

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 9/2023
IN
APPEAL FROM ORDER NO.2001/2022(F)

JATEEN ANIL AMONKAR Applicant.

Versus

VIVEKANAND SHRIKANT
VOLVOIKAR AND 5 ORS Respondents.

Mr Sudesh Usgaonkar with Ms Rosette Pereira, Advocates *for the Applicant.*

Mr Ashwin D. Bhobe, Advocate *for the Respondents.*

MISC. CIVIL APPLICATION NO. 231/2023
IN
APPEAL FROM ORDER NO.2001/2022(F)

VIVEKANAND SHRIKANT VOLVOIKAR
AND 5 ORS ... Applicants.

Versus

JATEEN ANIL AMONKAR AND 5 ORS ... Respondents.

Mr Ashwin D. Bhobe, Advocate *for the Applicants.*

Mr Sudesh Usgaonkar with Ms Rosette Pereira, Advocates *for the Respondents No.1,2 and 3.*

CORAM : M. S. SONAK, J.

DATE : 7th July 2023

P.C. :

1. Heard Mr Sudesh Usgaonkar for the Applicant in Civil Application (Review) No. 9/2023 and Mr Bhobe for the Respondent and in Misc. Civil Application No. 232/2023, Mr

Bhobe for the Applicants and Mr Sudesh Usgaonkar for Respondents No.1, 2 and 3.

2. Mr Usgaonkar submits that the *prima facie* observation recorded in this Court's order dated 9th March 2023, which has been transcribed in the order dated 16th June 2023, is incorrect. He submits that Section 18K of The Goa, Daman and Diu Agricultural Tenancy Act, 1964 provides for assignment. He points out that assignment by way of a Will is permissible in terms of the Supreme Court's Judgment. He submits that the *prima facie* finding recorded in the order dated 9th March 2023 appears to have been accepted in the order dated 16th June 2023. On this ground, he seeks a review of the order dated 16th June 2023.

3. The Order dated 9th March 2023 made by M.S. Karnik, J. in this matter was only transcribed in paragraph 4 of the order dated 16th June 2023. That is only a *prima facie* opinion which has been expressed. The *prima facie* opinion does not say that assignment, under all circumstances, is impermissible but only states that such an assignment has to be with the previous sanction of the Mamlatdar.

4. Only a *prima facie* opinion has been expressed, and it is well settled that such an opinion, in no way, binds the Trial Court while deciding the suit finally on merits. At that stage, the Trial Court will have to go by the evidence that the parties lead and also evaluate fully the position in law as regards such matters. Therefore, there is no case made out for review, except that it is clarified that none of the observations in the orders dated 9th March 2023 or 16th June

2023 shall be considered by the Trial Court while disposing of the suit on its own merits.

5. Accordingly, the Civil Application (Review) No. 9/2023 is disposed of in the above terms.

6. Misc. Civil Application No.231/2023 seeks to speak to the order's minutes dated 16th June 2023. It is pointed out that a restraint was to be imposed upon Respondent No.1 from carrying out any mutation in the survey records based upon the impugned Will. This court did indicate that mutation would not be permitted pending disposal of the suit, but inadvertently, this remained to be reflected in the order. Such a restraint would be proper; accordingly, it is clarified that the order dated 16th June 2023 also includes a restraint on Respondent No.1's carrying out mutation based upon the Will.

7. At the same, it is further clarified that in terms of the order dated 16th June 2023, Respondent No.1 is permitted to undertake agricultural operations in the portion of the suit property referred to in the order. This is subject to Respondent No.1 depositing an amount of ₹5.00 lakhs with the Trial Court, which deposit, Mr Usgaonkar states, would be immediately made.

8. Therefore, for such agricultural operations, if Respondent No.1 is required to apply for obtaining any subsidies, financial assistance under any schemes framed by the Government, etc., then the mere fact that there is no mutation carried out in his name should not come in the way of his availing of such benefits. If Respondent No.1 fulfils other conditions to avail of the benefits

under such schemes, such benefits should not be denied on the grounds of mutation. Merely by obtaining any benefits or subsidies, etc., Respondent No.1 will not claim any equities. These are matters that the Trial Court need not even consider while deciding the suit on merits. Misc. Civil Application No. 231/2023 is disposed of in the above terms.

9. Accordingly, both, Civil Application (Review) No. 9/2023 and Misc. Civil Application No. 231/2023 are disposed of in the above terms, without any order for costs.

M. S. SONAK, J.