

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 368 OF 2019**

Durgabai Uttam Sinai Gude (Dec.) &
Another Petitioners
Versus
Janu Janardan Kundikar & Another Respondents

Mr. Vishnuprasad A. Lawande with Ms. Ankita Kamat,
Advocates for the Petitioners.

CORAM : C.V. BHADANG, J.**DATE : 16th April, 2019****ORAL ORDER:**

Heard Mr. Lawande, the learned Counsel for the
petitioners, for some time.

2. The petitioners/plaintiffs, by this petition, are
challenging the order dated 01.03.2019, by which, the
application for deletion of issue nos. 4 and 5 has been partly
allowed, thereby, striking off issue no. 5 regarding tenancy.
The petitioners are aggrieved by the refusal, by the Trial Court
to delete the issue no. 4.

3. The following issue nos. 4 and 5 were framed as far
back as on 06.04.1998 and thereafter, they were re-cast on
14.12.1998:

4. Whether the defendant no. 1 proves that he is mundkar of house bearing no. 65/2 ?
5. Whether the defendant no. 1 proves that he is tenant of suit property including the house ?

4. The issue no. 5, namely, whether, the defendant no. 1 proves that he is the tenant of the suit property and the house, has since been deleted. The question is whether, issue no. 4 about the alleged mundkarial rights in respect of house bearing no. 65/2, also needs to be deleted or not.

5. A perusal of the plaint shows that the case made out by the petitioners is that the defendants were in possession of the suit house and even, the injunction is sought restraining the defendants from interfering with the suit property, except for the house occupied by them and the way leading to the main road leading to bazaar.

6. The learned Trial Court, in the impugned order, has found that the petitioners have admitted that the defendants are residing in the house in the suit property and that the survey plan shows the house and that the appointed date is after the promulgation of survey records and therefore, there

are sufficient grounds for framing the issue. The learned Trial Court has found and to my mind rightly so, that it is for the learned Mamlatdar to decide whether the defendants are mundkars or not.

7. Mr. Lawande, the learned Counsel for the petitioners has placed reliance on the decision of this Court in the case of **Mahableshwar Pandurang Halankar Vs. Damodar Pandurang Halankar & Others 2012 (5) Mh.L.J. 826**, in order to submit that a mundkarial issue cannot be mechanically framed, merely on the basis of vague claim, without any material on record. The principle as laid down in the said case cannot be disputed. However, the question whether, a mundkarial issue is to be framed or not would depend upon facts and circumstances of each case.

8. In the present case, as noticed earlier, the petitioners are not disputing that the defendants are in possession of the house. Significantly, the plaint is also silent as to since when the defendants are in possession or the capacity in which they are in possession. Having regard to the reasoning articulated by the learned Trial Court, I do not find that the impugned order suffers from any infirmity, so as to

require interference. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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