

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.78 OF 2018

1. Smt. Mathura Pandarinath Naik,
(Dec.) through LR.

.... Petitioners.

V/s.

Shri Dinnanath Eswant Shirodkar
(Dec.) through LR.

.... Respondents.

Shri Jagannath Jayant Mulgaonkar, the learned Counsel for the petitioner.

Shri. Abhay Nachinolkar, the learned Counsel for the respondents no.1, 2, 3, 4, 5 and 6.

Coram: DAMA SESHADRI NAIDU, J.

Date: 5th December 2019.

P.C.:

The original petitioner claimed to be a tenant under the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (“the Agricultural Tenancy Act”). When he faced a challenge to his right in a suit before the Civil Court, he raised an objection about his status. Then the Civil Court referred the issue to Mamlatdar. From there, through other adjudicatory echelons, the matter has finally reached this Court. In fact, pending those proceedings, the original petitioner died, and his legal heirs were brought on record. Then, of those legal heirs, his wife too died. Then, his children remained on record. Those children are the petitioners in this writ petition.

2. Indisputably, the land in question belonged to one Francisco

Filomena de Figueiredo, who sold it to the respondents in September 1971. Contending that the petitioners had been interfering with their possession, the purchasers, that is the respondents¹, filed Civil Suit No. 20 of 1972 before the Civil Judge, Junior Division, at Ponda. In that suit, the petitioners, as the defendants, raised an objection: that they are tenants under the Agricultural Tenancy Act, and that they have been in possession of the property. Therefore, the Civil Court referred the matter to Mamlatdar under Section 4 (1) of Agricultural Tenancy Act.

3. Before the Mamlatdar, the petitioners have also filed an application setting out how they have come into possession of the property and how they continue to be the tenants under the Agricultural Tenancy Act. After recording the oral and documentary evidence, and after appreciating the issues, the Mamlatdar rejected the petitioners' contentions. That is, they were held to be not a lawful tenant.

4. Aggrieved, the petitioners filed a statutory appeal before the District Court, North Goa, at Ponda. The Appellate Court, too, returned the same findings. Further aggrieved, the petitioners have filed this Writ Petition, invoking Section 227 of the Constitution of India.

Submissions:

Petitioner:

5. Shri Jagannath Jayant Mulgaonkar, the learned counsel for the petitioners, has submitted that initially the property had three tenants,

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It all began in 1972; by then, on both sides, the original claimants were alive. By the time the matter reached this Court, both the original claimants have died. Now, their legal representatives alone remain. Instead of tracing the chronology when the original parties died and at what stage, I narrate the events as if the LR's were parties throughout.

one of whom was one Babal Dhaku Naik. He was the petitioners' "ancestor". According to Shri Mulgaonkar, after Babal Naik, the petitioners have continued to be the tenants paying the rent, though the original landlord never issued any receipt. But the original landlord, according to him, never troubled the petitioners.

6. Shri Mulgaonkar further submits that the respondents, after purchasing the property, have laid a false claim as if they were in possession and sought a bare injunction against the petitioners. To elaborate his contentions, Shri Mulgaonkar has taken me to Section 2 of the Agricultural Tenancy Act, for that provision defines a 'tenant,' and also Section 4 of the same Act, which defines a 'deemed tenant.'

7. In the end, Shri Mulgaonkar has emphatically argued that both the courts have concurrently found that the petitioners have been in possession of the property. Once the possession is found in the petitioners' favour, he further stresses, the inevitable conclusion ought to have been that they are tenants and that their possession stands protected under the Agricultural Tenancy Act.

Respondent:

8. On the contrary, Shri Abhay Nachinolkar, the learned counsel for the respondents, has submitted that both the courts have concurrently held that the petitioners have miserably failed to prove their case. According to him, once the petitioners have taken the plea of tenancy, the burden squarely lay on them to prove that their possession is lawful and has created a tenancy in statutory terms.

9. Shri Nachinolkar has also argued that the respondents, to begin with, filed the suit for bare injunction because they have been in possession of the property. Only when the petitioners tried to trespass upon the property, did the respondents resist that attempt and then went to the Court. Finally, referring to the scope of Article 227 of the Constitution of India, Shri Nachinolkar submits that both the Courts adjudicated the case on facts, and that adjudication requires no interference.

10. Heard Shri Jagannath Jayant Mulgaonkar, the learned counsel for the petitioner; and Shri Abhay Nachinolkar, the learned Counsel for the respondent Nos.1 to 6.

