

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.10 OF 2023

- 1 Smt Hiravati Keshavarao Naik Alias
Lilavati Naik, 85 years, Since deceased
through her heirs.
- 1(a) Ankush Keshavrao Naik,
Son of Late Keshavrao Naik, 60years
Old, married and His wife,
- 1(b) Smt Shailaja Alias Amita Ankush Naik,
57 years old,
- 1(c) Lavu Keshavrao Naik,
Son of Late Keshavrao Naik, 55years Age,
All Indian National, All Residents of
H.No.616, Thorle Bhat, Dongri, ...Applicants/
Tiswadi, Goa 403104 Judgment Debtors
- v/s.
- Laxmi Dharma Naik Alias Bandodkar,
w/o Dharma Bandodkar, 70 years Old,
Landlady, Indian National, Resident of
H.No.524, Odlem Bhat, Dongri,
Tiswadi, Goa - 403 104. ...Respondent
/Decree holder
- (a) Madhu Dharma Bandodkar,
Son, 54 years old,
businessman and his wife;
- (b) Mrs Savita Madhu Bandodkar,
daughter in law, 50 years old, housewife,
- (c) Sanjay Dharma Bandodkar, son, 48 years

old, businessman and his wife;

- (d) Mrs Suchita Sanjay Bandodkar, daughter in law, 40 years old, housewife,
- (e) Rajeshree Naik, daughter, 50years old, housewife and her husband
- (f) Arun Naik, son in law, 59 years old, Service

All Indian nationals, resident of c/o. H.No.524, Vodlem Bhat, Dongri, Tiswadi, Goa.

(Amendment carried out as per order dated 06/07/2023 in MCA No.1321/2023 F)

Shri S.G. Desai, Senior Advocate with Shri Tejas Rane, Advocate for the Applicants.

Shri Harshad Arsekar, Advocate for the respondents.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 10th August, 2023

ORAL ORDER:

1. Heard the learned Senior Counsel Shri S.G. Desai appearing for the applicants along with Shri Tejas Rane and learned Counsel Shri Arsekar, appearing for the respondents.

2. The present revision petition is filed challenging the impugned order dated 06/01/2023 arising out of Regular Execution Application No.2 of 2018 in Regular Civil Suit No.40 of 2003.

3. Shri Dessai, appearing for the applicants strongly contended that first of all the decree passed by the Trial Court is a nullity and the same cannot be executed. He submitted that the applicants who are the original defendants raised a plea of munkarship in their written statement however without referring to such an issue of mundkarship, the consent decree was drawn in the year 2006. He submits that since the applicants are mundkars, the Civil Court has no jurisdiction even to pass such a decree. He invited the attention of this Court to various provisions of the Mundkar Act and claimed that the impugned order needs to be quashed and set aside.

4. Per contra, the learned Counsel Shri Arsekar appearing for the respondents invited attention to the order passed on 13/04/2023 wherein it was observed by the co-ordinate Bench that the question regarding maintainability of revision is kept open. He submits that the revision is not maintainable under Section 115 of CPC. He submits that twin conditions referred in Section 115 are not attracted.

5. As far as merits are concerned he submits that suit was filed for injunction wherein the applicants/ defendants approached the plaintiff and accordingly consent terms were drawn and accordingly the suit

was decreed in the year 2006 itself. However, the applicants/original defendants failed to come forward for purchasing the suit property as agreed upon and carried out illegal construction and therefore, he had to approach the Executing Court by filing an application for execution. He further submits that the objections raised by the judgment debtors have been rightly rejected by the Executing Court and no interference is warranted.

6. Rival contentions fall for determination as under.

7. Though learned Senior Counsel Shri Desai would submit that the decree itself is a nullity, one thing has to be kept in mind that the suit was filed by the plaintiff claiming injunction and consequential reliefs wherein it was alleged that the defendants/judgment debtors started constructing an illegal structure in place of a small hut. In that case, the defendants/judgment debtor filed a written statement claiming therein that they are Mundkar for the alleged structure. Records show that even a temporary injunction application was filed and it was allowed in favour of the plaintiff vide order dated 08/07/2004.

