

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.40 OF 2017

COMMUNIDADE OF CALAPUR, ... Petitioner
through its Attorney, having Office at
Cammunidade of Calapur, Calapur, Santa
Cruz, Tiswadi- Goa.

Versus

- 1 HIRABAI K. KAVLEKAR,
wife of late Keshav D'Souza alias Keshav
Kavlekar, aged 72 years, Indian National,
resident of House No.309, resident of House
No.309, Odlem Bhat, Santa Cruz, Tiswadi-
Goa.
- 2 ARTURO C. D'SOUZA,
of major age, married, Indian National,
Businessman, resident of House No.351,
Ruzalwado, Santa Cruz, Tiswadi- Goa.
- 3 MUNKUNDRAJ MUDRAS, of major age,
married, Indian National, businessman, resident
of C-9, Building 6, Kenkre Estate, Cabesa,
Santa Cruz, Tiswadi- Goa.
- 4 MARIANO ARAUJO,
of major age, Indian National, married,
businessman, resident of House No.341,
Cabesa, Santa Cruz, Tiswadi – Goa. ... Respondents

Ms Asha A. Desai with Ms Natasha Volvoikar, Advocates for the
Applicant.

Ms Sonadevi Nishad, Advocate for Respondent Nos.1 to 3.

Mr Ryan Menezes with Ms Gina Almeida and Mr Nigel
Fernandes, Advocates for Respondent No. 4.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 22nd June 2023

JUDGMENT:

1. This is revision filed by the defendant thereby challenging the impugned order dated 07/09/2017 passed by the learned Civil Court in Regular Civil Suit No.67/2017/C thereby rejecting the application filed under Order 7 Rule 11(d) of CPC.

2. This revision was admitted on 08/02/2018 and is tagged with Civil Revision Application No.40 of 2019, since Civil Revision Application No.40/2019 is arising out of rejection of the application filed under Order 7 Rule 11 for dismissal of the counterclaim.

3. Heard Mr Sawant appearing for the applicant, Ms Asha Desai appearing for respondent No.1 and Ms Sonadevi Nishad appearing for respondents No.2,3 and 4. With their assistance I have perused the paper book containing plaint, relevant documents and impugned order.

4. Mr Sawant appearing for the applicant would submit that a meaningful reading of the plaint would clearly go to show that the plaintiff is claiming to be a tenant of the suit property and alleging wrongful dispossession or interference by the landlord and others. According to him, the jurisdiction of the Civil Court is clearly barred under Section 58(B) of the Agricultural Tenancy Act. He would submit that the definition of “tenant” as found mentioned in Section

2(23) defines “tenant” or “deemed tenant”. Similarly, the allegations that the plaint would clearly go to show that there is apprehension in the mind of the plaintiff that he will be dispossessed wrongly or at the most the defendants would not allow him to operate the sluice gate which is a part and parcel of the tenancy. This aspect is clearly covered under Section 8(A) of the Agricultural Tenancy Act and, therefore, the provisions of Section 58(B) of the said Act would attract.

5. In support of his averments, Mr Sawant placed reliance on the following decisions:

1. **Smt Jaya R. Deshpabhu and others v/s. Shri Surendra Anant Naik Dessai** (1995(2)Goa L.T.305)
2. **Jose Maria Florence Xavier Cassiano Luis v/s. Vassudeo Budhu Morajkar** (1993 (3) Mh.L.J. 10)

6. Similarly, the learned Single Judge of this Court while deciding Second Appeal No.20 of 2008 on 20/10/2022 considered the provisions of Section 58(2) of the Agricultural Tenancy Act, which was amended and subsequently adding Section 58(B) of the said Act and observed that no Court shall have jurisdiction to settle, decide or deal with any question which is by or under Agricultural Tenancy Act is required to be settled, decided or dealt with by the Mamlatdar,

Tribunal, Collector, etc. and no orders passed by these authorities under the Act shall be questioned in any Civil and Criminal Court.

7. The learned Counsel Ms Asha Desai appearing for the respondent/plaintiff vehemently submitted that the plaintiff is the tenant declared by the Mamlatdar and the suit is only simplicitor for injunction and that too against the third party and not against the landlord. She would submit that the original defendants No.1, 2 and 3 who are not connected in any manner either with the landlord or with the suit property are trying to dispossess the plaintiff or are trying to interfere in the possession and operation of the sluice gate. According to her, the question of grant of mandatory injunction cannot be looked into or decided by the Mamlatdar under the Tenancy Act. She further submitted that Section 8(A) is not attracted in the present matter and therefore Section 58(B) cannot be invoked.

8. The short question which cropped up in the present revision is whether plaint in Regular Civil Suit No.67/2017/A needs to be rejected under Order 7 Rule 11 (d) i.e. barred by any law.

9. In this respect Order 7 Rule 11(d) provides that where the suit appears from the statement in the plaint to be barred by any law. Therefore, it is necessary to look into the contents of the plaint and on meaningful reading of it, to find out whether the statement made in

the plaint creates such a bar on the Civil Court to entertain and decide on merit.

10. With the assistance of the learned Counsel for the respective parties, I have gone through the entire plaint. In nutshell, it is the contention of the plaintiff that there is property, a paddy field, known as “Bondvol” situated at Oldem Bhat along with cashew plantation and other horticultural plantation tree. The said property originally belongs to defendant no.4/applicant herein. Para No.1 of the plaint itself shows the averments that the defendants No.1 to 3 trespassed into the property situated on the boundary of survey No.85/1 and 145/2 wherein there exists an outlet/sluice gate. These properties are referred to as the suit property.

