

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 766 OF 2017**

Shri Domingos Furtado
(since deceased through legal representatives)

1. Smt. Rosa Martina Furtado,
Wife of Shri Jose Fernandes
and daughter of late Shri Domingo Furtado
Major of age, occupation-agriculturist,
and her husband.

2. Shri Jose Fernandes,
major of age, occupation -agriculturist

Both residents of H. No.52,
Assolda, Taluka Quepem, Goa.

3. Smt. Conceicao Furtado,
Widow of late Shri Caetano Furtado,
major of age, agriculturist
and her daughter.

4. Kum. Precila Furtado,
Daughter of late Shri Caetani Furtado,
of major age, occupation -agriculturist

5. Miss Melvina Furado,
Daughter of late Shri Caetano Furtado,
major of age, occupation-student,

6. Shri David Furtado,
Son of late Shri Caetano Furtado,
major of age, agriculturist
and his sister;

7. Kum. Antonia Furtado,
Daughter of late Shri Domingo Furtado,
of major age, agriculturist;

8. Shri Pedro Xavier Furtado alias Peter Furtado,
Son of late Shri Domingo Furtado,
major of age, agriculturist,

All residents of H. No.178,
Gonvol, Cotombi,
Taluka Quepem, Goa.

.... Petitioners

V e r s u s

1. Shri Agostino Menezes,
major of age, occupation-businessman
and his brother;
2. Shri Lourencio Menezes,
major of age, occupation-businessman,
Both residents of Goval, Cotobi,
Taluka, Quepem, Goa.
3. Smt. Maria Aldevina Dulce Antao e Silva (since deceased)
through her legal representatives
- 3a) Shri Oscar A. D'Silva,
son of Respondent no.3,
major of age,
- 3b) Smt. Joyce D'Silva,
wife of Shri Oscar A. D'Silva,
major of age,
- 3c) Shri Luis A. D'Silva,
son of Respondent no.3,
major of age,
- 3d) Smt. Milena D'Silva,
wife of Luis A. D'Silva,
major of age,
- 3e) Shri Antonio Olinto Modestina D'Silva,

son of Respondent no.3,
major of age,

All residents of Cana, Benaullim,
Salcete, Goa.

(Amendment carried out as per order dtd.
17.7.2018 in MCA 241/2018)

4. Shri Antonio Olinto Modestino da Silva,
Of major age, landlord,
Both residents of Cana Benaullim,
Taluka Salcete, Goa. Respondents.
5. [The Joint Mamlatdar-I,
with office at Mamlatdar of Quepem,
Quepem, Goa] (deleted as per order dtd.
4.10.2017).

Shri Sudesh Usgaonkar with Advocate Ms. R. Pereira for the Petitioners

Shri R. G. Ramani, Advocate for the Respondents no.1 and 2.

Mr. V. K. Daniel, Advocate for Respondent no.4.

CORAM: C. V. BHADANG, J.

Reserved on: 1st October, 2018.

Pronounced on: 9th October, 2018.

ORDER:

By this petition under Article 227 of the Constitution of India, the petitioners are challenging concurrent orders of the Courts below, dismissing an application filed by them, for declaring themselves as tenants of land survey number 69/2 of village Cotombi, in Quepem Taluka, under section 7

and 8 of the Goa Agricultural Tenancy Act 1964 (Act, for short).

2. Now deceased, Domingo Furtado, filed an application under section 7 and 8 of the Act, before the Mamlatdar at Quepem. That application was filed against Agostino Menezes and his wife Lourencio Menezes as respondents no.1 and 2, who are the purchasers of the property and Smt. Maria Aldevina Dulce Antano E. Silva and Antonio Olinto Modestino da Silva as opponents no.3 and 4, who are the heirs of the original landlord. That application was filed on 26/9/1991 and was registered as Tenancy Case No. TNC/2/1992. The subject matter of dispute as described in para 1 of the application is an agricultural land known as “Nomximordi” locally known as 'Paino Moddi', situated in Quepem Taluka, surveyed under no.69/2 of village Cottombi. The original applicant Domingo also set out the boundaries of the suit property in para 1 of the application.

