

IN THE HIGH COURT OF BOMBAY AT GOA**Writ Petition No. 284 of 2019**

Mr. Roney Simoes,
major, bachelor, resident of
Perxett Waddo, Guirim,
Bardez, Goa,
Represented in this Act
by his duly constituted attorney
Mrs. Florina Carmalina Pinto,
resident of Hosue No.773,
Khairut, Aldona, Bardez, Goa.

..... Petitioner

V e r s u s

1. Mrs. Vera D'Souza,
resident of Guirim,
Bardez-Goa.

..... Respondent.

Mr. J. Godinho, Advocate for the Petitioner.

None for the Respondent.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 9th FEBRUARY 2021.

ORAL ORDER:

The respondent's brother lives abroad; he has property in India. Claiming to have been looking after her brother's property, the respondent filed Civil Suit No.88/76 before the Civil Judge, Junior Division, at Mapusa. She wanted the defendant, the petitioner, to be evicted from the suit property. The petitioner entered an appearance and filed the written statement. Among other issues, he has raised the issue of mundkarial right. Therefore, under section 32 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act 1975, the Civil Court referred the matter to the Mamlatdar.

2. On reference, the learned Mamlatdar conducted the trial and eventually dismissed the petitioner's claim through the order dated

24/11/1987. Aggrieved, the petitioner appealed to the Deputy Collector, who dismissed it on 20/9/2011. Undeterred, the petitioner has filed Civil Revision Application No.3/2015 before the District Judge, North Goa, Panaji. Through Judgment, dated 4/1/2019, the Revisional Court dismissed the petitioner's Revision. Further aggrieved, the petitioner has filed this Writ Petition.

Arguments:**The Petitioner:**

3. Shri Godinho, the learned counsel for the petitioner, has submitted that the respondent is 'admittedly' not the owner; her brother is. But she sued for eviction. Therefore, the suit is bad for non-joinder of a necessary party. Besides, the question of mundkarial arises in a suit between the owner and an occupant. Here, the owner has not sued. So the Civil Court ought not to have referred the matter to the Mamlatdar, in the first place. This is, according to the learned counsel, notwithstanding the petitioner's defence in the suit that he enjoyed mundkarial rights. Shri Gudinho, in this context, stresses that before the revisional Court, the petitioner raised a preliminary objection about the very reference by the Civil Court to the Mamlatdar on the issue of mundkarial right. As this issue goes to the root of the matter, the Revisional Court ought to have first decided it. And, then, if necessary, it could have gone into the merits. Therefore, he urges this Court to set aside the order and remand the matter to the revisional Court. Despite service of notice, the respondent has not entered an appearance.

4. Perhaps, the respondent has been tired of litigation and lost her faith in the system. Her wait for 45 years yielding no result, she may have refused to respond to the notice.

Discussion:

5. This Writ Petition reveals a disturbing litigious pattern and illustrates how Article 227 can be abused. The respondent filed a suit in 1976; a couple of years down the line, it would be five decades. She

explicitly pleaded that the property belonged to her brother and that she had been intermeddling with it. Now, the petitioner contends that he has pleaded in the written statement that the suit is bad for non-joinder of a necessary party—that is, the true owner. He alone must have filed the suit.

6. So, I required the petitioner's counsel to produce a copy of the written statement. Now that is produced.

7. In the first paragraph of the written statement, the petitioner, as the defendant, has categorically pleaded that the property belongs to the respondent's brother as well as to the respondent. For the record, I may quote that assertion:

“The property belongs to the referred to Albert Nazareth and also to the plaintiff.”

8. In paragraph no.3, the petitioner admits that it is the plaintiff herself that inducted him into the possession of the property. Thus, the petitioner has admitted that the respondent is not only intermeddling with the property but is also the co-owner. Faced with the pleadings—rather the admissions—in the written statement, now the petitioner, through his counsel, has feebly submitted that the respondent, as the plaintiff, never set up title in herself. Instead, she has stated that her brother is the owner and that she has been looking after the property. If we assumed that to be true, what matters and what binds would be the defendant's admission. That apart, it is too well established to be re-agitated that it is not the owner alone that can seek eviction of an occupant. Any other person intermeddling with the property can.

9. Here, the petitioner's own admission reveals that the respondent is a co-owner as well as the intermeddler. Therefore, that issue does not survive.

10. On the merits of the mundkarial rights, the Mamlatdar, as the primary authority, rejected the petitioner's claim, and the appellate authority confirmed that. Before the Revisional authority, for the first time, the petitioner wanted to turn the tables.

11. In the Revision application, I find no reference to any preliminary objection, not even a remote reference to non-joinder of a necessary party or that the *lis* is not between the owner and the occupant. The petitioner claims to have filed a separate application requiring the revisional Court to frame a preliminary issue—at the revisional stage, though—and decide on that. But that application has not been produced, nor has the Revisional Court, in the judgment, has referred to any such application.

12. On the contrary, the trial Court has negated the petitioner's defence and held that it runs counter to his earlier pleadings on mudkarial right, Rightly so.

13. At any rate, it is legally well-established that the scope of Revision is narrow. No new issue can be raised; it only revises the order under challenge on very limited technical grounds. Even if we assumed there was any substance in the petitioner's submission, the petitioner's pleas had already been proved to be false in the face of the petitioner's written statement and also the record before it.

14. Under these circumstances, I feel sad to note that the parties go to any extent to secure one order or another, thus under-minding the faith the Court bestows on the parties. It is nothing but abuse of law of the Court.

So, I am constrained to dismiss this Writ Petition with exemplary costs of Rs.50,000/- to be paid to the respondent.

DAMA SESHADRI NAIDU, J.

AP/-

NITI K

HALDANKAR

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HALDANKAR
Date: 2021.05.07 11:25:12 +05'30'