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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.143 OF 2019

JOANA COLACO E
COUTINHO, THR. HER POA,
JOSE COUTINHO AND ANR.PETITIONERS

Versus

SEBASTIAO MIRANDA
(DEC) AND 8 ORS.RESPONDENTS

Mr S.D. Padiyar with Ms A. Rane, Advocate for the Petitioners.
Mr Nigel Fernandes, Advocate for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 18th FEBRUARY 2023

ORAL ORDER :

1. Heard Mr Padiyar for the petitioners and Mr Nigel Fernandes for respondent no.2.
2. The challenge in this petition is to the judgment and order dated 12.05.2017 made by the Adhoc District Judge, FTC, South Goa at Margao in her capacity as the appellate Authority under the Goa Agricultural Tenancy Act, 1964.
3. By the impugned judgment and order dated 12.05.2017, the appellate Authority has partly allowed the petitioners' Appeal against

the judgment and order dated 26.06.2012 passed by the Mamlatdar of Salcete on an issue of tenancy which was referred in Civil Suit No.164/1991/A. Accordingly, the Appeal was partly allowed, and the order of the Mamlatdar was modified by holding that respondent no.1 was the tenant only in respect of the area of 3165 sq. mtrs. (paddy field area). However, the petitioners are aggrieved that their Appeal was not allowed in its entirety. Hence this Petition.

4. Mr Padiyar, the learned Counsel for the petitioners, submits that the declaration that the tenant had obtained in respect of the paddy field area of 3165 sq. mtrs. was a product of fraud. He proposes that such a fraudulent declaration cannot operate as res judicata. He submits that since the Appellate Authority has not adequately considered this aspect, the impugned judgment and order warrants interference.

5. Mr Nigel Fernandes defends the impugned judgment based on the reasoning reflected therein. He submits that the two Courts have adequately examined the material on record, and there is no error, much less jurisdictional error, involved. He, therefore, urges that this petition may be dismissed.

6. The rival contentions now fall for my determination.

7. The petitioner, in this case, is a purchaser of the suit property from the original landlord. Therefore, it is evident that the petitioner's position cannot be better off than the position of the original landlord.

8. The record shows that respondent no.1 was declared a tenant regarding the paddy field portion admeasuring 3165 sq. mtrs. by the competent Mamlatdar in proceedings to which the petitioner's predecessor in title was a party. The original landlord never challenged this declaration. However, the petitioner instituted Special Civil Suit No.192/1994/I for declaring the judgment and order in Tenancy Case No.7/1987 as null and void on the ground that the declaration of tenancy recorded therein was fraudulently procured. This suit was filed in the year 1994.

9. By judgment and decree dated 07.08.1998, the Trial Court dismissed this suit. The Appeal Court dismissed the Appeal against this judgment and decree in Regular Civil Appeal No.75/2003 on 04.09.2004. The petitioners preferred Second Appeal No.16/2004 against the same. However, this Second Appeal was withdrawn on 30.11.2012.

10. Thus, even the contention about the fraudulent tenancy declaration stood rejected, and such rejection has attained finality.

11. This petition concerns the impugned judgment and order made on a reference in Civil Suit No.164/1991/A. On reference, the Mamlatdar correctly held that the declaration of tenancy concerning the paddy field of 3165 sq. mtrs. had already obtained finality and operated as a res judicata. This order of the Mamlatdar was now upheld by the Adhoc District Judge, South Goa, Margao, by impugned judgment and order dated 12.05.2017.

12. Both the Courts were justified in holding that respondent no.1 was indeed the tenant regarding the paddy field portion of 3165 sq. mtrs. Further, this declaration/finding had attained finality. The two Courts have held that this declaration/finding, which had again attained finality, could not be attempted to be reopened given the doctrine of res judicata. In my judgment, there is no error, much less any jurisdictional error, in the approach of the two authorities to warrant any interference under Article 227 of the Constitution of India.

13. For the above reasons, this petition is dismissed.

14. There shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

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