8. Thereafter, consent terms were filed before the Trial Court in RCS No.40/2003/D on 31/01/2006. Such consent terms were duly signed by the plaintiffs, defendants and their respective Advocates. By

accepting consent terms the Trial Court passed an order decreeing the suit. Contents of the content terms reads thus:

“ The parties above named states and submits as under:-

1. That the defendants have agreed to purchase the land benith and around the dwelling house as per the availability of the land at site agreed between the parties and the plaintiff has agreed to sale the same.

2. The defendants hereby give undertaking that they will not do any construction in the suit property unless and until they purchase the land and to become owner of the said plot and in case anything is done the defendant shall demolish at their cost.

3. Upon the undertaking the plaintiff shall withdraw the suit.

It is therefore prayed that the consent decree be passed accordingly”

9. On the basis of such content terms, the suit was decreed and a decree was drawn on the same day i.e. 31/01/2006, which is at page 70.

10. In the Consent Terms the defendants/judgment debtors agreed to purchase the land beneath and around their dwelling house as per the availability of the land at the site at the rate agreed between the parties and the plaintiff agreed to sell the same. The second condition speaks about the undertaking given by the defendants that they will not do any construction in the suit property unless and until they

purchase the land and become the owner and in case anything is done, they shall demolish at their costs.

11. Records show that till the year 2018, both parties failed to execute the Consent Terms. Suddenly in 2018, the decree holder filed an execution application seeking reliefs as found in clause 'J' which reads thus:

“(j) The mode In which the assistance of the court, is required : (a) That the Judgment Debtors be ordered and directed to purchase the land benith and around their dwelling house as per the availability of land at site;

(b) That the Judgment Debtors be ordered and directed to demolish the illegal construction carried out by the Judgment Debtors in the suit property at their own cost;

(c) In case the Judgment Debtor's fails to comply the Consent Decree of this Hon'ble Court then Police protection be granted to the Decree Holder to carry out demolition of the illegal construction carried out by the Judgment Debtors in the suit property and the cost of demolition of the said illegal

construction be recovered from the Judgment Debtor's;

(d) The Judgment Debtor's be arrested and detained in civil prison;

(e) Other and further necessary Orders be passed as deemed fit and proper for the execution of the Decree."

12. The judgment debtor resisted the said execution proceeding by filing a reply wherein the plea of membership has been raised. It is also claimed that the judgment debtor approached the Mamlatdar for registration of mundkarship and the matter is pending before the concerned Mamlatdar. As far as the second part of the decree is concerned regarding illegal construction, it is their contention that the rear side of their house is a paddy field and some portion of the said property was damaged and therefore, they reconstructed it.

13. The reply filed by the judgment debtor clearly goes to show that they are claiming mundkarship over the structure and the proceedings were filed before the Mamlatdar. In such circumstances, without considering the contentions about the nullity of the decree as tried to be argued on behalf of the applicants, the learned Executing Court ought to have exercised its powers as contemplated under Section 32

of the Mundkar Act and to stay the execution proceedings since the judgment debtors have clearly referred in their reply that they approached the Mamlatdar for declaring them as Mundkar of the disputed structure. The mandate of Section 32 of the Mundkar Act requires the Civil Court to stay any proceedings when an issue regarding mundkarship is pending before the competent authority.

14. Mr Arsekar submitted that at the time of passing of the impugned order, the Executing Court observed that such mundkarial application filed by the judgment debtor was dismissed. However, Mr Desai, learned Senior Counsel appearing for the applicant would submit that application for restoration along with condonation of delay is pending before the Mamlatdar.

15. In such circumstances, the question of deciding the execution application is clearly an error on the part of the Executing Court in view of the clear bar to proceed with such execution. On this ground alone, the revision application needs to be allowed. All other contentions raised by the learned Counsel for the respective parties are left open.

16. The revision stands allowed. The impugned order is hereby quashed and set aside.