

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1122 OF 2016.

WITH

MISC. CIVIL APPLICATION NO. 260 OF 2021(FILING)

ISABELLA COUTINHO(DEC.) ...Petitioners.
THR. HER LRS.,

Versus

GANESH GUNO PAGI AND 6 Respondents.
ORS.,

Mr. D. Vernekar, Advocate *for the petitioners.*

Mr. N. Sardesai, Senior Advocate with Mr. S. Fadte,
Advocate *for the respondent no.1.*

CORAM: MANISH PITALE, J.

DATED: 6th September, 2021.

ORAL ORDER.:

1. By this petition, the petitioner has challenged judgment and order dated 12.4.2016, passed by the District and Sessions Court, South Goa, Margao whereby Tenancy Appeal no.86/2015/D.J.3 has been allowed and the application preferred by the petitioner under Section 7 of the Goa Daman and Diu Agriculture Tenancy Act, 1964, has been dismissed.

2. It is the case of the petitioner that the District Court erred in reversing the findings rendered by the Court of the Mamlatdar in Judgment and order dated 6.9.2011 passed in favour of the petitioner.

3. The petitioner filed an application under Section 7 of the aforesaid Act for a declaration of tenancy right in respect of a property known as 'Katravoril Tican' situated at Palolem, surveyed under number 120/10 of village Nagorcem Palolem of Canacona Taluka. It was the case of the petitioner that the respondents had purchased the property from the original landlord in the year 1996. According to the petitioner, an oral tenancy was created and that she was in possession of the said property as a tenant, defined under the provisions of said Act.

4. The application moved under Section 7 of the aforesaid said Act on behalf of the petitioner specially stated that she was being paid half coconuts for each plucking by the landlord for enjoying the possession of the property. In order to prove her claim, the petitioner examined witnesses, including the erstwhile landlord but she herself did not enter the witness box and a power of attorney holder deposed on her behalf.

5. The respondents denied the claim of tenancy of the petitioner and a specific statement was made on affidavit that the petitioner was in possession of the house on the property in question and that the petitioner and her legal heirs did not have any right on the property, other than the right to reside in the rented house in the property in question.

6. The respondents led evidence in support of their stand. After taking into consideration the oral and documentary evidence on record, by the aforesaid judgment and order dated 6.9.2011, the Mamlatdar allowed the application of the petitioner and declared her to be tenant of the property in question.

7. Aggrieved by the same, the respondents filed tenancy Appeal, which stood allowed by the impugned judgment and order.

8. Mr. Vernekar, learned Counsel appearing for the petitioner submitted that the District Court committed a grave error in holding against the petitioner and that much emphasis was placed on absence of particulars in the pleadings on behalf of the petitioner. He submitted that Section 46 of the said Act read with Rule 10 of the Rules framed thereunder, would show that the Mamlatdar was expected to take appropriate steps to ensure that the details of the information expected under Section 46 of the said Act in the context of a tenancy application were brought on record in a proper manner. He submitted that such a provision existed in the Act and Rules, for the reason that the applicants claiming tenancy are generally illiterate persons, not aware of the niceties of law. On this basis, it was submitted that the District Court erred in placing emphasis on necessary details in the pleadings. Apart from this, it was submitted that oral and documentary evidence on record was not appreciated in the correct perspective. Much emphasis was placed on the fact that the erstwhile landlord had filed an affidavit stating that the petitioner was indeed a tenant in the property. It is further submitted that the evidence of the power of attorney holder was wrongly discarded and that the evidence of the other witnesses was not appreciated in the correct perspective by the District Court. The learned counsel invited attention of this Court to certain admissions allegedly given by the respondents in their cross examination, indicating that the petitioner was indeed a tenant of the suit property. On this basis it was submitted that

the impugned order deserved to be set aside and that of Mamlatdar deserved to be restored.

