

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 195 OF 2018**

1. Smt. Gunavati Paco Pilarnekar, wife of late Paco alias Shambu V. Pilarnekar, aged about 82 years, housewife;
2. Smt. Vandana Venkatesh Pilarnekar, wife of late Venkatesh P. Pilarnekar, aged about 56 years, housewife;
3. Miss. Asmita Venkatesh Pilarnekar, daughter of late Venkatesh P. Pilarnekar, aged 30 years, service;
4. Shri Alkesh Venkatesh Pilarnekar, son of late Venkatesh Pilarnekar, aged 27 years, service;
5. Smt. Pushpa Suresh Pilarnekar, wife of Shri Suresh P. Pilarnekar, aged about 56 years, service;
6. Shri Vinayak Paco Pilarnekar, son of late Paco alias Shambu V. Pilarnekar, aged about 56 years, business;
7. Smt. Shakuntala Vinayak Pilarnekar, wife of Shri Vinayak Paco Pilarnekar, aged about 51 years, housewife;
8. Shri Finanath Paco Pilarnekar, son of late Paco alias Shambu V. Pilarnekar, aged about 56 years, service;
9. Smt. Sangeeta Dinanath Pilarnekar, wife of Shri Dinanath Paco Pilarnekar, aged about 50 years, housewife;
10. Shri Bharat Paco Pilarnekar, son of late Paco alias Shambu V. Pilarnekar, aged about 55 years, service;
11. Smt. Bhavana Bharat Pilarnekar, wife of Shri Bharat Paco Pilarnekar,

aged about 47 years, housewife;

12. Shri Gurudas Paco Pilarnekar, son of late Paco alias Shambu V. Pilarnekar, aged about 51 years, service;
13. Smt. Vidya Gurudas Pilarnekar, wife of Shri Gurudas Paco Pilarnekar, aged about 45 years, service; All Indian Nationals, residing at House No. E-26, Kumbharwada, Vaddy, Mercedes-Goa.
14. Smt. Rekha Narayan Bugde, married to Narayan Bugde, aged about 62 years, business, Indian National, residing at Alto Santa Cruz, Santa Cruz, Goa.
15. Smt. Rasika Arjun Harmalkar, married to Arjun Harmalkar, aged about 49 years, housewife, Indian National, residing at Aradi, Saleigao, Bardez-Goa.
16. Shri Suresh Paco Pilarnekar, son of late Paco alias Shambu V. Pilarnekar, aged 59 years, Advocate, Indian National, residing at House No. E-26, Kumbharwada, Vaddy, Mercedes-Goa, for self and as Constituted Power of Attorney for the petitioner nos. 1 to 16 above named.

.... Petitioners

Versus

1. Shri Balchandra Anant Vagle, son of Anant Vagle, aged about 71 years, business, Indian National
2. Smt. Pramila Balchandra Vagle, wife of Shri Balchandra A. Vagle, aged about 64 years, housewife, Both Indian Nationals, residents of House No. 624, Tonca, Caranzalem-Goa.

.... Respondents

Shri Prasheen Lotlikar, Advocate for the Petitioners.

Shri Ashwin D. Bhobe, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

Reserved on : 26th September, 2018

Pronounced on : 1st November, 2018

JUDGMENT:

On 14.08.2017, a notice for final disposal was issued in this petition. I have heard the learned Counsel for the parties and the petition is being disposed of finally.

2. By this petition, the petitioners original defendants, are challenging the order granting temporary injunction in favour of respondents/plaintiff, thereby restraining the petitioners from cultivating or doing any agricultural activities in the suit property or otherwise interfering with the same during the pendency of the suit.

3. The brief facts necessary for the disposal of the petition may be stated thus:-

That land bearing survey no.276/1 of village Morambi Grande, admeasuring 87,439 square metres, is subject matter of dispute (hereinafter referred to as the suit property). According to the petitioners, the suit property is

predominantly a coconut garden with some scattered fruit bearing trees, such as mango trees, jackfruit trees and tamarind trees. The respondent nos.1 and 2 have filed Regular Civil Suit No.92/2012, against the petitioners for permanent injunction, restraining the petitioners or anybody on their behalf, from doing any cultivation, plantation or any agricultural activities or interfering with the suit property in any manner and for mandatory injunction directing them to remove the cultivation already done and to restore the part of the suit property to its original condition.

