

IN THE HIGH COURT OF BOMBAY AT GOA

LETTERS PATENT APPEAL NO. 15 OF 2013

IN

WRIT PETITION NO. 428 OF 2010

Smt. Sula Karapurkar
(Since deceased through LR's)
1(a) Shri Uday Karapurkar,
Son of Devidas Karapurkar,
married, aged 48 years, service,

1(b) Smt. Sweta Uday Karapurkar,
wife of Uday Karapurkar,
aged 40 years, housewife,
Both residents of
H.No.252 (old) & 331 (new),
Malbhat, Margao,
Salcete Goa.

... Appellants

Versus

Shri Pascoal Baptista,
major,
r/o house No.250, Acquem,
Malbhat, Margao Goa.

... Respondent

Mr. Vilas P. Thali, Advocate for the Appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. V. Palyekar, Advocate
for the Respondent.

***Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.***

Date:- 16th July 2019

ORAL JUDGMENT (*Per M. S. Sonak, J*)

Heard Mr. V. Thali, learned counsel for the Appellants and Mr. Sudin Usgaonkar, learned Senior Advocate alongwith Ms. V. Palyekar, learned Advocate for the Respondent.

2. The challenge in this Letters Patent Appeal is to the judgment and order dated 21.02.2013, made by the learned Single Judge of this Court refusing to interfere with the judgment and order dated 20.01.2010 made by the Administrative Tribunal holding that a *prima facie* landlord tenant relationship has been established between the parties and, therefore, the matter could proceed for further inquiry before the Rent Controller.

3. Mr. Thali, learned counsel for the Appellants submits that once the Tribunal or the learned Single Judge has held that there is a landlord tenant relationship established, the Appellants might be precluded from persuading the Rent Controller that no such relationship is in fact existing. He submits that there was really no legal material available on record to sustain the findings of existence of landlord tenant relationship. He submits that the finding in this regard is clearly perverse and, therefore, this Letters Patent Appeal ought to be entertained.

4. Mr. Sudin Usgaonkar, learned Senior Advocate for the Respondent at the outset objects to the maintainability of the Letters Patent Appeal. He points out that the Letters Patent Appeal has already been abolished and it is only pending appeals that came to be saved. He submits that the expression "*pending*" means an appeal which has already been admitted, since, it is only at the stage of admission of an appeal that there is application of mind to the merit or otherwise of the appeal. In any case, Mr. Usgaonkar submits that the petition before the learned Single Judge was instituted by invoking Article 227 of the Constitution of India. In the impugned judgment and order made by the learned Single Judge as well, there is a reference to exercise of powers under Article 227 of the Constitution of India. He submits that no Letters Patent Appeal is maintainable against the judgment and order made in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. On this ground as well Mr. Usgaonkar submits that this Letters Patent Appeal is not maintainable.

5. Without prejudice to the aforesaid contention, Mr. Usgaonkar submits that the impugned judgment and order made by the learned Single Judge only holds that a *prima facie* landlord tenant relationship has been established. The matter is thereafter to proceed before the Rent Controller for determining not only whether this *prima facie* finding should be accepted finally but also for determining whether any grounds have been made out for eviction of the

Appellants. He, therefore, submits that there is absolutely no reason to entertain this Letters Patent Appeal as all legitimate defences of the Appellants have not been deprived.

6. The rival contentions now fall for determination.

7. According to us, in the peculiar facts of the present case, there is no necessity to rule upon the maintainability or otherwise of the Letters Patent Appeal. This is because even if we hold that the Letters Patent Appeal is indeed maintainable, we would not have been inclined to interfere with the impugned order for the simple reason that the impugned order has very categorically noted that the Administrative Tribunal has only recorded a *prima facie* finding with regard to the establishment of landlord tenant relationship. This means that the Appellants, have not been deprived the opportunity of contending before the Rent Controller that such *prima facie* finding ought not to be accepted at the final stage either based upon the material already on record or on the basis of such further material which the parties would always have liberty of producing before the Rent Controller. In that sense, therefore, there is hardly any prejudice that can be said to have been occasioned to the Appellants in the present case.

8. On the contrary, severe prejudice is already occasioning the Respondent because further inquiry before the Rent Controller has not

commenced even though several years have passed since the institution of eviction petition before the Rent Controller. Once, we have clarified that the finding recorded by the Tribunal and confirmed by the learned Single Judge is only a *prima facie* in relation to establishment of landlord tenant relationship, we are of the opinion that there is no further necessity to interfere with the impugned judgment and order made by the learned Single Judge. We clarify that all contentions of parties on merits of the matter are expressly kept open for decision of the Rent Controller.

9. With the aforesaid observations, we dispose of this Letters Patent Appeal. In the peculiar facts of the present case, there shall be no order as to costs.

10. Taking into consideration the circumstance that the eviction proceedings were instituted by the Respondent in the year 1985, we direct the Rent Controller to dispose of the proceedings in pursuance of remand as expeditiously as possible and in any case within a period of one year from the date of parties producing the authenticated copy of this order before the Rent Controller.

11. The parties to appear before the Rent Controller on 1st August, 2019 at 10.30 a.m. and produce the authenticated copy of this order.

12. All concerned to act on the basis of an authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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