

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 972 OF 2019

Michael Mascarenhas @
Micael Mascarenhas

..... Petitioner

V e r s u s

Vasanti Walke & anr.

..... Respondents

Mr. Balkrishna Prakash Sardesai and Ms. M. Shirodkar, Advocates for the Petitioner.

Mr. Amey Kakodkar, Advocate for the Respondents.

Coram :- M. S. SONAK, J

Date : 16th June, 2021

ORAL ORDER

1. Heard Mr. Balkrishna Sardesai, learned Counsel for the Petitioner and Mr. Amey Kakodkar, learned Counsel for the Respondents.

2. The challenge in this Petition is to the order dated 01.11.2019, by which the learned Civil Judge has dismissed Petitioner's application for framing of an additional issue in terms of Order 14 Rule 5 of the Civil Procedure Code.

3. Mr. Sardesai, the learned Counsel for the Petitioner, submits that no sanad or purchase certificate and/or registration could have been issued to the defendants in the absence of any declaration that the defendants were indeed the Mundkars in respect of the suit house. He submits that the sanad is therefore a nullity and the issue as to whether the defendants are Mundkars, in the absence of any declaration under Section 8-A of the Goa Daman and Diu Mundkars Act, arises in this matter. He submits that the learned Civil Judge was therefore not right in dismissing the Petitioner's application for framing of such additional issue. Mr. Sardesai submits that the issue as to whether the defendants are indeed the Mundkars of the suit house or not, could not have been directly or indirectly decided by the Civil Court, in view of the bar of jurisdiction provided under the Goa Daman and Diu Mundkars Act. For all these reasons, he submits that the impugned order warrants interference.

4. Mr. Kakodkar, learned Counsel for the Respondents, submits that the application for framing of additional issues was moved at a belated stage. He submits that the sanad issued in favour of the defendants was never

challenged and, therefore, the learned Civil Judge was quite right in dismissing the Petitioner's application. He submits that there is no jurisdictional error and, therefore, this Petition may not be entertained.

5. Mr. Sardesai, learned Counsel for the Petitioner, by way of rejoinder, pointed out that now the Petitioner has already taken up appropriate proceedings to challenge the sanad or the registration or purchase certificate issued in favour of the defendants and such proceedings are pending before the appropriate forum. He submits that this is an additional ground why the impugned order ought to be interfered.

6. Having heard the rival contentions, according to me, there is no case made out to warrant interference with the impugned order in the exercise of jurisdiction under Article 227 of the Constitution of India.

7. The issue as to whether the sanad, purchase certificate or the registration was rightly granted or not is now pending adjudication before the appropriate forum. The appropriate forum will therefore determine whether the sanad was correctly granted or not. Neither the pendency of the

present suit nor the impugned order can come in the way of the appropriate forum making such a determination.

8. However, merely because such adjudication is pending, there is no ground for framing of an additional issue by the Civil Court in the pending suit. Ultimately, it must be noted, the suit is for an injunction simplicitor. The impugned order, as observed, that it is the defendants who are in possession of the suit house. In such a suit, therefore, there is no necessity of framing the additional issue as proposed.

9. If ultimately the sanad is cancelled or held to be a nullity, then, the legal consequences, as arise, may follow. However, that by itself, is not a ground for framing of an additional issue in this suit which, as noted earlier, is a suit for injunction simpliciter.

10. Therefore, for all the aforesaid reasons, there is no case made out to interfere with the impugned order or entertain the present Petition. Such non-interference as clarified earlier, will in no manner, effect the proceedings initiated by the Petitioner questioning the validity of the sanad or the

purchase certificate or registration issued in favour of the defendants. Those proceedings will have to be decided on their own merits and in accordance with law independently.

11. With the aforesaid observations and clarifications, this Petition is disposed of. There shall be no order as to costs.

12. Now that this Petition is disposed of, the interim order staying further proceedings is hereby vacated.

13. The parties to appears before the learned Civil Court on 28.06.2021 at 10.00 a.m. and file authenticated copy of this order.

M. S. SONAK, J.