

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 16 OF 2019**

Mr. Oscar Joseph D'Souza alias Mr. Oscar Joseph Constantine D'Souza, aged 69 years, Professor, Indian National, R/o Flat No. A-12-A, 3rd Floor, Piccadilly Flats, Mirza Ghalib Marg, Byculla, Mumbai-400 008.

.... Appellant

Versus

1. Fr. Kenneth Augustine D'Souza, (Head of the Family) son of late John Fulgencio, Ricardo de Souza, years 77 years, Jesuit Priest, r/p St. Roque's Church, Gokhiviera, Vasai East, 401 205.
2. Mr. Kenneth D'Souza, 83 years, r/o J/6, Everard Nagar, Eastern Express Highway, Sion, Mumbai - 400 022.
3. Mrs. Enid D'Souza, aged 81 years and her husband,
4. Mr. Albert Coutinho, aged 80 years, Both r/o 148, Locket Road, Middlesex, Harrow Weald, HA37NZ, England.
5. Mrs. Eva Noronha, aged 74 years, and her husband,
6. Mr. Percy Noronha, aged 74 years, Both r/o 4 Seaside Apartments, 18A, Chimbal Road, Bandra, Mumbai - 400 050.
7. Mrs. Fatima Francisca Felicidade D'Souza, aged 67 years, r/o Flat No. A-12-A, 3rd Floor, Piccadilly Flats, Mirza Ghalib Marg, Byculla, Mumbai-400 008.
8. Mrs. Elaine D'Souza Fernandes, aged 65 years, and her husband,
9. Mr. Sylvester Arun Fernandes, aged 68 years, Both r/o 2nd Floor, 11/Batliwada

.... Respondents

Bldg., 201-A, Dr. Mascarenhas Road,
Mazagon, Mumbai - 400 010.

Mr. Vivek Rodrigues with Mr. Vithal Naik, Advocates for the Appellant.

Mr. Valmiki Menezes with Mr. Akshay Shirodkar, Advocates for Respondent Nos. 1, 2, 5, 6, 8 and 9.

CORAM:- C. V. BHADANG, J.

DATE: 17th June, 2019

ORAL JUDGMENT:

Heard.

2. Admit.

3. Mr. Menezes, the learned Counsel, waives service on behalf of contesting respondent nos. 1, 2, 5, 6, 8 and 9. Heard finally by consent of parties.

4. This appeal has to be partly allowed on a short count. The petitioner had raised an objection to the listing of item no. 22, by way of additional list. The objection was raised on two counts. First, that the property, which is situated at Mumbai, cannot be listed. The second objection was based on Section 7(15)(d) of the Maharashtra Rent Control Act, 1999. The material contention was that a person, who was not residing with the tenant, at the time when the death of the original tenant occurred, cannot be a tenant. The impugned order shows

that the first objection is considered by the Inventory Court and the second objection is not at all considered.

5. Mr. Rodrigues, the learned Counsel for the appellant, in all fairness, submits that the appellant will not press for the first objection about the listing of the property situated at Mumbai. The contention is that the learned Trial Court is required to consider the second objection.

6. For this limited purpose, I find that the matter has to be sent back to the learned Trial Court for deciding the same afresh, on its own merits and in accordance with law. In such circumstances, the following order is passed:

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The learned Trial Court shall consider the objection, as raised by the appellant, on the basis of Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 and shall decide the same on its own merits and in accordance with law, within a period of eight weeks from the receipt hereof.
- (iv) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.