

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.647 OF 2019**

Shri Premanand Naik,
adopted son of late Putu Naik,
65 years old, Indian National,
married, r/o. H.No.623,
Thorlem Bhatt, Dongri,
Neura Goa.

.... Petitioner

Versus

Fabrica De Mandur Church,
by its attorney Shri Joaquim
Dias Mandur Church,
Mandur Goa.

.... Respondent

Shri S.G. Desai, Senior Advocate with Ms. S. Shelke, Advocate for the
Petitioner.

Shri Joseph Vaz, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 4th AUGUST 2020

JUDGMENT :**Introduction:**

A charitable society—a Church—owns some property, a cashew grove. One person was believed to be a tenant; after him, his wife continued

to be so. But the Church contends that they were buying the produce and nothing more. They died childless. The petitioner claims to be their adopted son; he set up the tenancy on himself, both as their successor and on his own right. The Primary Authority believed his claim and allowed his application. But the Appellate Authority and the Revisional Authority disbelieved. They reversed the Primary Authority's findings. So this Writ Petition.

2. Has the petitioner established any grounds for this Court to interfere under Article 227 of the Constitution with, what seems to be, concurrent findings of facts?

Facts:

3. Petitioner Premanand Naik claims to be a tenant; the respondent is a charitable society—a church. The Church owns 61,550 sq. meters of cashew grove in Dongri Village. As a matter of history, the state of Goa was under Portuguese rule until 1961, when it was liberated. According to Premanand, in 1955, before liberation, his adoptive father Putu Bozo Naik leased the cashew grove from the Church. As Bozo Naik was without children, he adopted Premanand, his cousin's son, in July 1959.

Two New Pleas:

(a) A Rent Receipt:

4. When Bozo was continuing as a tenant, the state of Goa was liberated and had its agrarian reforms. Of those reforms, one of the earliest enactments was the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (“the Act”). That legislation covers cashew groves as well. As a tenant, Bozo was said to have been paying the rent to the Church regularly. In fact, Premanand filed on record a copy of the receipt that showed the rent

payment from 1963 to 1965. This receipt was produced for the first time before this Court, now, along with the rejoinder.

(b) Auction and Compromise:

5. Premanand also pleads that in August 1965, the Church refused to continue Bozo's tenancy; instead, in October 1965, it auctioned the tenancy rights. In response Bozo complained to the Mamlatdar. And that resulted in a compromise. So the auction was not given effect to. Nevertheless, the Church resists both the rent receipt for three years and the plea of compromise. They were introduced through the rejoinder—for the first time.

Back to Facts:

6. If we resume the facts, Bozo is said to have had his lease renewed in February 1967 and in January 1976. The Church is also said to have received the rent and issued the receipts for these extended periods. Later, on 12 January 1976, soon after the second renewal of the lease, Bozo Naik died.

7. After Bozo Naik's death, his wife Janki continued to be the tenant. She too had the lease renewed in July 1976. A few rent receipts allegedly issued by the Church to Janki are on record. But the Church denies them. According to the Church, both Bozo Naik and his wife, during their lifetime, were only harvesting the produce and paying the sale price for that.

8. The final renewal of the lease in Janki's favour was said to be in December 1981. She died in August 1984. Premanand Naik, as the adopted son, is said to have continued the tenancy. But, to deny him the leasehold rights, the Church forced him to enter into a contract "for the sale of crop",

as if he were only purchasing the produce. The record reveals that Premanand and the Church had similar agreements on a couple more occasions. Correspondingly, the Church also issued receipts to Premanand whenever he paid the money for the produce.

