

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 339 OF 2021

JOSE MARIA ANTONIO AGNELO

LOURDES MARTINS

... PETITIONER

VS

SHAIKH SHAMIN BI AND 2 ORS.

... RESPONDENTS

Mr. Aurobindo Gomes Pereira, Advocate for the Petitioner.

CORAM: G.S. KULKARNI, J.

DATED: 15 SEPTEMBER 2022

ORAL ORDER.

1. Heard learned Counsel for the petitioner.
2. The challenge in this Petition is to an order dated 12.02.2021 passed by the learned Civil Judge Junior Division, 'D' Court, Panaji, whereby, the application of the petitioner/original defendant no. 1 filed under Order VII Rule 11(a) of the Code of Civil Procedure (CPC) seeking the rejection of the plaint in the suit as filed by respondent no. 1/original plaintiff has been dismissed.
3. Respondent no. 1 has filed Regular Civil Suit No. 33/2018/D *inter alia* praying for the following reliefs:

“(A) For decree, order of declaration to declare that any document executed interse between the defendants and or amongst the family member of the defendant no. 2 taking away, waiving any right from the suit premises contrary to the right, interest of the plaintiff in respect of the suit premises are illegal, null and void and not binding on the plaintiff.

(B) For decree, order permanently restraining the defendants their family members, agents, servants, labourers, contractors and or any other person acting on their behalf from altering, constructing, alienating and from changing the existing structure of the suit premises without the written permission of the plaintiff.

(C) For decree, order restraining the defendants their agents, servants, family members from disturbing the peaceful possession of the plaintiff in the suit premises and or interfering with her possession from the suit premises without the authority of law and without following the due process of law as contemplated under law.”

4. The contention of respondent no. 1/plaintiff is that she is in possession of the suit premises in the capacity as a family member of the original tenant, namely, the father-in-law of respondent no.1. It is the case of respondent no.1/plaintiff in the suit, that the petitioner/defendant no. 1-landlord is likely to take coercive actions against respondent no. 1/plaintiff, prejudicial to her rights and interest so as to disturb her possession of the suit premises.

5. Considering the averments in the plaint, it appears that the parents-in-law of respondent no. 1/plaintiff, namely, Shri. Shaikh Mohammad and Smt. Khatija Bi occupied the premises on lease initially on monthly rent of ₹12/-. They were the tenants of the petitioner/defendant no.1. It is also respondent no. 1/plaintiff's case that the monthly rent was time to time hiked under the same lease. She has set out in the plaint the instances of her possession right from the date of her marriage. The plaint avers that on account of differences and domestic issues between respondent no.1/plaintiff is residing separately as her husband/defendant no. 2, leaving the plaintiff/respondent no.1 is presently residing at the Government Quarters at Patto, Panaji. However, the plaintiff/respondent no. 1, has continued to reside in the suit premises alongwith her children. She has also supported her case of possession by producing documents such as election card, aadhar card and other documents, all setting out the address of the suit premises as also the residence certificate of her son, which was also received at the address of the suit premises. She has categorically contended that she is residing in the suit premises without interruption of any person. She has set out in paragraphs 10, 11 and 12 of the plaint of her serious apprehension that the petitioner/defendant no. 1 is likely to dispossess her from the suit

premises. The averments made in the plaint at paragraphs 10, 11 and 12 read thus.

“10. It is stated that in the first week of April 2018 the Defendant No. 1 in collusion with Defendant No. 2 and Nazir Shaikh obtained the signature of mother-in-law of the plaintiff, Smt. Khatija Bi. That the defendant no. 2 was forcing the plaintiff to put her signature on the said document wherein the signature of the mother-in-law was obtained however the plaintiff objected to put her signature without furnishing the copy of the same and she did not sign the said document. Neither the content of the said document was disclosed to the Plaintiff nor was the Plaintiff made aware about the type of the document which was executed between the Defendants and the mother-in-law. However thumb impression of the mother-in-law of the plaintiff was obtained on some document which is beyond the knowledge of the Plaintiff.

11. It is stated that the Defendant No. 1 have recently constructed a new building in the neighbourhood of the suit premises and the said building is ready for occupation. However it is learnt that the Defendant No. 1 intends to construct a new building at the place where the suit premises are situated .

