

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 30 OF 2016
IN
WRIT PETITION NO. 603 OF 2016

1. Shri Pundalik Gangadhar Sinai
Sanvordekar (since deceased) through
his legal representatives.

a. Shri Chandrakant Pundalik Sinai
Sanvordekar, Son of Pundalik
Sanvordekar Major of age,

b. Shri Gauri Chandrakant Sinai
Sanvordekar, Wife of Chandrakant
Sanvordekar Major of age, Both r/o
H.No.420(2), Khamamol, Curchorem,
Goa.

c. Shri Hemkant Pundalik Sinai
Sanvordekar, Son of Punalik
Sanvordekar, Major of age,

d. Smt. Shobha Hemakant Sinai
Sanvordekar wife of Hemakant
Sanvordekar Both r/o House no.A-4/F-
2, Vijaynagar Colony, Corlim, Tiswadi,
Goa

2. Dr. Upendra Sinai Sanvordekar
(since deceased) through his legal
representatives

a. Smt. Leelavati alias Shilavatibai
Upendra Sanvordekar, Daughter of
Upendra Sanvordekar, Major of age r/o
Moquim, Cuncolim, Salcete, Goa;

b. Dr. Chandrakant Kudchadkar,
Major of age, Both b & c residing at
House no. 4/2777, Shantai Bungalow,
Manuel Gomes road, Behind
Sanchiyani, Vidyanagar, Margao- Goa
403 601

c. Smt. Geeta Chandrakant
Kudchadkar wife of Chandrakant
Kudchadkar Major of age.

... Petitioners

V e r s u s

1. Shri Shankar Gopal Bhandari (since
deceased) through his legal
representatives.

a. Smt. Parvati S. Bhandari, Daughter
of Shankar Bhandari Major of age

b. Shri Satchit Shankar Bhandari, Son
of Shankar Bhandari Major of age

c. Smt. Sandya Satchit Bhandari, Wife
of Satchit Bhandari Major of age

d. Shri Ulhas Shankar Bhandari
Son of Shankar Bhandari, Major of age

- e. Smt. Nirmala Ulhas Bhandari,
Wife of Ulhas Bhandari, Major of age
 - f. Shri Narendra Shankar Bhandari,
Son of Shankar Bhandari, Major of age
 - g. Smt. Lata Narendra Bhandari,
Wife of Narendra Bhandari, Major of
age
 - h. Shri Vinay Shankar Bhandari,
Son of Shankar Bhandari, Major of age
 - i. Smt. Chaya Vinay Bhandari,
Wife of Vinay Bhandari, Major of age
a to e above residents of Dhadem
Sanvordem-Goa
2. Dr. Sandip alias Uday Upendra
Sanvordekar, Son of Upendra
Sanvordekar, Major of age r/o
Moquim, Cuncolim, Salcete-Goa.
3. Smt. Smita alias Deepa Mahesh
Kudchadkar(since deceased) through
her legal representatives
- a. Mr. Amey Purshutam Kudchadkar
Son of Purshutam Kudchadkar. Major
of age. resident of Mungul, Margao,
Goa.
4. Mr. P.V. Kudchakdar alias Mahesh
Kudchadkar, Major of age, advocate

Residing at Mungul, Margao, Goa. ... Respondents

Mr. Shivan Desai, Advocate for the Applicant.

Mr. D. J.Pangam, Advocate for the Respondents.

Coram :- C. V. BHADANG, J.

Reserved for Order on : 5th March, 2019

Order Pronounced on : 26th November, 2019

ORDER

1. By this application, the applicants (original petitioners) are seeking review of the judgment and order dated 24.08.2016 in Writ Petition No.603 of 2016. By the judgment under review, the petition filed by the applicants challenging the order of the Mamlatdar declaring the respondents as tenants in respect of the suit property, known as "Titapemol" bearing survey no.18/1 situated at Corranguinim Village of Sanguem Taluka, has been dismissed.

2. The brief facts are that now deceased Shankar Bhandari, filed an application under the Goa Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short) against now Pundalik

Sanvordekar (since deceased) and Dr. Upendra Sanvordekar, claiming a declaration about he being a tenant of the suit property. The case made out in the application was that the father of the original applicant was inducted as a tenant by the original respondent no.1, Pundalik Sanvordekar, about 50 years back. The rent was paid in kind depending upon the yield. It was further contended that prior to 20 years of filing of the application, the rent was being paid in cash at the rate of Rs.200/- per year, however, no receipts were issued.