(c) Procedural History:

9. As Premanand pleads, in 1993 the Church demanded from Premanand ₹15,000 as the price for the sale of crop. Treating this as the Church's attempt to deny his rights of tenancy, on 7 December 1993 Premanand filed Tenancy Application No.49 of 1993 before the Mamlatdar. Besides seeking a declaration of tenancy, Premanand also sought an *ex parte* temporary injunction. On the very same day, it was granted. Later, on the merits, Mamlatdar confirmed the *ad interim injunction*. Aggrieved, the Church appealed to the Deputy Collector, the appellate authority, against the *ad interim* injunction on the merits. But in April 1996, the Deputy Collector dismissed the Church's appeal.

10. Further aggrieved, the Church went to the revisional authority: the Administrative Tribunal. Through its order, dated 17 January 2000, the Administrative Tribunal not only vacated the injunction but also held that Mamlatdar had no jurisdiction to decide the dispute Premanand raised. This time, Premanand filed WP No. 44 of 2000. Besides protecting Premanand's possession, this Court held that Mamlatdar had jurisdiction. Through judgment, dated 3 April 2000, this Court remanded the matter to the Tribunal, so it could decide on the injunctive relief Mamlatdar granted to Premanand. Then, in August 2003, the Tribunal vacated the injunction.

11. When Premanand filed WP No. 481 of 2003, this Court again restored the interim protection of possession in Premanand's favour and required the Mamlatdar to undertake the trial.

12. The trial did take place. Premanand examined three witnesses, including himself; whereas the Church, too, examined three witnesses. Through judgment, dated 29 June 2005, Mamlatdar declared Premanand as the tenant and granted a permanent injunction as well. Then, the Church appealed to the Deputy Collector, who, through judgment dated 17 February 2006, reversed the Mamlatdar's findings. That is, the appeal was allowed. Eventually, Premanand filed a revision before the Administrative Tribunal: Tenancy Revision No. 14 of 2006. Initially, the Tribunal provided interim protection to Premanand.

13. Pending the revision, there arose a dispute about an exercise license claimed and secured by both Premanand and the Church. It was for extracting cashew juice. Though both parties have dwelled on it at length, I reckon that was a *lis pendens* development, and that does not affect the merits of the matter. In this Writ Petition, the crux of the contention is whether Premanand is a tenant. So, I have informed the respective counsel this issue assumes no adjudicatory importance.

14. Finally, through the impugned judgment, dated 20 March 2019, the Administrative Tribunal dismissed Premanand's revision. Thus, Premanand suffered concurrent findings both in the appeal and in the revision. Therefore, he is before this Court, in this writ petition, under article 227 of the Constitution of India.

Arguments:

15. Shri Surendra Desai, the learned Senior Counsel for the petitioner, has submitted that neither the Appellate Court nor the Revisional Court has discharged its adjudicatory functions properly. According to him, both have failed to appreciate the evidence correctly. The Appellate Court ought not to have, he contends, reversed the findings of fact on the grounds not considered by the primary authority. As to the facts, Shri Desai argues that that the alteration in the petitioner's adoptive mother's name assumes no importance, nor does it affect the merits of the case.

16. Shri Desai stresses that Premanand has established his tenancy both as a successor to the previous tenant and also independently in his own right. Therefore, his failure to produce the succession certificate or securing a declaration from a civil court about his status as the adopted son does not affect the case. The learned Senior Counsel also submits that the lease deeds and the rent receipts speak volumes about Premanand's claim as a tenant.

17. Shri Desai has drawn my attention to the rent receipts to contend that the Church should not have been allowed to disown those receipts merely on the premise it had been in the practice of issuing only the printed ones. As to the agreements Premanand entered into with the Church to purchase the cashew produce, Shri Desai strenuously contends that though Premanand has been a tenant, the Church has forced him to sign those arguments. According to him, to save his tenancy and not to pick up a fight with the landlord, Premanand was constrained to enter into those arguments.

18. In the end, Shri Desai submits that the Mamlatdar's judgment was impeccable and that ought not to have been reversed. So he wants this Court to restore it for the petitioner.