3. It was contended that the suit property is a paddy field with one sorod crop. There are few fruit bearing trees namely mango trees and one cashew tree on the ridges of the paddy field. The suit paddy field was leased to the ancestors of the applicant Domingo. The ancestors of the applicant had their residential house in the suit paddy field. The father of the original applicant left the residential house about 65 years back and constructed a separate

house in the same village at Gonvol. The house in the suit field had collapsed due to its none- user and there are some ruins of the said house existing in the suit property.

4. According to the original applicant, he started cultivating the suit field personally since about 35 years prior to the filing of the application. The father of the original applicant died about 25 years prior to 1991. According to the original applicant he continued to cultivate the suit paddy field and enjoyment of the fruit bearing trees and used to pay Rs.45/- per annum as rent to the landlord.

5. The original respondent nos. 1 and 2 (the purchasers) tried to interfere in the suit paddy field, which attempt was resisted by the applicant. The respondent nos. 1 and 2 at that time claimed that the landlords had sold the suit paddy field to them, whereupon the original applicant made inquiries and learnt that the original opponent no.3 and 4 have sold the suit field in separate portions to the opponent nos.1 and 2 under two sale deeds, both dated 6/2/1979. It was contended that inspite of the execution of the sale deeds, the opponents no.1 and 2 never entered the suit field and the original applicant continued to be in possession. The original applicant inquired about the survey records and found that his name is not entered as a tenant in the

survey record and that the land has been shown as a garden land, though it was a paddy field. According to the original applicant, the survey record was required to be corrected. The applicant became aware of the wrong entry in the survey record, somewhere on 13/7/1991 and learnt about the sale deed in favour of the original opponent no.1 and 2 on 24/6/1991. It was contended that the applicant was not given any notice before the sale of the land as required under section 13-A of the Act. It was contended that the opponents no.1 and 2 about a month prior to the filing of the application had constructed an addo (compound wall) around the suit field, despite an objection by the applicant and had threatened the applicant with dispossession. This led the original applicant to approach the learned Mamlatdar for a declaration that he is a tenant of the suit paddy field and a deemed purchaser, for fixing the purchase price and issuance of certificate of purchase. The original applicant also sought an order restraining the original opponents, from interfering with the suit paddy field in any manner and for correction of the survey record.

6. The opponents no.1 and 2 filed a reply and resisted the application on various grounds. It was denied that the original applicant ever cultivated the suit paddy field. It was contended that after the purchase of the suit paddy field under the sale deed dated 6/2/1979 and even prior to that, the opponents were cultivating the suit paddy field by paying Rs.50/- per annum, as rent to

the landlord. However, no rent receipts were issued by the landlord. It was denied that the original applicant, Domingo, was a tenant or he could be a deemed purchaser. It was denied that he was entitled to purchase the land or for getting the revenue record corrected.

7. The original respondent nos. 3 and 4 also resisted the application by filing a separate reply. It was contended that the respondent nos. 3 and 4 along with one Oscar D'Silva and Luis Eugenio D'Silva are the successors of the original landlord of the suit paddy field. It was contended that the original applicant Domingo or his ancestors never cultivated the suit field. It was contended that the respondent nos. 1 and 2 were the tenants of the suit paddy field, even prior to its purchase by the respondent nos. 1 and 2, respectively, they adopted the written statement filed by the respondent nos. 1 and 2.

8. The parties led oral and documentary evidence. The original applicant Domingo Furtado examined himself along with Dilip Prabhu Dessai, Domnic Olivero, Pandhari Prabhu Desai, Antonio Costa and Peter Furtado (Petitioner no.8). The respondent nos.1 and 2 examined Augustin Menezes, Lourenco Menezes, Ratnakar Dattu Prabhu Dessai and Antonio Olinto Modestina D'Silva.

