Reghuvir
Babusoo Harmalkar, Age 53 years,
married, housewife, Indian National,
Resident of H.No...., Oxel Bamonwaddo,
Siolim, Bardez-Goa.
2. Shri Kanulo K. Naik,
since deceased through LR's
 - (i) Kum. Arti Tanulo Naik,
d/o. Tanulo @ Kanulo K. Naik,
aged 25 years,
 - (ii) Kum. Anup Tanulo Naik,
s/o Tanulo @ Kanulo K. Naik,
aged 23 years,
 - (iii) Kum. Agney Tanulo Naik,
s/o Tanulo @ Kanulo K. Naik,
aged 23 years,

All residents of H.No.392/6A,
Oxel, Bamonwaddo, Siolim,
Bardez, Goa.
3. Smt. Ganga Raghuvir Harmalkar,
Widow of late Shri Raghuvir B. Harmalkar,
age 70 years, Housewife,
Indian National, resident of H.No...,
Oxel-Bamonwaddo,
Siolim, Bardez-Goa.

.... Petitioners

V/s

Shri Gurudas Mukund Porob Padgaonkar,
Age .. years, son of late Mukund
Anant Porob Padgaonkar,
resident of Neel Varsha
Housing Society,
Block no.8, off Mahim,
Mumbai 400016.

.... Respondent

Shri Pravin Faldessai, Advocate for the Petitioners.
None for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 5th JULY, 2018

Pronounced on: 6th JULY, 2018

JUDGMENT :

Rule. Heard forthwith with the consent of the learned Counsel appearing for the petitioners. None appeared for the respondent.

2. The petitioners have taken exception to the judgment dated 6/05/2016 passed by the Administrative Tribunal in the Mundkar Revision Application No.1/2014 being the impugned judgment for brevity's sake hereinafter by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

3. Heard Shri P. Faldessai, learned Advocate for the

petitioners who submitted that the petitioners had lost at all stages of the proceedings namely before the Mamlatdar, the Collector and the Administrative Tribunal. A suit was filed against the petitioner no.1, since deceased, for his eviction in which he had taken a plea of mundkarship in defence which too was decided against him. The said Raghuvir had constructed the house with the permission of Ramnath, brother of the respondent and the co-owner of the property. In view of the plea of mundkarship raised in defence, the issue was referred to the Mamlatdar who held against him. The Deputy Collector too in appeal was swayed by the survey records and who dismissed his appeal while the Administrative Tribunal did not feel it appropriate to interfere with the findings rendered by the Courts below and dismissed the Mundkar Revision Application. This was a fit case to remand the matter to the Mamlatdar for a fresh determination and therefore the impugned judgment had to be quashed and set aside and the matter remanded to the Mamlatdar for a fresh determination.

4. None appeared on behalf of the respondent despite due opportunity. Nonetheless, having heard Shri P. Faldessai,

learned Advocate for the petitioner and on a perusal of the impugned judgment as also of the two Courts below, i would address myself to his submissions and decide the petition accordingly.

5. The respondent had filed the suit for permanent and mandatory injunction against the said Raghuvir alleging that during his visit to the property bearing Survey No.94/1 being the suit property for brevity's sake he had noticed the erection of a house structure apart from a hut and also noticed stones dumped in the suit property in order to carry out further construction activity therein. He had specifically pleaded that the said Raghuvir was residing in the house bearing Survey No.94/5 and that he had no right or interest to interfere in any other part of the suit property 94/1 without his consent and prayed for the stated reliefs. The said Raghuvir had taken a plea that he was a Mundkar and which issue was referred to the Mamlatdar for determination.

6. A cursory perusal of the judgment of the Mamlatdar would indicate that nowhere was a plea taken by the said Raghuvir that he had constructed the house in the suit

property 94/1 with the consent of Ramnath, brother of the respondent and the co-owner of the suit property. A reference to the judgment of the Mamlatdar who had recorded the evidence would also reveal that there was not a whisper on this count and quite on the contrary the learned Mamlatdar had found that the said Raghuvir was employed in Malvan and that when he came back to Goa somewhere in 1983 or thereabout, he undertook the construction of a separate house i.e. the suit house bearing distinct no.392/6A. The learned Mamlatdar on appraisal of the evidence led before him rightly came to the conclusion that the original house 94/5 was distinct from the suit house erected by the said Raghuvir and which was shown to be erected much after the coming into force of the Mundkar Act and not prior to the appointed date as was his case. The learned Mamlatdar had therefore on the basis of the evidence led by the petitioners and the respondent rightly come to a finding that he had failed to prove the issue of mundkarship and answered the reference accordingly.

7. The judgment passed by the Deputy Collector where the petitioner had challenged the judgment of the Mamlatdar in

appeal also refers to the testimony recorded before the Mamlatdar and who had come to a clear finding on the basis of the statement of his daughter since he had expired in the meantime, that he had come to the suit property some time in 1986 and thereafter erected the suit structure. The learned Deputy Collector had given a categorical finding that no documents were placed on record showing the existence of the suit house on the appointed date and dismissed the appeal. In appeal too there was no whisper about the plea of the said Raghuvir that he had constructed the suit house much prior to the appointed date and that too with the consent of Ramnath, brother of the respondent and another co-owner of the suit property. This matter was carried in revision before the learned Administrative Tribunal and where the Tribunal considered the case brought on record on behalf of the petitioners, that of the respondent and on appreciating the findings recorded by the Courts below clearly came to a finding that the suit structure was an illegal construction carried out by the petitioners and in that view of the matter dismissed the revision petition.

8. No illegality or perversity of any nature has been shown

with the findings rendered by the learned Tribunal. The petitioners have also failed to show that there was any breach of the principles of natural justice or otherwise there was lack of jurisdiction in the Tribunal to pass the judgment as it did in dismissing the revision petition. In the result therefore and though there has been no contest by the respondent, nonetheless, the petitioners on the basis of the material on record have failed to show that the impugned order justifies the invocation of the supervisory power of this Court under Article 227 of the Constitution of India.

9. Therefore i do not find any merit in the petition which is hereby dismissed with no order as to costs. Rule accordingly stands discharged.

NUTAN D. SARDESSAI, J.

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