

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.113 OF 2021.

FRANCISCO ELEUTERIO CASIMIRO
DIONIOSIO DIAS, REP. BY THEIR POA,
TITO D'CUNHA AND 2 ORS ...Petitioners.

VS

SARASWATI ANANT SAWANT DESSAI
(DEC) AND 18 ORS ...Respondents.

Mr. J. F. Melo, Advocate for the petitioners.

CORAM: A. K. MENON, J.

DATE: 22nd March, 2022.

P.C.:

1. The challenge in this Writ petition is to the order dated 27.1.2020 whereby the trial Court has modified issue no.5 on an application for deletion of that issue. The modified issue reads as follows:-

Whether the defendant no. 12 to 16 proves that they have inherited the tenancy rights in respect of the suit property i.e. survey no. 122/9 i.e. of village Cacora, through their father, namely Krishna Narayan Desai.

2. Learned Counsel for the petitioner has called into the question the

Court discretion having modified the issue. According to him, the issue of tenancy never arose in the first place. Therefore, he submitted that framing of the issue was unnecessary in the first place and the modification was equally uncalled for. According to him, the defendants nos. 12 to 16 have raised a vague plea of tenancy and no particulars have been given and the plaintiffs have never admitted tenancy of these persons. He has in support of his contentions has relied upon Rule 5 Order 14 of the CPC and submitted that Court has misconstrued the provision and has proceeded to frame an issue which is totally unnecessary and which does not arise from the pleadings. In support of his submission the learned Counsel has relied upon the decision of this Court in the case of *Sadanand Vithal Naik and ors Vs Rashmi Dinesh Naik and ors., 2010(4) Bom. C. R. 688*. He has invited my attention to the observations in this judgment that when a vague plea is being made by the defendant contending that he is a tenant of a land, Court should

hesitate in framing such issue unless the defendant is able to show the particulars when the tenancy was created and by whom it was created. If the defendant is unable to furnish the same, the Court should not raise an issue on that count.

3. The facts of that case in my view is clearly distinguishable. The facts in the present case reveal that the written statement of the defendants nos.12 to 16 annexure-p3 to this petition has clearly set out the fact as to creation of tenancy originally in the name of the father of these defendants. The relief in the plaint is that the name of the said Krishna Narayan Desai, the father of defendant nos.12 to 16 be deleted from the tenant column of survey no. 122/19 of village Cacora.

4. In the written statement in paragraphs 3, 5 and later in paragraphs 8 and 9, these aspects have been dealt with and tenancy has been reiterated. In my view the modification of the issue cannot be faulted at this stage, since the Court had the discretion to frame the issue. I am not

inclined to interfere with exercise of that discretion at this stage, except to state that the Court will proceed to hear the matter uninfluenced by this order. In view thereof, I pass the following Order:-

- i. Writ Petition is dismissed.
- ii. No order as to costs.

A. K. MENON, J.