

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 945 OF 2018

LAXMI SUKA GAD DESSAI, REP. THR.
HER CONST. ATTORNEY, DIPIKA
DESSAI.,

... Petitioner

Versus

SATANO COSTA (DEC) BY HIS LRS. AND
ANR.,

... Respondents

Mr. Rama Gajanan Rivankar, Advocate for the Petitioner.
Mr. Shivan Desai, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 28th August, 2019

ORAL ORDER

Heard the learned Counsel for the parties.

2. The challenge in this petition is to the concurrent findings of three Courts below, refusing to grant a declaration of tenancy under Section 7 of the Goa Agricultural Tenancy Act, 1964, (Act, for short), in favour of the petitioner.

3. The case made out by the petitioner is that, land survey no.1/11, which is a cashew and coconut garden and which is part of a larger property known as "Fondiem" of Village Quitol, Fatorpa, was cultivated by her grandfather Kusta and after his

death by her father Shiva alias Gurguro Desai and thereafter her mother Smt. Manorati. It was claimed that she is a tenant in respect of the said property. Admittedly, there is neither any lease agreement nor rent receipts in favour of the petitioner showing her alleged tenancy. The Revenue record also does not show the name of the applicant or her ancestors as the tenants of the suit property.

4. Before the Mamlatdar, the applicant examined herself along with Laxmi Naik Desai, Raghoba Sawant Desai and Kashinath Ram Sawant. The Mamlatdar after appreciating the oral evidence, has come to the conclusion that the applicant has failed to prove the tenancy or the plantation of the trees by the applicant or her ancestors.

5. I have heard Mr. Rivankar, the learned Counsel for the petitioner and Mr. Desai, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. The only contention raised on behalf of the petitioner is that the existence of a lease deed or a rent receipt is not sine qua non for a claim of tenancy to be accepted. In this context, reliance is placed on the decision of this Court in the case of BABU HARI

PATIL VS. RAMA ANANDA JADHAV, 2005 (1) MhLJ 1063.

It is contended that there is clear oral evidence to establish tenancy of the applicant which has not been properly considered by the Courts below.

7. Mr. Desai, the learned Counsel for the respondents, has taken me through the relevant observations of the Mamlatdar as well as the Deputy Collector and the Revisional Court to show that the Courts below have considered the oral evidence and after proper appreciation of the same, have recorded finding of fact that the petitioner has failed to establish her claim of tenancy which finding is not amenable to interference. The learned Counsel pointed out that the respondents have led evidence to show that an adjacent property which was bearing survey no.1/9 was also known as "Fondiem" and therefore nothing turns on the basis of the local name of the property. The learned Counsel has taken me through para 24 of the judgment of the Mamlatdar in order to demonstrate that the evidence of the applicant on the point of payment of rent has rightly been found to be discrepant.

8. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. It is true that there is no

requirement of there being a lease deed provided to accept the claim of tenancy, there is acceptable evidence of tenancy produced by the person claiming such tenancy. In the present case, even the survey record does not show the name of the applicant or her ancestors as tenants of the suit property. The oral evidence led, to my mind, is rightly found to be not satisfactory and even discrepant on the point of the rent. While according to the applicant she paid rent of Rs.500/- and one kolso cashew fenny and one kolso urraq per year to her landlady Santan Costa through her representative Cleta Costa and prior to that the rent was paid to her husband Ruzar Costa. She claimed that she paid five pailees of rice and 20 kg of cashew seeds. On the contrary, the evidence of the witness nos.2 and 3 is that the landlady came to the property twice in a year to collect rent and the applicant gave some fruits and paddy as rent.

9. A careful perusal of the judgment and order passed by the Mamlatdar and that of the Deputy Collector shows that the Courts below, after threadbare consideration of the oral evidence, have found that the applicants have failed to establish any tenancy in respect of the suit field i.e. survey no.1/11 of Village Quitol, Fatorpa. The revisional Court in its limited jurisdiction has rightly refused to interfere with the concurrent findings of two Courts below.

10. Thus, no case for interference is made out. The petition is without merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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