12. It is to be mentioned that the Plaintiff is a helpless lady. The plaintiff states that the contribution of the plaintiff for the month of March 2018 was paid by her to Nazir on 25-3-2018 and that of April 2018 was paid on 25-4-2018 and on 25-4-2018 the plaintiff was told by said Nazir that

henceforth she shall not contribute any rental amount in respect of the suit premises and that the plaintiff should hand over the rent amount directly to the defendant no. 1 however the reason behind the same is not within the knowledge of the plaintiff. It is on account of some understanding arrived at between the Defendant No. 2, the mother-in-law with the defendant no. 1; they are not in talking terms with the Plaintiff. The Plaintiff have apprehension that she may be dispossessed from the suit premises by the Defendants in collusion with each other without following the due process of law.”

6. In paragraph 15 of the plaint, she has set out that on 25.04.2018, defendant no. 1 had sent a person to the plaintiff to pass on a message to vacate the suit premises by 30.04.2018 or she will be thrown out of the suit premises. It is her case that the petitioner/ defendant no.1-landlord in collusion with her husband/defendant no. 2 and other members, of the family namely, the brother and the mother of defendant no. 2 is likely to create documents against her possession. It is her case that defendant no. 2 being her husband, she is the ‘moiety’ share holder and she has a share along with defendant no. 2 as per the local laws as applicable. There are other averments made in the plaint which supports her case for the reliefs as made in the plaint.

7. The learned Trial Judge having heard the parties on such application as filed by the petitioner under Order VII Rule 11 of CPC and noting the settled position in law on rejection of plaints under the said provision observed that clearly the suit was filed by the plaintiff to protect her possession of the suit premises. It was observed that the perusal of the plaint shows that the plaintiff's suit was based on tenancy as well as possession over the suit premises. It is also observed that the plaintiff's possession is on account of the suit premises being leased out to her father-in-law Shri Shaikh Mohammad. It is also observed that the plaintiff is clearly in possession of the suit premises and she wants the Court to protect her possession as she was threatened to be dispossessed without following the due process of law. The learned trial Judge does not find any favour on any of the contentions as raised in the application filed by the petitioner/defendant no.1 so as to non-suit respondent no.1/plaintiff and accordingly rejected the same.

8. In adjudication of an application under Order VII Rule 11 of the CPC only the averments as made in the plaint are required to be considered so as to find out as to whether any case has been made out to reject the plaint on any grounds as provided under Order VII Rule 11 of the CPC.

9. The submissions made on behalf of the petitioner before this Court are basically in the nature of defence which the petitioner/defendant no. 1 may have to the suit. The first contention as urged on behalf of the petitioner/defendant no. 1 is that although the case of the respondent no. 1/plaintiff is that she was staying in the premises leased to her father-in-law, however, there is no lease deed produced on record and hence, this needs to be held to be a non-disclosure of a cause of action in the plaint. The second contention is referring to the averments as made in paragraph 4 of the plaint which states that the premises were initially leased on a monthly rent of ₹12/- to her parents-in-law by respondent no. 1/plaintiff, and the monthly rent of the suit premises was from time to time hiked. It is contended that the said averments are contrary to the Goa Rent Control Act and therefore, the pleadings as made in the plaint are required to be considered as curious pleadings. The next contention as urged on behalf of the petitioner is that a clear case is made out by respondent no. 1 that respondent no. 1/plaintiff occupies suit premises as lessee, whereas there is no document of lease or rent receipts produced by her in support of such contentions. It is on such premise, it is contended that respondent no. 1 has failed to disclose any cause of action and hence, the application as filed by the petitioner under Order VII Rule 11(a) ought to have been allowed.

