

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

APPEAL FROM ORDER NO. 12 OF 2020

Mr. Gurudas Madhuras Gadkar,
S/o Madhuras D. Gadkar,
46 years of age, married,
Service, Indian National,
Resident of H. No.66/B,
Salvador-do-Mundo,
Paithon, Bardez, Goa.

..... Appellant
(Ori. Defendant No.4)

V e r s u s

1. Mr. Dashrath Shabi alias
Shanu Chodankar,
S/o late Shabi alias Shanu
Chodankar, 51 years of age, married,
Agriculturist, Indian National

2. Mr. Dilip Shabi alias
Shanu Chodankar
S/o late Shabi alias
Shanu Chodankar, 55 years
Of age, married, Agriculturist,
Indian National;
Both of the above are residents
of H. No. 13, Varanawada,
Morjim, Pernem- Goa
and 2 others.

..... Respondents
(Ori. Plaintiff nos.1 and 2.

Mr. Shivan Desai, Advocate for the Appellant.
Mr. T. Sequeira, Advocate for the Respondent nos.1 and 2.
Mr. A. D. Bhohe, Advocate for the Respondent nos. 3 and 4.

CORAM: DAMA SESHADRI NAIDU, J.

Date: 17th March 2021.

ORDER:

“This case has a checkered history”; “it is a curious case with peculiar facts”—these are the expressions we usually employ whenever we find an oddity in a case. Overuse has robbed these expressions of their vigour and vitality. But here is a case to which, I think, either expression applies—aptly.

2. First, let me introduce the parties. This Appeal From Order arises from Civil Suit No.42 of 2016 before the Civil Judge, Junior Division, at Mapusa. Respondents 1 and 2 here filed it. In the suit, respondent nos.3 and 4 are the 1st and 2nd defendants; the erstwhile Power of Attorney holder is the third defendant; and the appellant here is the fourth defendant.

3. Now, let me begin at the beginning. Respondent nos.1 and 2 claim they are statutory tenants. So, invoking the principle of deemed vesting, they filed JM-1/TNC/29/92 (tenancy proceedings) before the Mamlatdar for a declaration of their deemed ownership under the Goa Agricultural Tenancy Act, 1964. That was in 1992, and that application has still been pending. I will refer to the parties by their role in the litigation rather than by their procedural labels such as petitioner, respondent. And that reference is without prejudice to their rights and contentions, though.

4. Initially, in 1992, the tenants secured an *ex parte* injunction from the Mamlatdar against the owners. That injunction continued to operate and eventually made absolute in April 1997. Aggrieved, the owners filed Appeal No.30/1997 before the Deputy Collector. But through an order dated 17/11/1998, the appellate authority dismissed the owners' appeal.

5. Meanwhile, the Goa Agricultural Tenancy Act underwent an amendment. As a result, the Tenancy proceedings pending before the Mamlatdar were transferred to the Civil Judge, Junior Division, Pernem. The case, therefore, was renumbered as TNC No.68/2015. Pending those tenancy proceedings, on 18th June 2014, the owners sold a part of the property to the appellant, the purchaser.

6. The purchaser seems to have got the revenue records mutated; in November 2014, he secured a separate survey number. When he wanted to assert his rights as a purchaser and enjoy the property, the tenants invoked section 8-A of the Tenancy Act. They wanted the trial Court to injunct the purchaser from trespassing on the property or interfering with their enjoyment. The trial Court, however, through an order dated 1/8/2016, dismissed that application.

7. The trial Court has assigned two reasons: (i) Though the cause of action arose in June 2015, the tenants chose to apply for interim injunction one year later: in June 2016. Thus, the injunction application is belated and suffers from laches. (ii) As the tenants have already filed a comprehensive suit and, in that, as they have already sought an injunction on identical grounds, a second application for the same relief must fail. Aggrieved, the tenants have filed an appeal before the District Court, and that is pending.

8. Now, I will refer to the chronology of the case that has given rise to this Appeal From Order. Pending TNC No.68/2015, before the Civil Judge Junior Division, Pernem; the tenants filed RCS No.52/2015. That case was later renumbered as Special Civil Suit No.42/2016 before the Civil Judge, Senior Division, Mapusa. In that suit, the tenants sought a

declaration that the purchaser's sale deed is void. They have also sought an interim injunction. So, the purchaser has filed this Appeal From Order.

Arguments:

Appellant:

9. Shri Shivan Desai, the learned counsel for the purchaser, has described the litigation's undulating course. Then, he has contended that TNC/68/2015, pending before the Civil Judge, Junior Division, Pernem; and Special Civil Suit no.42/2016, pending before the Civil Judge, Senior Division, Mapusa, are between the same parties. In TNC 68/2015, the competent Tenancy Court has already refused to grant an injunction. When identical grounds have been pleaded under the same cause of action, the trial Court in RCS No.42/2016 ought not to have granted an injunction. The impugned order is, in fact, hit by *re judicata* because even at the interlocutory stage, the principles of estoppel apply.