Respondent:

19. Shri Joseph Vaz has, to begin with, submitted that Nike suppressed many a fact. In this context, he has drawn my attention to para 14 of the writ pleadings and contended that Premanand has contradicted himself on being a tenant and on having a right to the excise licence. Then he has pointed out that Form I and Form XIV of the revenue records have left the column of 'tenant' blank; so, a statutory presumption must be drawn that Nike has never been a tenant, nor even his alleged ancestors. He has also drawn my attention to the Notification, dt. 28 September 1995, which according to him, exempts the Church property from agricultural tenancy regulations.

20. Shri Vaz has contended that the deed of adoption, the deeds of lease renewal, and the rent receipts have all been fabricated. According to him, the Church, as an institution, has always issued printed receipts, never handwritten ones. He has also pointed out that one alleged lease renewal, purportedly signed by Bozo Naik, was after his death. In the same vein, Shri Vaz has submitted that 11 years after Janki's death, her name was corrected in Premanand's birth register. In this context, he submits that in the cross-examination, Premanand denied having ever applied for the correction. He, instead, tried to explain it away by saying that the registration authorities did that on their own. Shri Vaz stresses that throughout Premanand has indulged in fabrication and manipulation of records to establish a non-existing right of tenancy.

21. Thus, Shri Vaz has urged this Court not to interfere with the concurrent findings of facts but to dismiss the writ petition.

22. Heard Shri Surendra Desai, the learned Senior Counsel for the petitioner; and Shri Joseph Vaz, the learned counsel for the respondent.

Discussion:

23. This matter has had its adjudication at three stages: the first two courts are the Tribunals, having powers to adjudicate both on facts and on the law. And the last of the three courts is a Revisional Court. The first court returned a verdict in Premanand's favour. The second and final court of fact reversed it. Then, the Revisional Court has endorsed the Appellate Court's verdict. It has found no grounds to exercise its revisional jurisdiction. Now, the unsatisfied suitor has come before this Court, invoking Article 227 of the Constitution of India—the High Court's supervisory jurisdiction. Under these circumstances, it is too well established to be restated as to how this Court ought to exercise its supervisory jurisdiction, more particularly, when the determination, concurrently at that, was on facts.

24. But under the panoply of precedents by Constitutional Courts sitting in panels, the dissatisfied suitor always asserts at any stage of the proceedings—even in a revision against a revision or thereafter—that the court of any hierarchy has not applied its mind: the adjudication was mechanical or ritualistic. To obviate such an assertion from the petitioner, let me set out what weighed with the courts below and whether this Court should interfere on any jurisdictional issue.

25. According to Section 2(6), “to cultivate” is to “till or husband land” for raising or improving agricultural produce, or to carry on any

agricultural operations on the land. To cultivate “personally” means to cultivate land on one’s own account. It can be (i) by one’s own labour, or (ii) by the labour of any member of one’s family, or (iii) under the personal supervision of oneself or any member of one’s family. The actual cultivation may be by hired labour or by servants on wages. A lease is, as defined under Section 2(13), a transfer of a right to enjoy land; it can be oral or written and can be for a period specified or unspecified. It must be for rent, though. A “legal representative”, according to Section 2(14) is a person who represents the estate of a deceased person.

26. A “tenant”, as per Section 2(23), is 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. Tiller’s day, as explained in Section 2(23A), is the date of introduction of the Goa, Daman and Diu Agricultural Tenancy (Fifth Amendment) Bill, 1976, in the Legislative Assembly:’ 20 April 1976. As Section 18A mandates, on the tillers’ day, every tenant shall, subject to the other provisions of this Act, be deemed to have purchased from his landlord the land held by him as a tenant, and such land shall vest in him free from all encumbrances subsisting on the said day. Based on this deemed purchase, the tenant-purchaser shall pay the former landlord the purchase price, besides paying to the Government the dues, if any, from the tillers’ day.

27. Section 18C of the Act prescribes the procedure the Mamlatdar should adopt, among other things, for determining the land price to be paid by tenants.

