

IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 42 OF 2018.

SUGAND RAMA GAUDE AND ANR., ... Appellants.

Versus

V.G. QUENIM, THR. HIS LRS. AND 4

ORS., ... Respondents.

Shri Jatin Ramaiya, Advocate for the appellants.

Shri Yogesh V. Nadkarni, Advocate for respondent nos.1(a) to (i).

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on:- 21st June 2019.

Pronounced on:- 10th July 2019.

ORDER

The challenge in the Second Appeal is to an impugned order dated 18.3.2017 passed by the learned Principal District Judge, Panaji in Regular Civil Appeal No.81/2016 rejecting the said appeal.

2. The First Appeal arose out of an order dated 18.7.2016 passed by the learned Senior Civil Judge, Bicholim in Execution Application no.3/2005/A wherein the appellants were obstructing the execution of a decree claiming their rights over the suit properties. The

learned Executing Court rejected the application of the appellants/obstructionist.

3. I have heard Shri J. Ramaiya, learned counsel for the appellants /obstructionist and Mr. Y. V. Nadkarni, learned Counsel for the respondents 1(a) to 1(i).

4. Brief facts can be summarised thus:-

Appellants are the daughters of deceased Rama Mahadev Gaude and respondent nos.2 to 5 are his sons. There is an agricultural land known as "Ubratadechem Margachea Molievoli Daratulem Deudole" bearing survey nos.40/1, 41/3, 48/1 and 50/1 at the Village Sonus Vonvoliem.

5. Aforesaid property originally belonged to one Mr. Antonio Francisco C. S. Botelho and described under No.184 of the Book B1 of page 388 of Land Registration Office of Bardez at Mapusa.

6. Upon the demise of said Antonio Francisco C. S. Botelho, the

property was inherited by his heirs namely Jesus Venceslau Antonio Santana Misquita Botelho alias Venceslau Botelho and his wife Maria Socorro Ermelinda Sobrinho Botelho alias Linda Botelho.

7. It is the contention of the appellants that deceased Rama Gaude was tenant of the suit property who was inducted by deceased Antonio Francisco C. S. Botelho. Record of rights indicates name of Rama Gaude as a tenant.

8. Rama Gaude had constructed several structures in the property including three houses and was in possession of agricultural land since 20.4.1976. It is contended by the appellants that by virtue of Vth Amendment to the Goa Agricultural Tenancy Act, he became the deemed purchaser of the said property.

9. Appellants contend that after the death of Rama Gaude his wife and other legal heirs including the respondent nos.2 to 5 became co-owner of the suit property.

10. Appellants also acquired undivided right, share and interest in all the houses situated in the part of the suit property bearing survey no. 50/1. They are in joint occupation and possession of the suit property.

11. On 6.10.1995 Jesus and his wife Maria executed a sale deed purporting to sell the property to respondent nos.2, 3 and 5 for a meager amount of Rs.50,000/-. The said deed was executed during the life time of Rama Gaude.

12. By an agreement of sale dated 5.7.1996, respondent no.1 agreed to purchase the suit property wherein respondent nos.2 to 5 were described as first vendors and deceased Rama Gaude and appellants were described as second Vendors. In the said agreement of sale, respondent no.2 acted on behalf of the appellants on the strength of power of attorney dated 27.6.1996. The suit property was agreed to be sold for a consideration of Rs.24,69,175/-. Rights of the appellants were acknowledged by the respondents.

13. Respondent no.1 filed a Civil Suit against respondent nos.2

to 5 seeking specific relief of agreement dated 5.7.1996 *inter alia*, relief for a perpetual injunction from obstructing the respondents.

14. On 29.12.2003, Senior Civil Judge, Bicholim decreed the suit.

15. In the month of January 2004, respondent nos. 2 to 5 who were aggrieved by the judgment and decree of the Senior Civil Judge filed an appeal under Section 96 of the CPC.

16. This Court on 2.11.2004 dismissed the appeal of the respondent nos. 2 to 5 and confirmed the judgment dated 29.12.2003 passed by Senior Civil Judge.

17. Execution proceedings were filed by respondent no.1 in January 2005. On 24.5.2006, Senior Civil Judge, Bicholim dismissed the objection raised by the respondents, *inter alia*, directing them to comply with Order 21 Rule 64 of C.P.C. Aggrieved by the same the respondent nos.2 to 5 approached this Court invoking revisional jurisdiction.

18. By an order dated 15.2.2007 this Court has dismissed the revision application filed by the respondent nos.2 to 5. The appellants herein thereafter approached Senior Civil Judge by filling an application under Order 21 Rule 97 of CPC. On 18.7.2016, Senior Civil Judge dismissed the application under Order 21 Rule 97 of CPC after conducting an inquiry. An appeal preferred by the appellants before the Lower Appellate Court on 6.8.2016 came to be dismissed by the Principal District Judge by the impugned Order.

19. Shri Ramaiya, learned counsel for the appellants at the outset, contends that the judgment and decree of the Civil Court cannot be said to be binding on the appellants since they were not parties to the suit and were not granted sufficient opportunity to safe guard their rights. It is submitted that the suit of the respondent no.1 came to be decreed till the High Court. My attention is drawn to the agreement of sale dated 5.7.1996 wherein there is a mention of names of appellant no.1 being grand daughter of deceased Rama Gaude. Page 6 of the said document indicates that the second vendors have also agreed to sell the house

bearing panchayat nos.61/1,61/2 and 61/3 alongwith all the appurtenant like two cow sheds, three fire wood sheds, Pump house, warehouse, which are constructed over the said lands.

20. I have gone through the order of the Senior Civil Judge dated 18.7.2016 as well as the impugned order of the District Judge. The Executing Court in an order dated 18.7.2016 has observed that the applicants/appellants herein have no independent right, interest or title in the suit property and houses. They are claiming their right as heirs of deceased Rama including respondent nos.1, 2 and 5 in the character of tenants since 20.4.1976 and deemed owner in view of the Vth Amendment to the Agricultural Tenancy Act. It appears that appellants did not adduced oral evidence to prove their right in respect of suit property. Documents produced by them were not exhibited nor the contents were proved.

21. In the impugned order, the learned District Judge reiterated the same findings. It is observed that respondent nos.2 to 5 have failed to establish the issue of tenancy in favour of deceased Rama Gaude.

Indisputably, respondent nos. 2, 3 and 5 are brothers of the appellants.

22. The learned Counsel for the respondents drew my attention to an order passed by this Court on 15.2.2007 in CRA No. 21/2006 preferred by respondent nos.2 to 5 challenging the Execution Application no.3/2005/A whereby objection to the execution of the decree was raised. This Court after hearing respective counsel and after going through the records in paragraphs 7 has observed thus:-

“It is totally misplaced on the part of the applicants to say that the present case is governed by the provisions of the Agricultural Tenancy Act, 1964. This is so because the applicants were never tenants of the agricultural land. It is clear position that the father of the applicants also never applied for getting the certificate for having purchased the suit property under Section 18A of the Agricultural Tenancy Act. It is to be noted that the father of the applicants was alive when the conveyance deed was passed by the landlord in favour of the applicants in 1995. The father of the applicants could have been deemed tenant right from 1976. Right from 1976 till 1995 when the conveyance was passed in favour of the applicants, no such claim of the applicant's father as deemed purchaser of the property was ever made nor the certificate to that effect was ever obtained. Therefore, basically, the provisions of the Agricultural Tenancy Act are not attracted to the facts of the present case.”

23. This order is self explanatory and needs no further elaboration. I therefore, do not find any substantial question of law involved in this appeal. Consequently, appeal stands dismissed with no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

vn