

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 53 OF 2019

Mr. Suresh Tukaram Shirodkar & Anr. ... Applicants

Versus

Mrs. Leticia E Dos M. Siomes ... Respondent

Shri Virendra Parsekar, Advocate for the Applicants.

Shri C. Padgaonkar, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17th January, 2020

ORAL ORDER:

The applicants are the defendants in RCS No.88/2019/F before the Civil Judge Junior Division, Mapusa. The respondent in this Writ Petition is the plaintiff in that suit. After filing the written statement, the defendants have also applied under Order VII Rule 11, requiring the trial Court to reject the plaint. According to them, Section 58(B) of Goa, Daman & Diu Agricultural Tenancy Act bars the Civil Court's jurisdiction in the matters of agricultural tenancy. But, through its order dated 21/10/2019, the trial Court dismissed the defendants' application under Order VII Rule 11 CPC. That is, it has held the suit to be eminently maintainable. Aggrieved, the defendants have filed this Writ Petition.

2. Shri V. Parsekar, the learned counsel for the applicants, has submitted that the plaintiff has claimed to be the tenant of Comunidade of Nerul, but they have not added it as a party to the proceedings. Thus,

the suit suffers from the vice of not adding the necessary party. Besides, he has stressed that Section 58(B) read with Section 8(A) ousts the Civil Court's jurisdiction in the matters involving agricultural tenancy. Eventually, he has also stressed that the respondents as plaintiffs have grossly undervalued the suit. To support his contentions, Shri Parsekar has relied on *Pyarelal v. Shubhendra Pilania (minor) through natural guardian (father) Shri Pradeep Kumar Pilania*¹ and *Palmira Valadares v. Shri Inacio Mariano Dias*.²

3. On the contrary, Shri C. Padgaonkar, the learned counsel for the respondent, has submitted that under Order VII Rule 11 only the plaint averments should be looked into. Here, as the respondent has no grievance against her landlord, there was no occasion for her to array him as a party to the suit. Because the third parties have been trying to interfere with the respondent's possession and enjoyment of the property, the respondent filed the suit for mere injunction only against them. According to him, the Goa, Daman & Diu Agricultural Tenancy Act has no role to play in the dispute.

4. Shri Padgaonkar agrees that Section 58(B) of the Act bars the Civil Court's jurisdiction needs no contradiction. But he insists that the dispute to be taken away from the Civil Court, it must involve the landlord and the tenant, and the dispute must directly relate to the tenancy.

¹ (2019) 3 SCC 692

² 1998 (1) Goa L.T. 220

5. Heard Shri Virendra Parsekar, the learned counsel for the applicants, and Shri C. Padgaonkar, the learned counsel for the respondent.

6. If we examine Section 58(B), it is the usual jurisdictional clause under the Tenancy Act, 1964. It reads:

58B. Bar to jurisdiction of Courts – Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector, Administrative Tribunal or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.

7. As the petitioners' counsel contended, we may have to read this with Section 8(A) of the Act, and that provision reads:

8-A. Relief in certain cases of threatened wrongful dispossession.— (1) Any tenant in possession of any land or dwelling house who apprehends that he may be dispossessed *contrary to the provisions of this Act*, may apply in the prescribed manner to the Mamlatdar for an order safe guarding his right to possession.

(2) On such application, the Mamlatdar if he is satisfied on holding such enquiry as may be prescribed, that the applicant is entitled to continue in possession, shall, by order, *direct the landlord or any person claiming through him to refrain from disturbing it otherwise than in accordance with law.*

(3) *In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar by affidavit or otherwise that the opponent threatens to dispossess the applicant, he may by order grant a temporary injunction restraining such dispossession or otherwise causing injury until the final disposal of the proceeding or until further orders.* In all such cases the Mamlatdar shall, except where it appears that the object of granting the injunction would be defeated by delay, issue notice of the application to the opponent before granting an injunction.

(4) Any person dispossessing a tenant in contravention of an order made under sub-section (2) or (3), in addition to any other penalty to which he is subject, on application made by the tenant within thirty days of such dispossession, and notwithstanding anything to the contrary in any other provision of this Act, be summarily evicted by the Mamlatdar who shall thereupon restore

possession to the tenant".

(italics supplied)

8. As is seen from sub-section (2) of 8(A), evidently the dispute must involve the tenants on one hand and the landlord or any person claiming through him on the other. Here, the applicants' counsel maintains that the applicants as the defendants claim through the Comunidade. In this context, he has drawn my attention to para 7 of the written statement.

9. First, I hold that both the Supreme Court's judgment in *Pyarelal* and this Court's judgment in *Palmira Valadares* reiterated what is otherwise a settled proposition of law: The Civil Court's jurisdiction stands barred only in matters involving landlords and the tenants, and in disputes directly relatable to the tenancy Act. Now, in terms of Section 8(A) of the Act, going by the written statement, the applicants seem to be claiming through the Comunidade. That said, I may note that, to reject a plaint under Order VII Rule 11, the trial Court cannot consider the defendant's rival pleas in the case. So I reckon the trial Court's impugned order is unassailable.

10. Granted the question of inherent jurisdiction or subject-matter jurisdiction always goes to the root of the matter, and it can be raised at any stage. Here, the applicants are not remediless. If they regard their plea of their tracing through the Comunidade is sustainable, they may require the trial Court to frame a preliminary issue under Order 14, Rule

2 of CPC. Then, keeping aside all other issues, the parties may require the trial Court to adjudicate on the maintainability before it goes further.

Under these circumstances, I dismiss this Writ Petition as the trial Court's order remains unassailable and suffers from no legal infirmities.

DAMA SESHADRI NAIDU, J.

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