28. Section 4 of the Act elaborates on who the deemed tenants are. According to it, a person lawfully cultivating any land belonging to another person “on or after the 1st of July 1962 but before the commencement of this Act,” shall be deemed to be a tenant. That person should not be—(i) a member of the owner’s family, or (ii) a servant on wages and so on, or (iii) a mortgagee in possession. We are not concerned with the rest of the provision, though.

29. Section 5 of the Act deals with the rights of the persons holding the land on the date of liberation. According to this provision, a person who lawfully cultivated as a tenant or sub-tenant the owner’s land “on or after 19th of December 1961 but before 1st July 1962” shall be treated as a tenant. For our purpose, the other conditions of this provision assume no importance.

30. If a question arises whether any person is or was a tenant or a deemed to be a tenant under this Act, after holding an inquiry the Mamlatdar shall decide that question. So mandates Section 7 of the Act. In that inquiry, any statement as to the tenancy found in the record of rights prepared in the prescribed manner under this Act shall be presumed to be true. Section 8 bars the owner from terminating the lease or evicting the tenant without following the due process. Section 8A of the Act, in fact, empowers the Mamlatdar to provide injunctive relief to the tenant against “threatened wrongful dispossession”. Section 14, on the other hand, declares the tenancy rights to be heritable. Finally, we may refer to Section 29 of the Act. According to this provision, the rights and privileges of any tenant shall not be limited or abridged except as mandated in this Act.

How have the Courts below Decided?

31. In the above statutory backdrop, let us how the courts below have decided the dispute.

32. The learned Mamlatdar has focused on these two issues: (1) Has Premanand proved his possession and enjoyment of the property as a tenant? (2) Has he acquired or inherited the right of tenancy from his adoptive parents?

What are the Documents Premanand has produced before the Mamlatdar?

33. As seen from the judgment, before the Mamlatdar, Premanand produced (a) the deed of adoption, dated 2 July 1959; (b) the “lease agreement/renewal agreement”, dated 5 February 1967; (c) death certificates of Bozo Naik and Janki Naik; (d) Sale of Crop agreement, dated 23 December 1984; (e) agreement, dated 10 March 1991; (f) excise licence; (g) handwritten receipts (colly); (h) eight printed receipts; and (i) application, dated 24 June 1992.

34. As rightly contended by the Church, Premanand did not produce before the Mamlatdar the documents now he brought on record along with the rejoinder. Therefore, they ought not to be looked into.

(a) Mamlatdar's findings:

(1) Mamlatdar has believed both the lease agreements: the first one from 1967 to 1970 and the second one from 1976 to 1978.

(2) It believed all the rent receipts—handwritten and printed.

(3) Premanand's birth certificate and the adoption deed with corrections, too, were accepted.

(4) In the birth certificate, Premanand 's mother's name was initially recorded as Indri Naik, but later it was changed as Janki Naik. As to this change, the Mamlatdar puts the onus on the Church and concludes that it has failed to prove that they are different persons.

(5) Bozo Nayak had been holding the property before the Tillers' day; therefore, he became a deemed purchaser of the property.

(b) The Appellate Authority's Judgment:

1) Premanand's name was not recorded in Form I & Form XIV of the revenue records.

2) Premanand's documents contain corrections, but no explanation is supplied.

3) The name of Premanand's mother was corrected in his birth certificate 11 years after her death; it was to claim the property under the Tenancy Act fraudulently.

4) The authenticity of the handwritten rent receipts is doubtful.

5) The deeds executed in 1984, 1987, and 1991 reveal there was only a sale of the crop—no lease.

6) Premanand had been working elsewhere until 2003.

7) Mamlatdar can only decide tenancy disputes but not those of adoption, succession and so on; that is in Civil Court's remit.

8) Under Section 56 of the Act, Church properties stand exempted from the purview of Tenancy Act.

