

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 579 OF 2018

IN

WRIT PETITION NO. 492 OF 2016

LIANA DIAS AND ANR.,

... Applicants

Versus

SALVADOR FERNANDES (DECEASED)
THROUGH HIS LRS. AND 2 ORS.,

... Respondents

Shri D.J. Pangam with Shri Shivadatta Prakash Munj, Advocate
for the applicants.

Shri C.A. Ferreira, Advocate for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 3rd October 2018

P.C.:

It has been the contention of Shri Pangam, learned Advocate for the applicants that though a finding has been rendered by the learned First Appellate Court that the petitioner was a licensee and not a lessee, nonetheless, it would not preclude him from bringing the legal representatives of the sole deceased petitioner on record considering that the legal representatives who in terms of Section 2(11) CPC would include a person intermeddling with the estate of the deceased.

2. Shri C.A. Ferreira, learned Advocate for the respondents

submitted that the question of bringing the legal representatives on record would arise only in the event the right to sue survive and not otherwise. Considering the clear findings of the Appellate Court that the petitioner was a licensee and not a lessee, there was no question of any inheritance or right to sue surviving in the proposed legal representatives. Besides he adverted to the definition of a 'Tenant' as in the Rent Control Act and otherwise relied in the Judgment passed by this Court in Uma Bandekar v/s. Vivek Marathe (AO No.30 of 2015) where it has been held that a married daughter would not qualify as a tenant in terms of the Act.

3. At the outset, the finding of the learned First Appellate Court whether the petitioner is a licensee and not a tenant is the subject matter of challenge in this Writ Petition. What the applicant seeks to do by the present application is to bring the proposed legal representatives on record to represent the deceased and that the contentions on other aspects will be matter of scrutiny on the merits of the petition. The finding rendered in Uma Bandekar (supra), was on the merits of the appeal and which cannot bind this Court at this stage while considering only the aspect of bringing the legal representatives on record. At this juncture, I would not be swayed by the submissions made by Shri Ferreira, learned Advocate for the respondents that the proposed legal representatives do not have any right of inheritance even

considering the provisions of the Mundkar Act to which a reference was made by him for the purpose of being impleaded in this petition.

4. The application is allowed. All contentions of the parties are left open.

5. The applicant to bring the proposed legal representatives on record within a period of two weeks from today.

6. The application stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

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