

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 900 OF 2018

SUVARNA NAIK & ANOTHER ... PETITIONERS

Versus

ANTHONY D'SOUZA ... RESPONDENT

Mr. Jayant P. Mulgaonkar, Advocate for the Petitioners.

Mr. Kewal T. Sawant, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

Date : 29th January, 2019

ORAL ORDER:

By this petition, the petitioners, who are the original plaintiffs, are challenging the order dated 02.04.2018, passed by the Trial Court in Regular Civil Suit No. 5/2014/E. By the said order, an application Exhibit-D/26 filed by the respondent/plaintiff for modification of issue no. 7, has been rejected.

2. The original issue no. 7, which was framed reads thus:

“Whether the defendants prove that after the death of Radha Kuttikar, mundkari rights have been devolved upon her successors in title and as such defendants are entitled to continue the possession”.

3. The said issue has been re-framed as under:

“Whether the defendants prove that they are the mundkars of the suit house”.

4. At the outset, it is necessary to mention that Mr. Mulgaonkar, the learned Counsel for the petitioners, in all fairness, does not dispute the need to re-frame the issue. The petitioners are only aggrieved by the burden of proof, as placed in re-framed issue no. 7. In short, the contention is that the burden to prove that the petitioners are not the mundkars, ought to have been placed on the respondent, in view of the fact that there is an order of registration, under Section 29(4) of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (Act, for short), in favour of the mother/mother-in-law of the petitioners.

5. Mr. Sawant, the learned Counsel for the respondent has supported the impugned order. It is submitted that the Trial Court has rightly re-framed the issue, placing the burden on the petitioners.

6. On hearing the learned Counsel for the parties, I find that no case for interference is made out.

7. On behalf of the petitioners, reliance is placed on a Division Bench judgment of this Court in the case of **Gulabi Sangtu Devidas & Others Vs. Smt. Prema Govinda Gaonkar & Others, 1995 (1) GLT 154**, in order to submit that once there is an order of registration in favour of the mother/mother-in-law of the petitioners, the burden to prove that the petitioners are not mundkars of the suit house, would lie on the respondent. The judgment, in my considered view, cannot come to the aid of the petitioners in support of any such contention. As has been held by the Division Bench of this Court in the case of **Gulabi Sangtu Devidas** (supra) that the scope of enquiry under Section 29 of the Act is limited only to make entries in the register, which entries are presumptive in nature by virtue of Section 30 of the Act. Even after the mundkar obtains an order of registration under Section 29 of the Act, before going for purchase he has to get an order for declaration, under Section 8A of the Act. An order under Section 29 of the Act, which has a presumptive value, would only be a piece of evidence in favour of the mundkar. However, this cannot affect the burden of proof.

8. In the suit filed by the respondent, it is the case made out by the respondent that Radha Kuttikar was a trespasser, while it is the specific case made out by the petitioners that

Radha Kuttikar was the mundkar of the suit house. In that view of the matter, the burden of proof that the petitioners are the mundkars, would lie on the petitioners/defendants. 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, with no order as to costs.

C.V. BHADANG, J.

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