(c) The Revisional Court's Judgment:

35. This judgment, I must note, runs into 37 pages. The merits apart, the judgment has dealt with the issues elaborately. So, at the outset, we

cannot say that the revisional judgment is cursory or suffers from non-application of mind. It has, to its credit, considered a profusion of precedents as well.

The Findings:

- 1) Only in evidence for the first time did Premanand depose that Janki and Indri were the same.
- 2) he admitted in evidence he was in service until 2003.
- 3) Premanand entered into "Deeds of Sale of Crop", but never asserted himself to be a tenant.
- 4) Though he deposed in evidence that he signed those deeds under duress, he nevertheless admitted that before his signing those deeds, he had obtained a legal opinion.
- 5) The lease deed, dated 5 February 1967, was not signed by Bozo Naik; besides it contained many corrections, which had not been authenticated.
- 6) The change of the mother's name in the birth certificate could not be justified.

In Perspective:

(a) Deemed Purchase:

36. Bozo Naik died on 12 January 1976; his wife Janki Naik died on 3 August 1984. If we consider the tillers' day, it was 20 April 1976. So the tillers' day came when Janki Naik was alive. After the death of Bozo Naik and Janki Naik, their alleged adoptive son, Premanand, claims to have personally cultivated the property. Though Premanand has set out the statutory scheme in the pleadings, he has never claimed that his adoptive mother, much less himself, became the deemed purchaser from the tillers' day. Nor is there any record to show that the proceedings under Section

18-A to 18-I of the Act have been followed. But strangely Mamlatdar confers on Premanand the right he had never pleaded for: a deemed purchaser.

(b) Section 56 and the Notification, dt. 28 September 1995.

37. Section 56 speaks of exemption. That is, this Act will not apply to lands granted to any individual specifically for rendering any service to any religious, educational or charitable institution. Here, the lease, if it were, has not been burdened with any service. That said, the Government may exempt any land belonging to “a temple, church, mosque or any other institution for public religious worship or of a trust for educational or charitable purpose, or hospital, pinjrapole or goshala”. This exemption is, however, conditional; the entire income of such land must be used for “such temple, church, mosque” and so on. So comes the Government Notification, dt. 28 September 1995.

38. The Government of Goa did exempt religious institutions’ properties from this purview of this Act. But there should not have been any “tenancy rights” existing. This notification begs the question. By 1995, if no tenancy existed regarding a religious institution’s land, then the Agricultural Tenancy Act does not apply. Here, however, the whole issue is, has there been any tenancy at any time—before 1995? Premanand sets up tenancy beginning from the 1950s—the preliberation period. So neither Section 56 nor the Notification helps us.

(c) Birth Certificate and Name-Correction:

39. Premanand was born on 12 June 1953 to Saraswati Anant Naik and Anant Laxman Naik. They are said to be Bozo Naik’s relatives. Premanand says his maiden name was Ramdas. The adoption was said to

be on 2 July 1959. In the writ pleadings, Premanand asserts that he "got changed the name of Janki as Indri on 10 November 1995 by obtaining necessary endorsement Of the Civil Registrar." But in the evidence, he deposed that he had never applied for the correction; it was the Civil Registrar himself that effected the change.

40. First , Premanand's birth certificate must have reflected the names of his biological parents: Sarswati Anant Naik and Anant Laxman Naik. He was said to have been adopted when he was six years old. By any reckoning, there must have been no occasion for the registering authorities to record in the birth certificate the adoptive parents' names. At the time of the birth, such recording was impossible, and after the adoption it was impermissible. The Registration of Births and Deaths Act, in fact, contains no reference to any adoption. At any rate, the birth certificate is said to have reflected Premanand's mother's name as Indri—neither as Saraswati, the biological mother, nor as Janki, the adoptive mother. In this regard, Mamlatdar has wrongly cast the burden on the Church and held that it had failed to establish that Janki and Indri were different. The correction—whatever its efficacy—was eleven years after Janki's death, and about that correction, Premanand was evasive in his evidence.