10. Shri Desai has also contended that section 58-B of the Goa Agricultural Act imposes an absolute bar against any civil suit concerning tenancy disputes. Therefore, once the trial Court has no subject matter jurisdiction, its granting injunction in RCS No.42/2016 is impermissible.

11. To support his contentions, Shri Desai has relied on (i) *Inacio Martins v. Narayan Hari Naik*, AIR 1993 SC 1756; (ii) *Madhumati Atchut Parab v. Rajaram V. Parab*, (2009) 4 SCC 183; (iii) *Trimbak Sopan v. Ganga Ram Mhatarba*, AIR 1953 Bombay 241.

12. On the other hand, Shri T. Sequeira, the learned counsel for the tenants, submits that when the tenants initiated the proceedings before the Mamlatdar, the purchaser was not in the picture. He purchased the property pending those proceedings. When the proceedings were transferred to the regular Civil Court, that is the Tenancy Court, in TNC No.68/2015, the *lis pendence* purchaser tried to trespass upon the property and cut the trees. That provided the cause of action for the tenants to apply for an injunction. According to him, the tenancy Court has erroneously dismissed that application on the premise there has been a civil suit pending.

13. According to Shri Sequeira, the trial Court's order is not on the merits. So, neither estoppel by record nor *res judicata per se* applies.

14. In the alternative, Shri Sequeira has contended that the purchaser's vendors have already suffered injunction, and the purchaser takes under them. That is, the injunction operating against the owners operates against the *lis pendence* purchaser, too. So, the trial Court's granting

injunction is only an affirmation of the interim injunction already in force. He wants this Court to dismiss the appeal From Order.

15. Shri A D. Bhobe, the learned counsel for the owners, agrees with the purchaser's counsel that the civil suit is not maintainable. As to the merits of the order, he fairly submits that the order does not operate against the owners. Therefore, he cannot join the issue on that count.

16. Heard Shri Shivam Desai, the learned counsel for the appellant; Shri T. Sequeira, the learned counsel for the respondent nos.1 and 2; and Shri Bhobe, the learned counsel for the respondent nos.3 and 4.

Discussion:

17. As I have prefaced, it is indeed a curious case. In fact, when one judicial proceeding would suffice, the tenants have chosen one more to re-assert themselves. And that has caught them in a web of litigation. Compounding the situation is another aspect. At the earliest, the owners filed RCS No.34/1992 claiming a right to the property and injunction. But that suit was dismissed for non-prosecution. After that, first, the tenants filed JM-1/TNC/29/92, later transferred and renumbered as TNC No.68/2015.

18. When the owners sold a piece of property, the tenants filed RCS No.2/1995. They sought a declaration that the sale was void; they also sought an injunction. That suit dismissed in June 2004, they filed Appeal No.124/2004. That appeal, too, was dismissed one year later. Though they filed SA No.12/2005, this Court allowed them to withdraw the Second Appeal with liberty to prosecute the pending tenancy proceedings: TNC No.68/2015. Therefore, neither RCS No.34/92 nor Second Appeal No.12/2005 (RCS No.2/1995) affects this case.

19. Now, we have two cases: TNC No.68/2015 (tenancy proceedings) and Civil Suit No.42 of 2016 (regular civil suit challenging the sale). Now, the question is whether TNC No.68/2015 affects the RCS No.42/2016.

20. It is the purchaser's specific contention that because of section 58-B, no civil suit lies. In *Inacio Martins*, the Supreme Court has held that the Civil Court's jurisdiction in tenancy matters stands barred section 58 (2) of the Goa Tenancy Act. No Civil Court can deal with, settle, decide any question required to be dealt with, settled, or decided by the Mamlatdar. But the Act does not preclude a tenant from instituting a suit for regaining possession from a trespasser. That said, if the defendant who is sued as a trespasser raises a plea of tenancy, a question arises whether the Civil

Court can decide his plea of tenancy as incidental to the grant of relief for possession.

21. In answer, *Inacio Martins* holds that if any question arises whether any person is a tenant or should be deemed to be a tenant under the Act, the Mamlatdar shall decide such a question. The jurisdiction is, therefore, vested in the Mamlatdar under Section 7 of the Act and Section 58(2) specifically bars the jurisdiction of all other courts to settle, decide, or deal with any question under the Act required to be dealt with, settled, or decided by the Mamlatdar.

22. The Supreme Court, in *Madhumati Atchut Parab*, has further held that under clause (b) of Section 70 of the Goa Tenancy Act, the Mamlatdar has jurisdiction to determine whether a person is a tenant. He can, therefore, also decide whether a person is not a tenant. If he can decide this question, on an application made to him by a tenant; it is difficult to understand why he should not decide this question if a landlord applies. In either case, the question which the Mamlatdar must determine is whether the relationship of landlord and tenant exists between the parties. The jurisdiction to decide this question vests exclusively in the Mamlatdar, and the Civil Court is not competent to decide it.

