

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS.359 & 360 OF 2017.

WITH

CIVIL APPLICATION NO. 160 OF 2019.

IN

WRIT PETITION NO.359 OF 2017.

WITH

CIVIL APPLICATION NO. 195 OF 2019.

IN

WRIT PETITION NO.360 OF 2017.

LOURENCE VICTORINO
FERNANDES @ LAWRENCE
FERNANDES AND ANR.

.... Petitioners.

VS

RAMCHANDRA ANANT MANDREKAR
(DEC) THR. HIS LRS. AND 6 ORS.

... Respondents.

Shri R. Bras Desa and Ms. V. Shet, Advocates for the petitioners.

Shri A. Bhobe, Advocate for the respondent nos. 6 and 7.

Coram: DAMA SESHADRI NAIDU, J.

Date : 7th April 2021.

ORDER ORDER:

The petitioner bought a piece of property through a registered deed of conveyance. It was in 1968. Then he had no idea, as he pleads, that the property had a tenant. At any rate, he did not get the revenue records mutated until 2007. That year, he filed Regular Civil Suit No. 56 of 2007 before the Civil Judge, Junior Division, at Pernem. He sought a declaration that he was the owner of the property spread

across many survey numbers. But the trial Court dismissed the suit on 31.8.2010.

2. Aggrieved the petitioner filed Regular Civil Appeal No. 448 of 2010. The District Court, through its judgment dated 30.1.2000, partly allowed the appeal: the petitioner was declared the absolute owner of the properties in a few survey numbers and a co-owner of the properties in some other survey numbers. Those details are unnecessary for us.

3. Meanwhile, in 2009 the sixth respondent took out declaration proceedings before the Mamlatdar under Goa Agricultural Tenancy Act. In those proceedings, the petitioner's predecessor-in-title was the respondent.

4. On 27.8.2013, the tenancy Court declared that the sixth respondent along with his wife (the seventh respondent) the tenant of the property. When they tried to exercise their tenancy rights over the property, the petitioner, as the earlier purchaser, treated that as an act of interference. So he filed Special Civil Suit No. 26/2014B before the Civil Judge, Senior Division. Mapusa. It was for perpetual injunction. In that suit, the respondent nos. 6 and 7, as the defendants, brought to the trial Court's notice that they had been declared as tenants of the property by a competent tenancy Court.

5. In this context, the petitioner claims that only on 27.8.2013 did he come to know about the alleged tenants, the tenancy proceedings and the quasi-judicial proceedings. Then, on 23.06.2014 the petitioner applied for certified copies of the judgment and secured them soon after that. Immediately, he applied to the Appellate Court

for leave to file an appeal. As there was a delay of 382 days, the petitioner applied for its condonation. Through its order dated 26.2.2017, the appellate Court refused to condone the delay. Aggrieved, the petitioner has filed this Writ Petition.

6. Shri Rohit Bras De Sa, the learned counsel for the petitioner, has submitted that until recently the petitioner had been unaware of the tenancy proceedings. In that sense, there has been no delay at all. But out of abundant caution, the petitioner applied for the condonation. According to him, though the petitioner had provided cogent reasons for the delay, the Appellate Court adopted a hyper technical view and rejected the application. To support his contentions, the learned counsel has relied on *V. N. Kirshna Murthy v. Ravikumar*¹.

7. On the other hand, Shri A. Bhobe, the learned counsel for the respondent nos. 6 and 7, has straight away pointed out that the petitioner 'admittedly' knew about the tenancy proceedings by 15.4.2014. But he applied for the certified copies only on 23.6.2014—that is, beyond 80 days. This delay, according to him, still remains unexplained.

8. That apart, Shri Bhobe has also contended that even if the petitioner brought the property in 1968, he had never attempted to have the revenue records mutated. Thus, the respondent nos. 6 and 7 had never known about the alleged sale deed.

9. Shri Bhobe has also submitted that the respondents, who are a poor tenants holding on to a small extent of property, have already

¹ 2020(9) SCC 501.

suffered because of the endless litigation. Now, after many years of litigation, again they may have to fight another round of litigation, which is inequitable. He has therefore urged this Court to dismiss the writ petition.

10. Shri Bhobe has also reminded me that when this Court exercises its supervisory jurisdiction under Article 227 of the Constitution of India, it may not interfere with the trial Court's discretion in either condoning or refusing to condone the delay. The interference, he stresses, gets its justification only if exercising discretion is perverse.

11. Heard Shri Rohit Bras De Sa, the learned counsel for the petitioner, and Shri Ashwin D. Bhobe, the learned counsel for the respondent nos. 6 and 7.

12. Indeed the petitioner purchased the property through a registered deed of conveyance. It was in 1968. But, evidently, until recently the revenue records did not reflect the petitioner's name. He claims that he came to know about the tenancy proceeding only on 15.4.2014. Section 52 of the Agricultural tenancy Act 1964 requires any aggrieved person to file the appeal in 60 days. But the petitioner applied for the certified copies of the Mamlatdar's judgment beyond 60 days. To be precise, he applied eight days after the limitation was over.

13. That said, the petitioner purchased the property decades ago. So I reckon the delay of eight days—for that matter the whole period of 68 days—should not prove fatal to have his rights, if any, vindicated before a Court of law. More particularly, when the

petitioner came to know about the pending proceedings, we could not expect him to rush into action. Instead, some leeway should be given for the parties to assess the position, seek proper legal advice, and take remedial steps. This inevitably takes time and results in delay—which, in my view, is not inordinate.

14. Under these circumstances, I set aside the impugned order, dated 28.2.2018. I allow the Writ Petition. The delay stands condoned. As to the leave to appeal and other aspects, the Appellate Court is free to rule on the merits. As a matter of abundant caution, I clarify that none of the observations made in this Writ Petition should affect the defence the respondent nos. 6 and 7 may take before the trial Court at whatever stage.

No order on costs.

DAMA SESHADRI NAIDU, J.

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