

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO.22 OF 2019
IN
WRIT PETITION NO.826 OF 2018

Waman Sadashiv Joshi & Ors.

... Applicants

Versus

Namdev Rajaram Gawde & Ors.

... Respondents

Shri P.S. Lotlikar, Advocate for the Applicants.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 24th February 2020

ORAL ORDER :

The first respondent in the review petition is the plaintiff in Regular Civil Suit No.37/2012 before the Civil Judge, Junior Division, Pernem. He has filed that suit for a declaration that certain MOUs are void. Later, the first respondent as the plaintiff has taken a plea of tenancy too. She wanted the Trial Court to frame an issue on tenancy. The Trial Court rejected her request. Aggrieved, the first respondent has filed Writ Petition No.826/2018. This Court through its judgment dated 23/08/2019, partly allowed the Writ Petition. The order, in fact, reads as follows:

- “(i) The petition is partly allowed.
- (ii) The impugned order dated 19.07.2018, below exhibit 81, is hereby set aside.
- (iii) The issue no.2 shall stand modified as under:
“Whether the plaintiffs prove that they are in

possession of the suit property as having inherited the tenancy rights from the grandfather of the plaintiff no.1?”

- (iv) The dismissal of the applications, exhibit 86 and 87, is hereby confirmed.
- (v) In the circumstances, there shall be no order as to costs.”

2. Now one of the defendants who was a respondent in the Writ Petition has come out with this review petition.

3. The learned counsel for the review petitioner has contended that the plea of tenancy could not be sustained. According to him, first, the alleged owners are not parties to the suit because the first respondent's application to bring them on record was rejected before the Trial Court. Second, according to him, the first respondent's father in an earlier round of litigation raised a plea of tenancy but withdrew it. Thus, the question of tenancy stood determined. Therefore, the learned counsel insists that the judgment under review suffers from errors apparent on the face of record.

4. Indeed, under Order XIV of CPC, to have an issue framed, a party to the proceedings must affirm a material fact and that must have been denied by the other party. Thus arises the issue. Here, the plaintiff has asserted tenancy and the respondents have traversed the plea—so they have joined the issue. The plea may be meritless if we go by the respondent's assertion but it will still remain a plea, and an issue comes out of that contested plea. In this context, I see no error apparent on the

face of the record in the order under review.

Therefore, the review petition stands dismissed. Indeed, a judgment suffering from an error on the merits cannot be termed an error apparent on the face of record, even otherwise.

DAMA SESHADRI NAIDU, J.

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