23. When the Legislature has left it to the Mamlatdar to decide whether the defendant is a protected tenant, it implies, as held by this Court in *Trimbak Sopan*, that he must also decide whether the defendant otherwise is a trespasser. *Trimbak Sopan* acknowledges that the law that ousts the jurisdiction of the civil court must be strictly construed. But however strict the construction be, the language used by the Legislature in Section 70(b) of the Tenancy Act and the scheme of the Act unmistakably reveal this: all questions about the status of a party, when the party claims the status of a protected tenant, must be determined by the Revenue Court, and the jurisdiction of the civil court is ousted.

24. That said, the purchaser has not applied, for example, under Order 7 Rule 11 CPC to non-suit the tenant. So long as the suit is pending, there is a presumption that it has been validly instituted, and that presumption affects the legality of the impugned order of injunction.

25. Now comes into the picture the second contention: Once a competent civil court has refused a relief, can another court enjoying parallel jurisdiction revisit that issue between the same parties? As we may appreciate, the settled law is that there should be no conflict of judicial

findings between the same parties, especially, on the same cause of action, by courts with parallel or coextensive jurisdiction.

26. This argument carries weight. But I am afraid this is an outlier of a case. Here, technically and, indeed, as a matter of fact, the appellant is a *lis pendence* purchaser. When he purchased the property, an order of injunction had been operating against his vendors. Under the common law, an injunction binds not only the person that has suffered it but also all others who claim under that person. Here the *lis pendence* purchaser cannot claim a larger right or better immunity than what the vendors could have. Nor can he avoid the consequences the vendors otherwise may suffer. So, by implication, the injunction had been operating and still has been operating against the purchaser, too.

27. The principles of *bona fide* purchaser or lack of knowledge cannot be a defence against the principle of *lis pendence* purchase. In June 2015, when the purchaser allegedly tried to trespass upon the property and cut away the trees, the tenants could have complained about injunction violation and could have sought contempt proceedings. After impleading the purchaser in the first tenancy proceedings, TNC No.68/2015, they could have complained to the Court about the *lis pendence* purchaser's violating the injunction order. Instead, they chose to file another application for injunction before the same Court, which had already granted the injunction. I reckon that the transfer of the proceedings from one forum to another forum because of the statutory amendment does not make the transferee forum different from the transferor forum. The proceedings are continuous, and the forum is regarded as the same.

28. The Tenancy Court—the Court of Civil Judge, Junior Division, Pernem—has dismissed the tenant's application for an injunction on three grounds: (i) the injunction operating against the owner does not bind the appellant, who is the subsequent purchaser; (ii) the application for interim injunction is belated; it was filed about one year after the alleged cause of action; (iii) the tenants have already filed a separate suit, and in that suit, an application for an interim injunction has already been pending on the same cause of action. Now, the Tenancy Court's order has been pending in appeal before the District Court-II, at Mapusa.

29. Here, I face a decisional dilemma. Once a competent forum has been seized of an issue, no other court, higher or lower in rank, should usurp that court's adjudicatory power—collaterally. So I must not examine the correctness of the Tenancy Court's decision, which is pending in appeal

before the District Court. That said, I must decide whether this case—that is, whether the Tenancy Court's refusal to grant an injunction—comes in the way of the other Civil Court's granting an injunction on the same issue and between the same parties. For that, I may, at least incidentally, refer to the impact of the Tenancy Court's order rejecting injunction.

30. Therefore, to the extent possible, I will confine myself to the merits of this case. Here, the purchaser took the property from the owners, against whom an order of injunction had been operating by then. As he took under them, the injunction binds them. So long as the RCS NO.42/2016 stands undisturbed, even in the face of section 58-B of the Goa Agricultural Tenancy Act, I must presume its legality. Therefore, in the first place, the tenants seeking another order of injunction, this time against the purchaser, was unnecessary. The Tenancy Court could have observed this fact and closed the application. On the contrary, it has held that the injunction operating against the owners would not bind by the purchaser. Incorrect.

31. At any rate, the Civil Court granting an injunction does not, in my view, amount to contradicting another Civil Court of parallel jurisdiction. Rather, the impugned order has only acknowledged what has been legally preexisting. To repeat, I hold that the trial Court's granting injunction does not amount to its contradicting another civil court of competent or even parallel jurisdiction.

32. Under those circumstances, I am disinclined to interfere with the impugned order. I, therefore, dismiss the Appeal From Order.

No order on costs.

DAMA SESHADRI NAIDU, J.

AP/-

NITI K
HALDANKAR

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