

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.36 OF 2022

VICTOR MARTINS
AND 3 ORS.

... Appellants.

Versus

ANNA FRANSISCA FERNANDES
(DEC) THR. LRS.

... Respondents.

**WITH
SECOND APPEAL NO.37 OF 2022
WITH
MISC. CIVIL APPLICATION NO.2446 OF 2023 (F)
IN
SECOND APPEAL NO.37 OF 2022**

VICTOR MARTINS
AND 3 ORS.

... Appellants/
Applicants.

Versus

LIRA CARDOZO

... Respondent.

**WITH
SECOND APPEAL NO.38 OF 2022**

VICTOR MARTINS
AND 3 ORS.

... Appellants.

Versus

REMEDIANA SEQUEIRA
ALSO KNOWN AS REMEGIA
SEQUEIRA LEITAO

... Respondent.

Mr Gautami Kamat, Advocates for the Appellants/Applicants.

Mr A.D. Bhobe with Ms R. Prazeres, Advocates for the Respondents.

CORAM: VALMIKI SA MENEZES, J.

DATED: 1 November, 2023

ORAL ORDER:

1. These three Second Appeals challenge three Judgments and Decrees dated 16.02.2021 of the District Judge-1 (FTC-1), South Goa, Margao. This judgment shall dispose of all three Second Appeals, which have come up for hearing before me under the following circumstances.

2. Three suits came to be filed before the Civil Judge Junior Division at Margao which are Regular Civil Suit No.121/2012, Regular Civil Suit No.122/2012 and Regular Civil Suit No.123/2012 wherein the Plaintiffs are respectively the Appellants in Second Appeal No.36/2023, Second Appeal No.38/2023 and Second Appeal No.37/2023. In all these suits, the Plaintiffs sought a decree of permanent injunction against the Defendants, who are common to all three suits. The decree of permanent injunction sought to restrain these Defendants from interfering with the suit properties which are land under Survey No.121/1 admeasuring 3725 square metres in Regular Civil Suit No.121/2012, land under Survey No.121/13 admeasuring 1050 square metres in Regular Civil Suit No.122/2012 and land bearing Survey No.121/2 admeasuring 1200 square metres in Regular Civil Suit No.123/2012. All these suit properties are garden lands under cashew cultivation.

The Plaintiff in Regular Civil Suit No.121/2012 claimed title by two sale deeds, dated 27.04.1970 and 24.07.1970. The Plaintiff in Regular Civil Suit No.122/2012 claimed title through a sale deed dated 16.05.1970 while the Plaintiff in Regular Civil Suit No.123/2012 claimed title through a sale deed dated 04.10.1968. In all four sale deeds, the vendor is one Dr Beatriz de Menezes Braganca, the original owner of these properties.

3. In defence, the present Appellants/Defendants in these suits, raised a plea in their written statement that the three suit properties formed part of a larger property known as “Marvatollem” in which, their father Shri Ernesto Minguel Martins was an agricultural tenant. It is the claim of the Defendants in the written statement that all these properties were leased by Dr Beatriz de Menezes Braganca to the said Ernesto Minguel Martins, and in terms of the Goa, Daman & Diu Agricultural Tenancy Act, 1964 (Tenancy Act), the said Ernesto Minguel Martins, in a Tenancy Case No.109/65 was declared as “deemed tenant” and as a consequence thereof, the four sale deeds through which the Plaintiffs were claiming ownership of the property would be a nullity. The Defendants raised a counterclaim in these suits wherein they sought a declaration from the Civil Court that the aforementioned four sale deeds were null and void and as a consequence, they sought a permanent injunction against the Plaintiffs from interfering with their peaceful possession of the suit properties as also the further properties bearing Survey Nos.121/3, 121/4 and 121/12, to which they laid a claim of tenancy.

4. In the written statement, there are categorical averments made as to the number of the tenancy appeal in the afore-referred tenancy proceedings as also the proceedings in revision petition preferred by Dr Beatriz de Menezes Braganca before the Administrative Tribunal. Note is required to be taken of the fact that the pleading refers to an appeal No.5/68 filed by the said Dr Beatriz de Menezes Braganca before the Collector to challenge the tenancy declaration issued by the Mamlatdar under the Tenancy Act in favour of late Ernesto Martins, and the order of the Administrative Tribunal dated 24.07.1971 in a revision filed by the same person to challenge the Collector's order.

5. Before the Trial Court, evidence was led by the Plaintiffs while the Defendants stayed away from the witness box. The Trial Court has decreed the suits returning a specific finding in all three matters that the Plaintiffs were in possession of their respective suit properties and that the Defendants had failed to prove that they had been declared as deemed tenants of these properties

In an appeal carried before the District Court by the Defendants against the three sets of Plaintiffs, the District Court has returned concurrent findings on the question of possession and ownership in favour of the original Plaintiffs and has rejected the claim of having obtained a declaration of deemed tenancy by the Defendants. There being concurrent findings of fact, both on ownership and on possession of the Plaintiffs, in the circumstances of the case, there would be no substantial question of law arising on this issue to be decided by this Court.