9. On the other hand, Mr. N. Sardesai, learned Senior Counsel appearing for the respondents submitted that the pleadings in the present case were as vague as they could be and this was in the backdrop of the application having been filed by an Advocate on behalf of the petitioner. He further submitted that the application was bereft of details about the point in time the tenancy came into being, the manner in which rent was paid and the person to whom it was allegedly paid by the petitioner. It is further submitted that evidence of the power of attorney holder as well as other witnesses was hearsay evidence and the petitioner herself did not enter the witness box. The claim of oral tenancy was not supported by material on record. It is further pointed out that the erstwhile landlord who had filed an affidavit allegedly in support of claim of the petitioner was never cross examined, as he expired during the pendency of the application before the Mamlatdar. Therefore, his affidavit was of no consequence. It is further submitted that the statements made in cross-examination by the respondents were consistent with their statement on affidavit that the petitioner was in possession of the house located on the suit property and she did not enjoy the status of tenant in respect of the suit property as contemplated under the provisions of the said Act. On this basis, it is submitted that the petition deserves to be dismissed.

10. Heard learned counsel for the rival parties. Perused the material on record.

11. Since the District Court in the present case reversed the findings of the Mamlatdar, it needs to be examined as to whether the reversal of the order in favour of the petitioner could be said to be justified on the basis of the material on record. Perusal of the impugned judgment and order would show that the District Court has considered and analyzed the pleadings of the parties and the evidence led on their behalf from paragraphs 22 to 40. While considering the application filed under Section 7 of the said Act on behalf of the petitioner, the District Court has found that the statement made in paragraph 6 of the application did not support the claim of tenancy made on her behalf. In the said paragraph, it has been averred on behalf of the petitioner that she was being paid half coconuts of each plucking by the respondents for being a tenant of the land in question. This is a strange form of pleadings because the meaning that it conveys is that the respondents as landlord were allegedly paying half coconuts of each plucking to the petitioner for occupying their land as a tenant. The said pleading is obviously not in consonance with the claims of the petitioner. When oral evidence led on behalf of the petitioner is perused, it is seen that witnesses have made statements exactly contrary to the aforesaid paragraph of the application. Be that as it may, even if it is assumed that part of the plucking of coconut was being made over to the landlord, there are no details as to from which date the tenancy commenced, who was the person to whom the rent was paid and the exact manner in which the rent was allegedly paid to the landlord.

12. The present case appears to be a case of oral tenancy and in support of such a claim, it was expected that the petitioner would produce witnesses who would be able to cogently support such a claim of oral tenancy. It is an admitted position that the

petitioner herself failed to enter the witness box. The power of attorney holder who appeared on her behalf has made statements which are in the nature of hearsay information. Similarly, other witnesses have also sought to support the claim of the petitioner on the basis of hearsay information rather than their personal knowledge.

13. It is in the backdrop of such oral and documentary evidence, as also pleadings that were filed on behalf of the petitioner, that the order passed by the Mamlatdar needs to be appreciated. It is surprising that the Mamlatdar has placed much emphasis on the affidavit filed by the erstwhile landlord when there is nothing on record to show that such witness was available for cross examination. Apart from this, the Mamlatdar has not been able to appreciate that some rudimentary pleadings were at least required to be placed on record on behalf of the petitioner to support the theory of the tenancy under the provisions of said Act. Perusal of the material on record shows that the District Court correctly appreciated the nature of the pleadings on record on behalf of the petitioner. The oral evidence was also appreciated in the correct perspective. The alleged admission given in cross examination by the respondent no.2, has to be appreciated in the context of the affidavit in evidence of the said respondent. In the said affidavit it is specially stated that the petitioner and her deceased husband were occupying only the house located on the property. It was specifically stated that they had no other right in the property in question other than house in which they were residing. Emphasis placed on behalf of the petitioner that the respondents failed to place on record any document to support the said assertion can be of no consequence because it was the petitioner who had approached the Mamlatdar

under Section 7 of the Act to seek declaration of tenancy in terms of the provisions of the said Act.

14. The learned Senior Counsel appearing for the respondents was justified in submitting that the Mamlatdar erred in appreciating the material on record and that the District Court reversed the order after giving cogent reasons to support its findings. This court is of the opinion that no case is made out for the interference under Article 227 of the Constitution of India. The Present Writ Petition is found to be without any merit. Accordingly, the Writ Petition is dismissed. Pending applications, if any, stand disposed of.

MANISH PITALE, J.