

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1132 OF 2018

FRANCISCO XAVIER DA CUNHA. ... Petitioner

Versus

MARIA D'CUNHA AND ANR. ... Respondents

Mr. Suraj Naik, Advocate for the Petitioner.

Mr. R. Shetkar, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J.

DATED : 31st MARCH 2023

P.C.:

1. Heard Mr. S. Naik, learned counsel for the Petitioner and Mr. R. Shetkar, learned counsel for Respondent No.1.

2. This petition was instituted to challenge the impugned order dated 03.05.2018 by which the learned trial Judge declined to frame the tenancy issue and refer the same to the Mamlatdar for adjudication. The trial Judge, in the impugned order has held that there were inadequate pleadings for framing such an issue.

3. The Petitioner has already filed an application seeking leave to amend the plaint. Such amendment was allowed on 22.01.2019 i.e. after the institution of this petition. After taking into account the

amended pleadings, the learned trial Judge has framed the following additional issues.

“ ADDITIONAL ISSUES

1. Whether the Plaintiff proves that defendant no.2 had created rights in favour of his father during the Portuguese regime by orally leasing the said property bearing survey No.170/4 of Village Goa -Velha Taluka Tiswadi, Goa on annual rent to be paid in kind to the extent of 1/6th of the paddy yield from the said property?

2. Whether the plaintiff proves that his parents along with his children i.e. plaintiff and other family members were carrying out agricultural activities in the said property such as cleaning, maintaining the boundary hedge of the said property and ploughing the said property?

3. What relief? What order?”

4. The first additional issue concerns the tenancy. The learned counsel for the parties agree that this issue will have to be referred to the Mamlatdar for adjudication and decision.

5. Considering the above subsequent development, the effect of the impugned order dated 03.05.2018 stands neutralized. The reliefs in this petition are also rendered infructuous because the issue of tenancy is framed and there is no dispute that the same will have to be referred to the Mamlatdar for adjudication/decision.

6. Accordingly, by taking note of the above subsequent development, this petition is disposed of. There shall be no order for costs.

7. All concerned are to act on the authenticated copy of this order.

M. S. SONAK, J.

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH
Date: 2023.03.31 16:41:09 +05'30'