

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 103 OF 2011

1. Mrs. Suproza Peixoto
Widow of Antonio Rodrigues
Major
2. Mr. Paulo Pedro Rodrigues,
Son of Antonio Rodrigues,
Major
3. Mr. Clemente Rodrigues
Son of Antonio Rodrigues,
Major
All residents of H No.205/11
Near the House of Shamba Rivonkar
3rd Ward
Colva, Salcete, Goa.

.... Appellants.

V/s.

Mr. Jose Antonio Luis
Son of Jose Moropio Silvester Luis
Major,
Resident of H No.220,
3rd ward, Colva
Salcete, Goa.

.... Respondent

Mr. Nigel Da Costa Frias, Advocate for the Appellants

Mr. C.A. Coutinho, Advocate for respondents

Coram: BHARATI H. DANGRE, J.

Date: 11th March 2021

ORAL JUDGMENT:

1. On 05.10.2011, the Second Appeal came to be admitted on the following substantial questions of law:

(a) Whether the suit filed by the Respondent was barred by the law of limitation and hence liable to be dismissed.

(b) Whether the Order passed by the Mamlatdar of Salcete on the application filed by the Appellant no.1 under section 29(4) of the G.D.D. Mundkars (Protection from Eviction) Act, 1975 for registration of herself as a mundkar of the suit hut could be termed as an adjudication of the mundkarial rights of the appellants in the absence of there being any declaration sought under section 8 A of the said Act and any proceedings in that regard.

2. Today, when the appeal is called out, the learned Counsel for the appellants Mr. Nigel Da Costa Frias and the learned Counsel Mr. C. A. Coutinho for the respondents are in consensus in making a submission that the substantial question of law framed vide point No.(b) do not survive as on date in view of the subsequent development, being the case filed by the Defendants in the Court of Mamlatdar-III of Salcete seeking a declaration under Section 8A of the Goa Mundkar (Protection from Eviction) Act, 1975 being dismissed for non-prosecution on 14.07.2015. In view of this development the substantial question of law framed at point

No.(b) stands answered and the Appeal require consideration only on the question of law framed vide point No.(a).

3. The appellant in the Appeal is the original defendant. The plaintiff Mr. Jose Antonio Luis (the present defendant) initiated proceedings for eviction of the defendant in the Court of Civil Judge Senior Division at Margao. The plaintiff pleaded to be the owner in possession of the suit property described in paragraph (1) of the plaint. It is pleaded that there is a hut situated in the suit premises and the plaintiff had permitted one Nicolau Menezes to dwell in it since 1985 and he continue to reside there and assist the plaintiff in all agricultural work in the suit property and other properties belonging to the plaintiff. The defendant No.1, who is the sister-in-law of Nicolau, i.e. sister of his wife came to reside in the suit hut on account of strained relationship with her husband and she being his wife's sister, Nicolau permitted her to join in the dwelling house. It is pleaded that some time in the year 1993 the plaintiff noticed the defendant No.1 staying separately in the suit hut and when Nicolau who was an authorised occupier of the suit hut was questioned he responded by expressing his helplessness. The plaintiff approached the defendant No.1 and asked her to quit the premises as she was not authorised by him to reside there. She failed to do so.

4. In the year 1996, the defendant No.1 approached the Panchayat of Colva and registered the suit hut in her name for the purposes of house tax and when the plaintiff gained knowledge about this

fact he approached the Panchayat and the Panchayat revoked the resolution passed by it on 12.01.1998.

5. The defendant No.1 set up a claim of being Mundkar of the suit hut and launched proceedings in the Court of Mamlatdar of Salcete at Margao vide case No.JM-III-Mund.Reg-Colva-1-97. By judgment and order dated 14.10.2003, the Joint Mamlatdar dismissed the suit after following the prescribed procedure under the Goa Mundkar (Protection from Eviction) Act, 1975. The Appeal was preferred by the defendant No.1 to the Court of Deputy Collector at Margao and the same was also dismissed on 08.02.2006. Thereafter, the defendant No.1 also approached the Administrative Tribunal and when the suit was filed the proceedings were pending before the Tribunal.

6. Pleading that the defendant had no right to the suit hut and her stay therein is unauthorised and illegal, the plaintiff sought a judgment and decree against her to quit and vacate the suit hut.

In the said suit the cause of action was pleaded in paragraph 15 to the following effect:

'15. The cause of action arose on 8.2.06 for the present suit when the Deputy Collector dismissed the appeal thereby confirming the Judgment of the Mamlatdar and implying that the Defendants have no right to the suit hut. This suit is therefore not barred by limitation.'