6. During the course of the hearing of the matter, the learned Advocate for the Appellants has sought to produce under Misc. Civil Application No.2446/2023 (F), an order dated 27.04.1970 passed by the Collector of Goa in Tenancy Appeal No.5/68 and order dated 24.07.1971 passed by the Administrative Tribunal of Goa in Revision Application No.40/70 wherein the order of the Mamlatdar passed under the provisions of the Goa, Daman & Diu Agricultural Tenancy Act, 1964 declaring the Appellants/Defendants to be deemed tenants of a property known as “Marvatollem”. The application is sought to be urged on the basis of provision under Order 41 Rule 27 read with Order 42 Rule 1 CPC to contend that though the Defendants had pleaded all these facts before the Trial Court in their written statement, they were unable at that point of time to produce these orders in evidence. It was further contended by the learned Advocate for the Appellants that reading these two orders in evidence would further the case of the Defendants in that if they were considered by the Courts below, the Courts would have arrived at a different conclusion in that the suit properties, if made subject matter of a tenancy plea, the sale deeds themselves would be a nullity.

7. Learned Advocate for the Appellants relied upon the Judgment of the Supreme Court in *Sanjay Kumar Singh vs. The State of Jharkhand; Civil Appeal No.1760/2022 dated 10.03.2022* to contend that where additional evidence sought to be adduced removes the cloud of doubt over the case, and such evidence has a direct and important bearing on the main issue in the suit, in the interest of justice, the documents ought to be allowed to be produced.

8. For the purpose of deciding the above application, the Appellants would have to demonstrate before this Court not just the relevancy of the documents in terms of their content, but also that, notwithstanding due diligence, they were precluded from obtaining the documents and producing them before the Trial Court in evidence.

9. Clearly, the Defendants/Appellants herein have specifically pleaded by date and number of the proceedings, the contents of the orders they now seek to be relying upon to set the clock back to trial stage. Clearly, therefore, the first hurdle of having shown due diligence has not been crossed by the Appellants. It would be nigh impossible to plead that such detail of the dates of the orders and numbers of the proceedings, without actually having those orders in hand. Clearly, therefore, the Appellants had not acted with any diligence in the matter and will be precluded from producing these documents at this stage.

10. Nevertheless, I have examined the contents of the documents themselves, to ascertain their relevance and in what manner they would further the case of the Defendants. The suit properties are all cashew groves with the nature of the crop being specified as garden lands in the survey records. It is not only the Plaintiffs specific pleadings in the plaint that the suit properties were cashew gardens, but also the specific pleading in the written statement of the Defendants, wherein they had contended that though the lands were originally cashew gardens, the cashew crop on these lands was at present very sparse. Undoubtedly, therefore, these suit properties were cashew gardens and not a paddy field. If one peruses the two orders sought to be produced, these pertain

specifically to a land known as “Marvatollem”, situated in Village Chinchinim and has been referred to as paddy field. Nowhere in these orders do the two Courts of the Collector and Administrative Tribunal refer to this property or any part of it to be under cashew cultivation or an orchard land. In fact, the two orders refer to the agricultural operations claimed to have been carried out by the late Ernesto Martins since 1960 in great detail, and amongst these activities, he had claimed that the suit field needed four to five kudavs (a measure) of paddy seeds. It is thus clear that after going through these two orders, even if the Defendants were to lead evidence, which it has not done before the Trial Court, on these documents, the documents themselves obviously do not refer to a property which is a cashew grove as is the case of the suit properties. I, therefore, do not consider these documents to be of any relevance so as to further the claim of the Defendants to have been declared as deemed tenants of the suit properties. In any event, the Defendants have not led any evidence before the Trial Court to even establish that the property claimed under tenancy by them i.e. “Marvatollem” extends to the survey numbers covering the three suit properties and in addition to those under Survey Nos.121/3, 121/4 and 121/12. In that view of the matter, the Misc. Civil Application No.2446/2023 (F) stands rejected.

Sanjay Kumar Singh (supra) cited by the Appellants was a judgment rendered in a case where contemporaneous sale instances were sought to be produced at the appellate stage for assisting the Appellate Court at concluding the market value of the acquired property. It is in those circumstances, that being a land acquisition case, that the Supreme Court has observed therein, that the Appellate Court should approach

such applications in a liberal manner. However, in the present facts, the observations in *Sanjay Kumar Singh* (supra) would not be affected as the concerned documents were in fact pleaded in the written statement itself and not produced.

11. Since no substantial question of law arises for determination in these three appeals, the appeals stand dismissed with no order as to costs.

VALMIKI SA MENEZES, J.

JOSE
FRANCISCO
DSOUZA
Digitally signed by JOSE
FRANCISCO DSOUZA
Date: 2023.11.01
12:52:04 +05'30'