

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**

**SECOND APPEAL NO. 7 OF 2020**

MIRA TUKARAM NAIK. ... Appellant

*Versus*

GIVAJI BALKRISHNA SINAI HEDE  
(DEC) REP. BY LRS. AND 4 ORS. ... Respondents

Mr Vivek Rodrigues, Advocate for the Appellant.

**CORAM: M. S. SONAK, J.**

**DATED : 6<sup>th</sup> JULY 2023**

**P.C.:**

1. Heard Mr Rodrigues, learned counsel for the Appellant.
2. This appeal challenges the concurrent judgments and decrees dated 30.06.2012 and 30.11.2018 by the trial Court and First Appellate Court decreeing the Respondents' suit for permanent injunction and correction in the survey records.
3. Mr Rodrigues, learned counsel for the Appellant, submits that the Appellant-defendant had raised the plea of agricultural tenancy in the suit. He submits that this issue was referred to the Mamlatdar for decision. He admits that the reference was dismissed due to the absence of all the parties. He submits that such dismissal does not amount to any negative declaration by the Mamlatdar. He submits

that the two Courts could not have decreed the suit based upon such dismissal.

4. Mr Rodrigues submits that the suit was barred by limitation, considering the admission of PW1 during his cross-examination. He referred to paragraph 30 of the trial Court's judgment dated 30.06.2012 to submit that the cause of action for correcting survey entries arose in 1976. Therefore, Mr Rodrigues submits that the suit instituted in 2004 was hopelessly barred by limitation.

5. Based on the above submission, Mr Rodrigues proposed the following substantial questions of law.

(i) Whether a dismissal for default of both parties in a reference under the tenancy act can amount to a negative declaration to give the civil court jurisdiction to remove name of tenant from the record of rights?

(ii) Whether the suit is barred under the law of limitation in view of the specific cross examination and admission of knowledge of entries in record of rights?

6. Upon consideration of Mr Rodrigues's contentions and perusing the records, I am satisfied that no case is made out to entertain this Second Appeal. The brief reasons are discussed hereafter.

7. The Appellant-defendant did raise a plea of agricultural tenancy, and based upon such plea, a reference was made to the Mamlatdar. The onus was on the Appellant to establish her plea of agricultural tenancy. This onus required the Appellant to lead proper evidence to

make good her plea of tenancy. Since the Appellant failed to do so, the Mamlatdar had no option but to dispose of the reference. The Appellant did attempt to seek restoration, but such an attempt also failed. The Appellant took no further steps to obtain a declaration of tenancy.

8. In the above circumstances, two Courts were justified in holding that there was no material before them supporting the Appellant's plea of agricultural tenancy. Since the Appellant claimed no other rights other than tenancy and further since there was no dispute about the Respondents' ownership, the decree of permanent injunction was granted. The Courts did discuss the evidence on possession and recorded concurrently finding favouring the Plaintiffs. The consequential decree of correction of survey records was also granted based on the same reasoning and evidence.

9. Although the dismissal of a reference may not amount to the grant of a negative declaration by the Mamlatdar, the dismissal of the reference can at least be considered a failure by the Appellant to obtain a positive declaration of her tenancy. In such circumstances, the two Courts were justified in decreeing the suit. If the appellant's contention that the trial Court should have again referred the matter to the Mamlatdar is accepted, there would be no end to litigation. The Appellant was granted a full opportunity to make good her plea of tenancy. But she failed. The insistence that the concurrent decrees be set aside, and further opportunities be granted cannot be entertained.

**10.** There was no question of the bar of limitation, particularly in the context of relief of permanent injunction. The plaint and the other material on record show that the decree of permanent injunction was sought no sooner than the interference was experienced. Based upon the statements in the cross-examination, it cannot be said that the suit itself was barred by limitation.

**11.** Besides, it needs to be clarified that the entries in the survey records are only for fiscal purposes, and they are not strictly speaking determinative of the rights and title. Similarly, the dismissal of the reference by the Mamlatdar may not at least *prima facie* preclude the Appellant from instituting the substantive proceedings seeking declaration etc. Considering this perspective, no case is made out to interfere with the concurrent decrees made by the two Courts.

**12.** The two substantial questions of law proposed by Mr Rodrigues either do not arise or in any case are required to be answered against the Appellant.

**13.** For the above reasons, this appeal is dismissed.

**14.** There shall be no order for costs.

**M. S. SONAK, J.**