9. The learned Mamlatdar by a judgment and order dated 11/2/2013 dismissed the application. The learned Mamlatdar came to the conclusion that the evidence produced on record including the Notarized copy of the records and proceedings in Case No.TNC/SR-32/72 (Exhibit PW1/F- colly) can at the best show that the applicant might have been into some agricultural activity, but the documents cannot prove and identify “the precise property which was under the cultivatory possession of the applicant”. The learned Mamlatdar also found that no presumption arises in favour of the applicant, as his name was not recorded in the tenants column in Form No.I and XIV of the suit paddy field.

10. Feeling aggrieved, the petitioners challenged the same before the learned District Judge in Tenancy Appeal No.21/2015. The learned District Judge has concurred with the finding as recorded by the learned Mamlatdar and has dismissed the appeal, by a judgment and order dated 17/2 /2016 which brings the petitioners to this Court.

11. I have heard Shri Usgaonkar, the learned counsel for the petitioners, Shri Ramani, the learned counsel for the respondents no.1 and 2 and Shri Daniel, the learned counsel for the respondent no.4. With the assistance of the learned counsel for the parties, I have gone through the record.

12. Shri Usgaonkar, the learned counsel for the petitioners has placed reliance on an application filed by the original landlord John Baltazar D'Silva under section 12 of the Act before the Thasildar, which was registered as Case No.TNC/32/1972. That was a case for recovery of rent of Rs.380/- filed by John Baltazar against the original applicant Domingo Furtado in which John Baltazar has stated that he has given his paddy field better known as "Nomochi Modi" situated at village Cottombi, Taluka, Quepm to the original applicant Domingo Furtado for the last six years for cultivation on an agreed annual rent of Rs.30/-. That application was filed in July 1972. The Tenancy Court decided the said application by a judgment dated 24/7/1972 directing Domingo Furtado to pay to the applicant John Baltazar an amount of Rs.65/- being the arrears of rent for the last three years. It is contended that thus the land "Nomochi Modi" was admittedly given by the original landlord John Baltazar for cultivation as a tenant to Domingo Furtado. It is submitted that the Courts below have failed to properly appreciate the effect of the application and the order. It is submitted that at the time when John Baltazar filed the aforesaid application for recovery of rent, the survey was not carried out or promulgated and therefore the property could only be identified on the basis of its name as "Nomochi Modi". The learned counsel has then referred

to the sale deed executed in favour of the original respondent no.1 and 2 on 6/2/1979 and has invited my attention to the description of the property which is described as the land “Nomoxi mordi” of village Cottombi. It is submitted that although the respondents no.1 and 2 have claimed that they were in possession of the suit field, even prior to its purchase, there is no such recital in the sale deed dated 6/2/1979. It is submitted that even assuming that the respondents no.1 and 2 were in possession of the suit field, since prior to its purchase, the purchase has to be executed in accordance with the provisions of the Act before the Mamlatdar and a private sale would not be permissible. The learned counsel has then referred to the cross examination of the respondent no.1, Mr. Augustine Menezes in order to show that he had not filed any objection before the survey authorities to record his name as a tenant. It is submitted that the opponents have not shown as to which property the application in Tenancy case no. TNC/32/1972 refers to, if not to the suit paddy field..

13. On the contrary, it is submitted by Shri Ramani, the learned counsel for the respondents no.1 and 2 that the original application was filed by Domingo on 26/9/1991 and it is not shown that the applicant was in possession of the suit paddy field on the date of the filing of the application. It is submitted that the appellate court has given a specific finding that the original applicant was

not in possession of the suit field on the date of the filing of the application. It is submitted that the petitioners have not made out any case that the concurrent findings recorded by the Courts below are perverse. It is submitted that in the absence thereof, no interference is called for.

14. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

15. Admittedly the claim of the original applicant about he being in possession of the suit field as a tenant thereof is not supported by any document or an entry in the survey record. The Mamlatdar has found and to my mind rightly so that in the absence of any entry, about the name of the applicant being recorded, as a tenant in the survey record, no presumption arises in favour of the applicant. It may be mentioned that the survey was promulgated somewhere in the year 1971-72 and till 1991 when the original applicant approached the Mamlatdar for a declaration, the applicant had not sought the correction of the survey record. On his own saying, the applicant had no receipts to show the payment of rent nor is having any paddy declaration in respect of the suit filed. The original applicant claimed that he had cultivated the suit paddy field in the year 1991 but it was destroyed by the original respondent no.1. However, the matter was not reported to the

police. There are two registered sale deeds executed by the original respondent no.3 and 4 in favour of the respondent nos.1 and 2 which is dated 6/2/1979. It is not possible to accept that inspite of the purchase, the respondents no.1 and 2 had not entered the suit field or were not cultivating the same or that the original applicant continued to cultivate the said field. The case set up by the applicant to my mind is improbable. It is also not possible to accept that the original applicant was unaware of the execution of the sale deed of the year 1979 till June 1991.

16. The reliance placed on behalf of the petitioner on the application filed by John Baltazar in case no.TNC/32/1972 to my mind is misplaced. The property cannot be said to be identified merely on the basis of a popular local name of the field as “Nomochi Mordi” . Even assuming that the survey record was not promulgated in July 1972 , (when the said application was filed by John Baltazar and therefore, the application is silent as to the survey number of the suit field), the application is conspicuously silent about the boundaries which could have lent some assurance about the identity of the said property. The learned counsel for the respondents is right in contending that in all probability the applicant obtained the boundaries of the suit field from the sale deed and mentioned the same in the application for declaration in order to claim that the identity of the property is established. I have

carefully gone through the application filed by John Baltazar and all that it says is that a paddy field known as “Nomochi Modi” of village Cottombi was given to Mr. Domingo Furtado for cultivation on an agreed annual rent of Rs.30/- for last six years (whereas according to the original applicant, he was paying a rent of Rs.45/-.) Thus the application filed by John Baltazar states that the suit field was given to him only for a period of six years.

17. It was contended on behalf of the petitioner that the original applicant being in possession of the suit filed on the date when the 5th amendment to the Act came into force i.e. on 14/10/1976, the original applicant had become deemed purchaser/owner. The contention in my considered view cannot be accepted as the identity of the property itself is not established. The contention based on the application filed by John Baltazar in order to establish the identity of the property to my mind cannot be accepted. There are two sale deeds of the year 1979 in favour of the respondents no.1 and 2 and it is not possible to accept that till the year 1991, the petitioner was unaware of the same or that inspite of the purchase of the suit paddy field, the opponents no.1 and 2 had not entered the suit field. Although the applicant claimed in his evidence that he had recorded his name as a tenant in respect of the suit paddy field, the same is not only contrary to the recitals in the application, but is also not supported by any documentary evidence about any

such entry in the revenue record. The applicant in his evidence has also admitted that he knows that the respondents no.1 and 2 had purchased the suit field about 10-12 years back. The learned counsel for the petitioners contended that this admission cannot be read to mean that the applicant had knowledge about the purchase prior to 10-12 years of the recording of the evidence i.e. on 27/10/1992. The contention in my considered view cannot be accepted. Nothing prevented the applicant from clarifying this during the course of his cross examination. The evidence has to be read as it is in which the applicant has stated that he knows that the respondents no.1 and 2 had purchased the said paddy field about 10-12 years back.

18. The mere absence of a recital in the sale deed that the respondent nos.1 and 2 were in possession of the suit paddy field prior to its purchase, would not be decisive. The principal issue is about the claim of the original applicant that he was in possession of the suit field as a tenant on the appointed date and continued to be in such possession on the date of the filing of the application i.e in the year 1991 and the identity of the property, none of which has been established on record.

19. I have carefully gone through the order passed by the learned Mamlatdar and the learned District Judge and I do not find that the

concurrent findings as recorded suffer from any infirmity, so as to require interference. The writ petition is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/