7. In the written statement filed by the defendant, a plea was raised that the suit was barred by law of limitation and deserve to be dismissed on that ground. In paragraph 12 of the written statement, the defendant has averred that at the age of 12 years, defendant No.1 was brought by the plaintiff from her native place to work in his house as a maid servant and since then she is staying in the plaintiff's house. It is also pleaded that it was the plaintiff who allowed the defendant No.1 to construct the residential house in his property as they were on good terms and with his permissions a house was constructed by her in 1974 which was registered under H.No. 205/1 in the village of Colva and since the construction of the house till date she was residing there with her family as a mundkar therein. The certificate issued by Mamlatdar of Salcete was also enclosed alongwith written statement. In paragraph 21 it is further pleaded that the issue about she being conferred with status of mundkar is subjudice before the Administrative Tribunal and therefore the suit for eviction filed before the Civil Court is not maintainable and liable to be dismissed for want of jurisdiction.

8. The Civil Judge Junior Division at Margao adjudicated the said suit filed by the plaintiff and decreed the same vide judgment dated 11.10.2010. The issue as to whether the suit is barred by limitation, as pleaded by the defendant was specifically framed as issue No.3. It was held that though the cause of action for

filing the suit arose in the year 1993, the suit is filed on 04.08.2006 and the plaintiff has offered an explanation that the matter was subjudice before the Mamlatdar Court and thereafter the Appeal was pending before the Deputy Collector and it is only when the Deputy Collector dismissed the Appeal on 08.02.2006, confirming the Judgment of the Mamlatdar and declaring that defendant had no right to the suit hut, the present proceedings were filed. The learned Judge endorsed the said submission and held that since the matter was subjudice before the Revenue Court with respect to the mundkarial proceedings initiated by the defendant, the suit could not have been filed earlier and from the dismissal of the Appeal to be precise, on 08.02.2006, the suit of the plaintiff is within limitation. In an appeal filed before the Adhoc District Judge, South Goa at Margao, judgment and order passed by the Court below was upheld including the finding on the aspect of limitation and the Regular Civil Appeal was dismissed on 04.03.2011.

9. In the backdrop of the aforesaid framework with its foundation laid in the pleadings and the decision of the Court below the aforesaid question of law has been formulated as a substantial question of law. The period of limitation for institution of suit for recovery of immovable property is prescribed in Part V of Schedule to the Limitation Act, 1963 and in particular Article 64 and 65. For possession of immovable property based on previous possession and not on title, when the plaintiff

while in possession of the property has been dispossessed, the limitation prescribed is 12 years from the date of dispossession; for possession of immovable property or any interest therein based on title, the limitation prescribed is 12 years and the time from which the period begins to run is set out as; when the possession of the defendant becomes adverse to the plaintiff. The case of the plaintiff who sought eviction is that the defendant No.1 unauthorisedly occupied the suit hut by staking her claim to be a mundkar. The proceedings came to be instituted by the defendant No.1 in the year 1997 and the suit house was registered by her in her name in the year 1996. It is at this time the plaintiff gained knowledge about a claim being set up by her adverse to the claim of the plaintiff, being the owner of the suit premises. Her attempt to stake a claim of mundkar failed before the two Revenue authorities and when it failed before the Deputy Collector, the plaintiff sought her eviction as she had no right to the suit hut of whatsoever nature. Pertinent to note that at this stage when the suit was decided even the Appeal filed by the defendant No.1 before the Administrative Tribunal was also dismissed by order dated 24.04.2009. The possession of the defendant became adverse to the plaintiff when the defendant No.1 took a step to claim her right as mundkar in the property of the plaintiff and this happened in the year 1996. The claim however got crystallized when the Deputy Collector dismissed the appeal of the defendant No.1 confirming the judgment of the Mamlatdar holding that the defendant had no right to the suit hut. The suit came to be instituted on 25.07.2006 and since it is instituted within the period of limitation prescribed under the Limitation Act, the concurrent finding rendered by the Court below on the issue of

limitation has been rightly determined and answered by reference to the pleadings before it. The finding rendered do not warrant any interference, since the limitation would start from the date when the possession of the defendant becomes adverse. The plaintiff sought eviction of the defendant and the period of limitation commenced from the date possession of the defendant becomes adverse to the plaintiff and it is that period when the defendant No.1 asserted her claim as mundkar in the suit hut.

Answering the substantial question of law framed vide point (a) that the suit filed by the plaintiff was not barred by law of limitation and both the Courts below have rightly held that it was within the period of limitation, the Second Appeal on the said point do not call for any further reconsideration and deserve dismissal. Upholding the concurrent findings rendered by the two Courts below, the Second Appeal is dismissed.

BHARATI H. DANGRE, J

msr.