Discussion:

11. Indeed, the petitioners claim to be tenants. They trace their right through one Babal Dhakul Naik, whose name was found recorded in the Index of Record of Rights prepared by the Government during promulgation. Therefore, to the extent of Babal Dhakul Naik being the tenant at some point of time, there could be no dispute. That said, the petitioners claim that Babal Naik is their ancestor. When queried about the real import of the expression ‘ancestor,’ the petitioners’ counsel has submitted that the petitioners claim through him, so he is the ancestor. About either consanguinity or kinship, he has fairly informed the Court that the record does not clearly reveal how the petitioners trace their ancestry—that is, how they claim their right through Babal Naik.

12. I reckon once the petitioners have claimed Babal Naik as

their ancestor, they should have placed on record some material about that. In the absence of any such material, the courts are compelled to conclude that the petitioners are strangers to Babal Naik.

13. As the respondent has filed the suit for a mere injunction, we need to examine two issues:

- (a) Have the petitioners been in possession of the property?
- (b) If so, has their possession been lawful to make them deemed tenants under Section 4 of the Act.

14. The Mamlatdar, that is the Primary Authority, in his Judgment, dated 14th January 2013, has recorded as follows:

15. The witnesses examined by the applicants have given evidence as far as the various trees existing in the suit property and the possession of the suit property by the applicants. *However, mere possession is not sufficient for declaring a person as tenant of any property. The possession has to be lawful* and in pursuance of a lease agreement between the landlords and the person through whom tenancy is claimed and has to be accompanied by the requirement of payment of rent.

(italics supplied)

16. I gather from the above extract that the primary authority has recognized the petitioner's possession but concluded that the possession is not lawful. Now, we may turn to the Appellate Authority's Judgment, dated 21st August 2017. It has reiterated the Mamlatdar's finding that the petitioner may have been in possession of the property, but that possession cannot be termed lawful.

17. True, the petitioners have maintained that their predecessor,

Pandharinath Naik, who was the original applicant, was in possession of the property, and that possession continued at the time of Liberation, too. I see no evidence on record to that effect. But the Primary Authority, as the above extract demonstrates, did acknowledge the petitioners' possession but held that it was not lawful.

18. The petitioners' counsel, in fact, has tried his best to impress upon the Court that once the possession has been shown with the petitioners, it shall be presumed that they are the tenants or deemed tenants. To appreciate this contention, we should examine the statutory scheme. Section 2 (23) of the Agricultural Tenancy Act defines 'tenant':

Tenant means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is or was deemed to be a tenant under this Act.

19. Now, we may turn to Section 4, which defines the expression 'deemed tenant.' For, in the absence of any documentary proof, such as an Agreement of Lease, the petitioner could only claim, if ever, deemed tenancy. Therefore, that provision needs scrutiny. To the extent relevant, the provision reads:

“4. Persons deemed to be tenants: A person lawfully cultivating any land belonging to another person (hereinafter in this Section referred to as the owner) on or after the 1st of July, 1962 but before the commencement of this Act, shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not -

(i) a member of the owner's family or

(ii) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or of any members of the

owner's family, or

(iii) a mortgagee in possession:

Provided that if upon an application made by the landlord within one year from the commencement of this Act to the Mamlatdar within whose jurisdiction the land is situated: -

(a) the Mamlatdar declares that such person is not a tenant and his decision is not reversed on appeal or revision, or

(b) the Mamlatdar refuses to make such declaration but his decision is reversed on appeal or revision, such person shall not be deemed to be a tenant under this Section:

...”

20. To my mind, Section 4 presents two crucial aspects: (a) the cultivation must have been lawful; (b) that cultivation must have commenced before 1st of July 1962. Had the petitioners been Babal Dhakul Naik’s descendants, successors, or legal heirs, the requirement of their lawfully cultivating the land before 1st July 1962 would have been fulfilled because, in the case of succession, the doctrine of tacking applies. In other words, “if privity exists between the parties, such that one possessor gives possession of the land to the next, the time periods that the successive occupants have had possession of the property may be added or tacked together to meet the continuity requirement.” But as I have already observed, there is no material to that effect.

21. The petitioners’ counsel has persisted with the plea that the petitioners have been in possession of the property. About the legality of that possession, though, the petitioners have led no evidence. That apart, as contended by the respondents’ counsel, the scope of the Writ Petition is extremely limited; while exercising its supervisory

jurisdiction under Article 227 of the Constitution of India, this Court by no stretch can be called upon to adjudicate a disputed question fact.

22. Granted, the quasi-judicial authorities have held that the petitioners are neither tenants, nor have been in lawful possession. That finding rendered, it is for the Civil Court, before which the suit is pending, to decide on the petitioners alleged settled, albeit illegal, possession and its impact on the respondents' claim for a perpetual injunction.

23. This Court only declares that the findings rendered by the Primary Authority and the Appellate Authority require no interference.

I, therefore, dismiss the Writ Petition. No order as to costs.

DAMA SESHADRI NAIDU, J.

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