4. The case made out in the plaint is that the respondents are the owners and in lawful possession of the suit property and they are in actual possession, including the part of the suit property, which contains different houses. The entire coconut plucking was done by the respondents or their predecessor and they are enjoying the usufruct. This was done by one Kishor Naik, resident of Saligao, who was working as a Mukadam for about 50 years.

5. The respondents claim that there is a house bearing no.E-26, situated in the suit property, which is occupied by the defendant nos.1 to 13 and 16. The name of Paco Pilanekar, who

is the late husband of the defendant no.1, is found to be recorded in the other rights column in Form I and XIV of the suit property. However, there is no name of any of the defendants or any other persons recorded in the tenants column. In short, it was contended that there is no tenant existing in the suit property.

6. The respondents had filed Civil Suit No. 87/2011, against the defendant nos. 1, 6, 8, 10, 12 and 16 before the learned Civil Judge, Junior Division at Panaji, in which the aforesaid defendants have been restrained from carrying out any construction in the suit property. The respondents did not dispute that the defendants have filed an application for declaration of tenancy, being Tenancy Case No.22/2010, which is pending before the learned Mamlatdar, in which the defendants have purportedly claimed tenancy in respect of the portion admeasuring 9,810 square metres from out of the suit property.

7. On 26.06.2012, when the respondent no.1 was on a casual visit to the suit property, he had noticed that a portion admeasuring 1,000 square metres, in the vicinity of the said house no.E-26, occupied by the defendant nos.1 to 13 and 16,

has been ploughed, and on enquiry, it was revealed that these defendants are doing illegal plantation. The matter was reported to the police on 27.06.2012 and thereafter, the suit came to be filed for the reliefs as aforesaid.

8. The respondents also sought temporary injunction, restraining the defendants from carrying out any cultivation/plantation or other agricultural activities or from interfering with the suit property in any manner during the pendency of the suit.

9. The application was resisted by the defendants nos.2 to 11 and 14 to 16 on various grounds, including on the ground that the suit does not disclose any cause of action. It was contended that the tenancy case is filed in the year 2012, in which, the respondents have already appeared and in the tenancy application, the petitioners have pleaded that for the first time in November, 1972, that the respondent no.1 (plaintiff no.1) had visited the suit property alongwith the Mukadam, Shri Shantaram Naik, who had noticed cultivation of bananas, lady fingers, chillies and other plantations in the suit property. It was denied that the same was noticed in June 2012 as claimed. It was contended that the suit is barred by limitation.

10. The learned Trial Court by an order dated 29.10.2014 has granted temporary injunction in the aforesaid terms, which was unsuccessfully challenged by the petitioners, before the learned District Judge in Miscellaneous Civil Appeal No.125/2014, which was dismissed on 15.06.2016. Hence, this petition.

11. I have heard Shri Lotlikar, the learned Counsel for the petitioners and Shri Bhobe, the learned Counsel for the respondents. Perused record.

12. It is submitted by Shri Lotlikar, the learned Counsel for the petitioners that the petitioners are tenants in respect of 9,810 square metres of the land from out of the suit property and they are tenants/deemed purchasers in respect of the said portion since the year 1952. It is submitted that the petitioners have approached the Mamlatdar for declaration of their tenancy much prior to intimation of the suit and the Court in such circumstances ought not to have granted temporary injunction. It is submitted that the petitioners are plucking the coconuts from the suit property. It is submitted that even on the saying of the respondents, there is a house bearing no.E-26 and that house is occupied by the petitioners. It is submitted that

the name of Paco Pilanekar, who is the late husband of the respondent no.1/defendant no.1 is found recorded in the other rights column in Form I and XIV pertaining to the suit property. It is submitted that the Courts below failed to properly appreciate the judgment of the Supreme Court in the case of **Inancio Martins (deceased), through LRs Vs. Narayan Hari Naik, AIR 1993 SC 1756**, in which, the Supreme Court has held that where there is a remedy provided under the said Act, the jurisdiction of the Civil Court would stand barred.