10. In support of such contentions, learned Counsel for the petitioner has reiterated reliance on the decisions which were also cited on behalf of the petitioner before the learned Trial Judge and more particularly on the decision in **Liverpool & London S.P. & I Association Limited Vs. M.V. Sea Success I & Another**¹ to support the proposition that when a plea of a tenancy is taken, the plea has to be clearly supported by documents. It is stated that a vague plea has been taken by the respondent no. 1/plaintiff. Learned counsel for the petitioner/defendant no. 1 has also placed reliance on the decision of this Court in **Pandu Dhondi Yerudkar & Another Vs. Ananda Krishna Patil**², wherein the Court was considering whether it was proper for the trial Judge to hold that an issue of tenancy may not be referred to the Mamlatdar for his finding for the purposes of trial of the disputes involved in the suit. The issue that arose before the Court was under the Bombay Tenancy and Agricultural Lands Vidarbha Region and Kutch Area Act and it is in the context of framing of issues, such question had arisen. The High Court observed that caution is required to be exercised by the Court when issues are framed. In such context it was observed that an issue can only arise when a material proposition of fact or law is affirmed by one party and denied by the other. It was observed that when vague plea is made by the defendant

¹ (2004) 9 SCC 512

² AIR 1975 BOM 52

contending that he is a tenant of the land, the Court should not hesitate to frame such an issue on such a vague plea, unless the defendant is able to give details about when the tenancy was created; the person by whom it was created; and the terms on which it was created. These are the observations as referred to by the learned Counsel for the petitioner to be applied to the facts in hand. I am afraid as to how such observations of the Court made in the context framing of an issue can be of any assistance to the petitioner and that too when the issue in hand is whether the Court could exercise the drastic power to non suit the petitioner by taking recourse to Order VII Rule 11 of CPC. Hence this decision in the facts and context of the case, is surely not applicable.

11. The learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in **D.M. Deshpande & Others Vs. Janardhan Kashinath Kadam (dead) by LRs. & Others³**, in support of his contention that the plea as taken by respondent no. 1 was a vague plea of tenancy. In my opinion, this decision would not support the petitioner's case inasmuch as the decision had arisen from the execution proceedings as instituted by the appellants (D.M. Deshpande and others) in executing a trust scheme as a decree of the Court, which was filed before the Court

³ (1998) 8 SCC 315

of Civil Judge Senior Division, Yavatmal. The respondents had objected to the decree by filing a joint application, in which, a statement came to be made by the respondents that the applicants (D.M. Deshpande and others) did not obtain any decree of the competent Court of the respondents for delivery of possession from non-applicant no. 2, who was tenant over the field in question. However, in raising such a contention, there was no plea mentioned in the application as to when the alleged tenancy was created in favour of non-applicant no. 2. As there were no details of creation of tenancy; as to who created such tenancy in favour of the respondents; and how the same had come into existence and even the quantum of rent payable being not mentioned, and more particularly, the appellants having denied in the reply about the tenancy in favour of the first respondent, the Supreme Court made observations that, as no particulars were given by the first respondent or the second respondent therein relating to the tenancy, the Executing Court rightly rejected the objection of the respondents, which were confirmed by the learned District Judge. It was held that the High Court ought not to have interfered in the revision proceedings in absence of any factual basis in support of the plea of tenancy raised by the claimants. It was accordingly held that the direction of the High Court, directing possession of the Trust properties to be handed over to the first respondent was

also set aside. These are certainly not the facts of the present case. Respondent no. 1 is admittedly in possession. She is claiming her possession coupled with the plea of tenancy rights, which have accrued to her, which is clear from the averments made in the plaint as stated above. In such circumstances, reliance on behalf of the petitioner on such decision is not well founded.

12. On perusal of the impugned order it is clear that the learned Trial Judge has not only appropriately considered, but has applied his mind to the averments in the plaint and has rightly come to the conclusion that the suit as filed in asserting the rights of respondent no. 1/plaintiff is based on tenancy as well as possession of the suit premises. The learned Trial Judge has duly considered the various averments in the plaint to come to a conclusion that this is certainly not a case where the Court ought to non-suit respondent no. 1/plaintiff by exercising jurisdiction under Order VII Rule 11 of CPC and more importantly, when respondent no. 1/plaintiff is in possession of the suit premises. Having perused the averments made in the plaint and also having perused the reliefs in the plaint, in my considered opinion, and as observed by the learned Trial Court, no case whatsoever is made out by the petitioner for rejection of the plaint. The application as filed by the petitioner was thoroughly misconceived, which was rightly

rejected. There is no merit in the Petition and it is dismissed,
however, with no costs.

G.S. KULKARNI, J.