

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 2 OF 2019

**JANAKI NARAYAN HARMALKAR @ AVADU
BABAI HARMALKAR (DEC) THR. HER
LRS., .**

.... Applicant

Versus

PETER PAUL D'SOUZA AND 15 ORS.,

..... Respondents

Adv. Amey Kakodkar for the Applicants.

Adv. Vivek Angelo Rodrigues with Adv. Bernard Fernandes for Respondent nos.1 & 2.

Coram:- C. V. BHADANG, J.

Date:- 16th August, 2019.

Oral Order:

The challenge in this revision application is to the order dated 27/7/2018 below Exhibits 103 and 110. These orders are passed by the learned trial court on two separate applications by two sets of defendants for rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure (C.P.C, for short) inter alia on the ground that the relief claimed in prayer clause (3) of the plaint is barred under section 58 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short).

2. The suit is filed by the respondent nos.1 and 2 seeking the following reliefs :

1. It is therefore prayed that this Hon'ble Court be pleased to declare that (1) plaintiffs have acquired right, title, interest and share of said late Antonio Fialho and they are the co-owners of the suit properties along with the defendant nos.1, 2, 2a, 3 3a, 4 and 4a.

(2) The name of defendant no.6 Comunidade of Arpora has been wrongly recorded in the Occupant's column of suit property 69/0 and the same is liable to be deleted;

(3) The name of said Janaki Narayan Harmalkar alias Avadu Babi Harmalkar is also wrongly recorded in the tenant's column in Form No.I and XIV of suit property 69/0 and that said Janki Narayna Harmalakar alias Avadu Babai Harmalkar is not the tenant of the suit property 69/0 and the same is liable to be deleted.

3 a) declare that defendant no.5 is not the owner of the suit propriety 68/0 and 69/0 and that the name of defendant no.5 St. Joseph High School has been wrongly recorded a owner in the Occupant's column of suit property 68/0 and the same is liable to be deleted.

4) That by judgment and decree an order of permanent injunction restraining the defendants, their family members, relatives, agents, servants, labourers and or any person/s claiming through them and further alienating, selling, transferring the suit proprieties or from cutting any trees or from constructing any structure or developing the

suit properties in any manner.”

3. It is not disputed that except prayer clause (3) the other prayers cannot be granted by the Mamlatdar under the said Act. It is a settled position that the plaint cannot be rejected in part. Mr. Kakodkar, the learned counsel for the petitioner in all fairness did not dispute that the other prayers except the prayer clause (3) cannot be entertained by the Mamlatdar. The trial court in para 13 of the impugned order has observed that if at all the issue of tenancy is framed, it will have to be referred to the authority having jurisdiction to decide the issue. The finding so recorded does not suffer from any infirmity. Thus the ultimate order rejecting the plaint does not call for any interference. The Revision application is without any merit and is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-