

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 53 OF 2018

ANKUSH PEDNEKAR (DEC) THROUGH HIS
LEGAL HEIRS, URMILA PEDNEKAR (DEC)
THR. HER LRS.,

... Petitioner

Versus

JOHN D'SILVA AND ANR.,

... Respondents

Shri Prasheen Lotlikar, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 30th January 2018

ORAL ORDER:

Heard Shri Lotlikar, the learned Counsel for the petitioner.

2. The petitioner is challenging the concurrent findings of the Courts below, refusing to grant declaration in favour of the petitioner that he is the tenant in respect of the suit property bearing Survey No. 85/8 of village Nerul.

3. It is submitted by Shri Lotlikar, the learned Counsel for the petitioner that the contents of the rent receipts as well as the affidavit filed before the Civil Court were not explained to the petitioner and the respondents obtained the said documents in order to deprive the petitioner of his tenancy rights. It is submitted that the petitioner is an illiterate person and as such, he was unable to understand the contents of the rent receipts and the

affidavit filed before the Civil Court, in which, the petitioner had stated that he was working as a Security Guard on the field. It is submitted that mere absence of the name of the original applicant in the occupant's column in Form I & XIV, would not be decisive. It is submitted that the Appellate Court failed to consider the evidence on record in its proper perspective and has erred in confirming the order passed by the learned Mamlatdar.

4. On hearing the learned Counsel for the petitioner and on perusal of the record, I do not find that any case for interference is made out. Although, the absence of the name of the original applicant in the occupant's column in Form I & XIV, would not be decisive, it would be one of the circumstances, which can be taken into consideration, while deciding whether, the petitioner has established that he was cultivating the land in the capacity of a tenant. The documents styled as rent receipts and the affidavit sworn by the applicant on 04.08.1983 are sought to be questioned at this stage, on the spacious ground that the applicant being an illiterate person was unable to understand the contents thereof. It is trite that the affidavit/declaration dated 04.08.1983 was executed before the Officer of the Court, in which, the Officer of the Court explained the contents to the applicant and only when the contents are admitted to be correct that the affidavit is sworn. Although, it is contended that the applicant was cultivating the paddy field, there are no receipts produced to

show that the original applicant had sold the agricultural produce during all these years, which would also have been relevant to show that the original applicant was indeed cultivating the land.

5. I have carefully gone through the order passed by the learned Mamlatdar and the learned District Judge. Both the Courts, on appreciation of oral as well as documentary evidence on record, have rightly come to the conclusion that the original applicant has failed to establish that he was a tenant. No case for interference is made out in the concurrent findings of fact so record. The petition is accordingly dismissed.

C. V. BHADANG, J.

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