13. Shri Bhobe, the learned Counsel for the respondents, on the contrary, has supported the impugned order. It is submitted that the Trial Court has rightly found that the respondents have made out a *prima facie* case for grant of temporary injunction. It is submitted that the case about the tenancy made out by the petitioners is vague and as such, the Civil Court would not be barred from granting temporary injunction, where the suit is based on possession, as has been held by this Court in the case of **Laxmi & Others Vs. Savanta Bapu Mali, AIR 1986 BOM 169**. It is submitted that the Courts below have rightly granted the temporary injunction and no case for interference is made out.

14. I have carefully considered the circumstances and submissions made. The name of the respondents are recorded as occupants in Form No. I and XIV of land survey no.276/1, which is admeasuring 87,439 square metres. It is not disputed that the respondents are the owners of the land survey no.276/1. The only case made out by the petitioners is that apart from the respondents, there are other successors of the suit property. However, the fact remains that the petitioners have not disputed that the respondents are the landlords of the suit property. According to the respondents, they are in possession of the entire suit property. The petitioners on the other hand claim that they are tenants in respect of an area of 9,810 square metres and mundkars in respect of house no.E-26. Admittedly, an application for declaration of their tenancy has been filed by the petitioners somewhere in August, 2010, which is pending before the learned Mamlatdar. It transpired during the course of the arguments at bar that the petitioners have also filed an application for temporary injunction therein, which till date has not been pressed and no orders have been sought from the Mamlatdar.

15. The learned Trial Court has found that the case made out by the petitioners that they are in possession as agricultural

tenants is vague and the petitioners have not pleaded as to who has planted the coconut trees and there are also no pleadings as to who had created the tenancy and what was the rent fixed while creating the tenancy. The learned Trial Court has found that on the contrary, the respondents have filed affidavits of three witnesses along with the photographs to show their possession. The learned Trial Court placing reliance on the decision of this Court in the case of **Laxmi** (supra) has held that the jurisdiction of the Civil Court to entertain the suit or the application for temporary injunction cannot be barred, which is based on possession.

16. In my considered view, the learned Trial Court is right in finding that merely on a claim of tenancy being raised, the jurisdiction of the Civil Court to grant interim relief cannot be said to be barred. It is now well settled that the Court is under no obligation to remit the issue of tenancy mechanically, merely on asking, as held by this Court in the case of **Pulmati Shyamlal Mishra Vs. Ramkrishna Gangaprasad Bajpai, 1981 Mh.LJ 321** and mere averments in the written statement about the claim of tenancy are not enough as held by this Court in the case of **Uttam Deshmukh Vs. Yamunabai Bhojar, 1998 (4) Bom.C.R. 441**. The Court would be entitled to see,

albeit, *prima facie* whether, the case about tenancy is vague or otherwise. In the present case, the Trial Court has noticed that the case made about the tenancy is vague and there are no pleadings in respect of the rent fixed, when the tenancy was created and also about the plantation of the coconut trees. Admittedly, the name of Paco Pilanekar, who is the late husband of defendant no.1/respondent no.1 is recorded in the other rights column. However, there is no entry about the tenancy rights. Thus, at this stage, there is no presumption arising about the tenancy as claimed. The petitioners have tried to explain the absence of the said entry on the ground that garden lands were not covered under the provisions of the Act till 1976 as the survey was promulgated in the year 1971 and therefore, the respondents could not have placed reliance on the absence of entries in the tenants column.

17. In my considered view, this aspect will have to be considered by the learned Mamlatdar, while deciding the application for declaration. The learned Trial Court on the basis of the *prima facie* evidence about the possession of the respondents and on finding that the case of tenancy is vague and is lacking in material particulars, has allowed the application for temporary injunction, which has been confirmed

in appeal.

The concurrent finding so recorded, do not suffer from any infirmity. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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