3. Indisputably, an area admeasuring 2.81 hectares from western side of suit property was sold in favour of the original applicant vide Sale Deed dated 04.11.1977, for a sum of Rs.4000/-. It was the specific case made out that after excluding the area sold, the remaining area of about 45 hectares continued to be in possession of the original applicant as a tenant. It was also contended that the land is exclusively a Cashew Grove and the original applicant was extracting cashew juice and had

obtained Excise licence in his own name. It appears that some time prior to the filing of the application, a separate licence was obtained in the name of Satchit Bhandari, who is the son of the original applicant Shankar Bhandari.

4. The application was opposed on behalf of the petitioners. It was denied that the land admeasuring 45 hectares (after excluding the area sold) was in possession of the original applicant as a tenant.

5. The parties led oral and documentary evidence. The learned Mamlatdar by an order dated 30.12.2010, allowed the application which order has been confirmed by the learned District Court vide judgment and order dated 13.04.2016 in Tenancy Appeal No. 7 of 2015.

6. It appears that this Court principally refused to interfere with the impugned order on finding that the name of the original applicant was recorded as a tenant in Form I and XIV of the land

survey no..18/1 and there was a D.C. case being D.C. Case no.2 of Corrangunim in which in the evidence of Anand Bhandari and Ram Naik, it was admitted that the cashew trees in the suit property are cultivated by Shankar Bhandari and thereafter the said case was withdrawn and that was not carried any further. This Court also found that there are Excise licences on record for various years from 1987 to 1992 and copies of the applications made to the Excise Inspector from the year 1995, 1996, 1997, 1999 to 2001 which showed that Shankar Bhandari was extracting cashew juice from out of the cashew fruit yield.

7. Mr. Desai, the learned Counsel for the applicants pointed out that out of the total area in Form III as well as Form I and XIV, the cashew plantation is only shown in respect of 2.81 hectares i.e. 28100 square metres which was not specifically pointed out to this Court during the hearing of the petition. He submits that by the Sale Deed dated 04.11.1977, only 28100 square metres of land was sold which was having cashew

plantation and this was purchased dehors of the claim of tenancy. It is submitted that there is an acknowledgement that the portion except under cashew plantation i.e. admeasuring 2.81 hectares is in possession of the applicants. The argument on behalf of the applicants is that in such case the presumption available under Section 105 of the Land Revenue Code would extend only to the 2.81 hectares and not the entire land. It is submitted that these aspects have not been pointed out to the Court.

8. Mr. Pangam, the learned Counsel for the respondents, has submitted that this cannot be a ground for review of the judgment as it does not partake of the nature of an error apparent on the face of the record. Mr. Pangam, the learned Counsel, has relied upon the judgment of the Supreme Court in the case of **M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi (1980) 2 SCC 167.**

9. I have carefully considered the circumstances and the submissions made. As noticed earlier, one of the material

circumstance which weighed with this Court while passing the judgment under review dismissing the Writ Petition No.603 of 2016 was that the name of the original applicant was recorded as tenant in Form I and XIV of the suit property i.e. land survey no.18/1. However, prima facie, a perusal of Form III as well as the Form I and XIV show that the cashew plantation is only to the extent of 2.81 hectares which is shown to be in possession of Shankar Bhandari, the rest is shown to be in possession of Pundalik Sanvordekar. This aspect was specifically not brought to the notice of the Court. In a given case, a material circumstance which is otherwise available on record, if not pointed out, can be considered while deciding a prayer for review as in the present case. Thus, I find that a case for review is made out and the Writ Petition is required to be re-heard for admission.

10. In the case of **M/s. Northern India Caterers** (supra), certain legal material was subsequently placed before the Court which was never brought to the notice of the Court earlier when

the appeals were heard and decided. It was in these circumstances held that two or more views which are canvassed on the point out of which the view taken by the Court in the original judgment is a possible view. In such circumstances, it was found that there was no case made out for holding that there is any error apparent on the face of the record. It can thus be seen that the case turned on its own facts. In the present case, Form III and Form no. I and XIV showing the possession of Shankar Bhandari only to the extent of 2.81 hectares was already there on record which was not pointed out to the Court.

11. In such circumstances, the application is allowed. The judgment and order dated 24.08.2016 is hereby recalled. Writ Petition No.603 of 2016 is restored back to the file. The petition to stand over for admission on 07.01.2020.

12. It is made clear that the observations made herein are only for the limited purposes of considering the prayer for review and

the petition is required to be heard for admission on its own merits.

C. V. BHADANG, J.

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