

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.1029 OF 2019**

Mary John Peter Fernandes

... Petitioner

Versus

John (Januario) Pedro Pereira &amp; Anr.

... Respondents

Shri Shivan Desai, Advocate for the Petitioner.

Shri V. Menezes and Shri A. Shirodkar, Advocates for the Respondents.

**Coram:- DAMA SESHADRI NAIDU, J.****Date:- 6<sup>th</sup> March 2020****ORAL ORDER:**

The petitioner claims to be a tenant. To have his right declared and to purchase the property of tenancy, he took out proceedings against the owner. And he succeeded. Later, he purchased the property through the process of law.

2. Eventually, the owner's daughter has applied to the Civil Court, highlighting that her father died in 1957 and the alleged tenant was aware of it. Despite that the tenant secured an order of declaration and sale as well against the dead person. In response, the petitioner seems to have filed a cursory reply, without specifically traversing that he had knowledge about the original owner's death. Then, the Civil Court, acting as the Mamlatdar, held that the proceedings were void. Aggrieved, the tenant filed an appeal before the District Court but could not succeed. In this process, over two years lapsed.

3. In the meanwhile, the owner's daughter passed away. Later, her children filed the Regular Civil Suit No.41/2019/A, in the Court of Civil Judge, Senior Division, at Mapusa. In that suit, they sought recovery of possession and mandatory injunction. It seems on the strength of the order the petitioner earlier acquired against the dead owner, he had

started constructing on the land. So the plaintiffs in RCS No.41/2019/A wanted a mandatory injunction: the petitioner should demolish the structures and hand over the vacant possession.

4. Now, the petitioner has filed this Writ Petition, ostensibly, against the dismissal of his appeal before the District Court. But he confines his relief to, what the learned counsel terms, a clarification that the earlier proceedings would not come in the petitioner's way if he wanted to reassert his right as a tenant. According to him, those earlier proceedings he had taken admittedly rendered themselves *void ab initio*.

5. In response to submissions made by the petitioner's counsel, the respondents' counsel has submitted that there are no bona fides in the petitioner's approach. First, he had been aware of the original owner's death. Second, at any rate, he never denied the allegation about his knowledge of the owner's death. Despite that, he pursued his appeal remedy before the Appellate Court. Even the Appellate Court dismissed the appeal two years ago, that was in 2017. Now, after a lapse of considerable time, the petitioner has come before this Court.

6. To elaborate, the respondents' counsel has submitted that if at all the petitioner has any right surviving, he does not require any judicial imprimatur from this Court.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

8. Under these circumstances, I may note that the proceedings the petitioner initiated were declared nullity. If any order becomes *void ab initio*, the legal fiction mandates that those proceedings never existed; they stand wiped off the record, for no rights flow out of them. That said, if at all the petitioner had persisted with his proceedings despite the true owner's death, it may expose him to certain legal consequences—say suppression or even fraud. But that does not affect his right, if any, to seek any declaration as to the property allegedly in his possession.

9. Therefore, as rightly contended by the respondents' counsel, if a person has a right to sue or to seek a particular relief, no Court need reaffirm that right to enable him to proceed legally. A court of law can neither confer on nor take away from a person a right to legal remedy. It is a matter of statute or common law. There is no need for a clarification or declaration either.

10. Thus, I hold that if at all the petitioner's right to sue and to seek relief survives, he may proceed with his right to legal remedies. This observation, I clarify, cannot be taken as this Court's judicial imprimatur on the petitioner's right to sue, if any.

The writ petition stands disposed of.

**DAMA SESHADRI NAIDU, J.**

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