(c) Written Document, Parole Evidence, and Estoppel:

41. When Janki Naik died, Premanad claims to have continued the tenancy. First, no revenue record—including Form I and Form XIV—reflected the tenants' name. Second, Premanand, on more than one occasion executed "Deed of Sale of Crop" with the Church authorities. It happened in December 1984, in December 1987, and in March 1992. He secured

receipts also from the Church, and they reflect the fact that Premanand purchased the produce from the Church.

42. True, Premanand asserts that the Church designed this device, that is the deed of sale of crop, only to defeat his leasehold rights. It began in 1984 and continued until 1993, when he applied to the Mamlatdar. For over a decade he did not question the deeds of crop sale. In his own words, when the Church demanded more money as ‘rent’, he complained to the Mamlatdar under Section 7 of the Act. Premanand cannot blow hot and cold. He ought to account for his conduct. He cannot derive for a decade a benefit under one device and, then, disown it—only to choose a more advantageous method.

43. First, Section 91 of the Evidence Act proscribes extraneous evidence except for the document itself if the terms of a contract, grant or other disposition have been reduced to the form of a document.

44. Quoting from *Starkie on Evidence* with approval, the Supreme Court has emphatically enunciated law on this point. In *Roop Kumar v. Mohan Thedani*, (2003) 6 SCC 595, the Court has held that “it is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy.

45. According to *Roop Kumar*, “it is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parole evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights

depended, were liable to be impeached by loose collateral evidence.” I am afraid I could not more felicitously express the dictum than respectfully quote it.

46. Besides, Premanand has merely sought a declaration from the Mamlatdar on his status as a tenant. The deeds of sale of crop remain unchallenged before any competent forum. Those documents do bind Premanad and, in fact, estop him from contending otherwise.

(d) Personal Cultivation:

47. As we have already set out, Section 2(7) defines what is “to cultivate personally” mean. It may be cultivation on one’s own account — (i) by one’s own labour, or (ii) by the labour of any member of one’s family, or (iii) under the personal supervision of oneself or any member of one’s family, by hired labour or by servants on wages payable in cash or kind but not in crop share. That said, Premanand was an employee until 2003. There must have been no occasion for him to cultivate the land personally, but he pleads that he did cultivate the land "personally". Again, it is a question of fact that went against Premanand before the Courts below, concurrently at that.

(e) Documents and their Authenticity:

48. Indeed, Bozo Naik is said to have signed an agreement on 20 July 1976. In fact, that document was filed on record. But admittedly, he died on 12 January 1976. Premanand explains nothing about this anachronism. Judicial proceedings are sacrosanct; however eager a suitor may be to have his contentions sustained before a court of law, he should not resort to fraudulent practices. Should this Court exercise its extraordinary power of

judicial review at the behest of such a person, even if he had merits in his favour? Here, of course, he has none.

49. Given the practices Premanand adopted, no wonder the Appellate Court and the Revisional Court have disbelieved the rent receipts. That said, whether Premanand is the adopted son of Bozo Naik and Janki is a question of fact. The Revisional Court, as well as the Appellate Court, which actually is the court that can rule on the facts, has held that Premanand's adoption is doubtful. The correction-ridden deed of adoption and the birth certificate with mangled nomenclature have provided the justification for those Courts to rule as they did.

Conclusion:

50. Viewed from any angle, I find no merit in the case. The Revisional Court has exercised its adjudicatory powers well within its bounds and rendered a reasoned order. Most findings, even by the Appellate Court, as affirmed by the Revisional Court, are on questions of fact that cantered on whether Premanand was or has been a tenant.

Result:

I, therefore, dismiss the writ petition with costs, as devoid of any merit.

DAMA SESHADRI NAIDU, J.

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