11. Further, paragraph 2 shows that defendants No.1, 2 and 3 have no right over the suit property whereas the defendant No.4 is the owner and plaintiff is the tenant and is in possession of it. It is also pleaded that the plaintiff is carrying out pisciculture activities during the time when the reservoir is filled with water i.e. from June to February and thereafter the farming and agricultural activities from February to May. It is also claimed that there is a dry season reservoir converted into a paddy field wherein the plaintiff is cultivating paddy.

12. Apart from the details of the agricultural activities and the produce yield from the said property, it is claimed that vide order

/judgment dated 10/05/1968, the plaintiff is declared tenant by the Mamlatdar. Accordingly, the plaintiff and the legal heirs of Keshav became the deemed purchaser of the said property. The plaint further show that the plaintiff is in continuous possession of the said property and cultivating the said property from 1967.

13. Further in the plaint it is claimed that the defendants with an intention to harass the plaintiff filed various complaints with different authorities including GCZMA. The defendants are also unnecessarily harassing the plaintiff by carrying out inspections with the help of such agencies and interfering with the possession. It is further claimed that on 07/05/2017 the defendants took out the lid which closes the valve and illegally put its own lock on the sluice gate thereby restraining the plaintiff from entering the said area to operate the valve and the said gate. It is claimed that such an act on the part of the defendant of wrongly restraining the plaintiff from operating the said valve and thereby disturbing the water timetable of the reservoir which is likely to adversely affect the agricultural activities of the plaintiff in the suit property.

14. In paragraph 21 of the plaint, it has been specifically pleaded that the plaintiff's apprehension that by restraining the plaintiff, her rights are affected with regard to the enjoyment of the property and carrying out agricultural activities. Similarly, in paragraph 23 of the plaint, it is claimed that the plaintiff is entitled for injunction against

the defendants, their successors etc. thereby restraining them from interfering in any manner in the suit property.

15. For the first time, in the prayer clause, the plaintiff has very specifically asked for injunction only against defendants No.1,2 and 3 not against defendant No.4.

16. From the reading of the plaint it is clear that plaintiff is not disclosing the connection of defendants No.1,2 and 3 by which they are trying to disturb the possession of the plaintiff over the sluice gate or the said property. The entire plaint clearly goes to show that such activities were carried out by the defendants including defendant No.4. Be that as it may, the question which needs to be addressed in the present matter is whether the plaint needs to be rejected under clause(d) of Rule 11 of Order 7 CPC.

17. Section 2(23) of the Agricultural Tenancy Act defines “tenant” which means a person who on or after the date of commencement of this Act holds land on lease and cultivates it personally and includes a person who is [or was] deemed to be a tenant under this Act.

18. Plaint is very clear on this aspect wherein averment show that the plaintiff is the deemed tenant/deemed purchaser. Averments further show that the plaintiff holds the said land on lease and cultivates it personally.

19. Section 7 of the Agricultural Tenancy Act deals with question of tenancy and provides that if any question arises whether any person is or was tenant or should be deemed to be a tenant under the said Act, the Mamlatdar shall hold enquiry and decide such question.

20. Relevant provision to Section 8(A) which reads thus:

“[8A. Relief in certain cases of threatened wrongful dispossession.— (1) Any tenant in possession of any land or dwelling house who apprehends that he may be dispossessed contrary to the provisions of this Act, may apply in the prescribed manner to the Mamlatdar for an order safe guarding his right to possession.

(2) On such application, the Mamlatdar if he is satisfied on holding such enquiry as may be prescribed, that the applicant is entitled to continue in possession, shall, by order, direct the landlord or any person claiming through him to refrain from disturbing it otherwise than in accordance with law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar by affidavit or otherwise that the opponent threatens to dispossess the applicant, he may by order grant a temporary injunction restraining such dispossession or otherwise causing injury until the final disposal of the proceeding or until further orders. In all such cases the Mamlatdar shall, except where it appears that the object of granting the injunction would be defeated by delay, issue notice of the application to the opponent before granting an injunction.

(4) Any person dispossessing a tenant in contravention of an order made under sub-section (2) or (3), in addition to any other penalty to which he is subject, on application made by the tenant within thirty days of such dispossession, and notwithstanding anything to the contrary in any other provision of this Act, be summarily evicted by the Mamlatdar who shall thereupon restore possession to the tenant]”

21. Similarly, Section 58(B) deals with bar to jurisdiction of Courts reads thus:

“58(B) Bar to jurisdiction of Courts- Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal Collector or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court”

22. The combined reading of the above provisions would go to show that the reliefs claimed in the plaint either against the owner or a third party are covered under the provisions of Section 8(A). Mamlatdar is empowered to even grant a temporary injunction restraining any person from dispossessing or interfering with the possession of the tenant.

23. The protection granted to a tenant under the said Act is for a specific purpose. A special forum is provided for the tenants to approach either for declaration or for threatened dispossession.

24. In the present case, there are clear averments that the plaintiff is already declared as a tenant and, therefore, he is covered under Section 2(23) of the said Act. If the landlord or even any person claiming through a landlord is trying to dispossess or interfere with the possession of the said tenant, such tenant is entitled to approach the Mamlatdar by filing an application under Section 8(A).

25. Ms Desai appearing for the respondent/plaintiff would submit that the wording in sub section 2 of Section 8(A) specifically refers to any person claiming through the landlord. According to her, the

defendants No.1,2 and 3 are not the landlords and that they are not claiming through the landlord and, therefore, Section 8(A) could not attract.

26. Though such submissions appear to be probable, it is settled that the entire section has to be read and not only one part in isolation. If we read the entire Section 8(A) and more particularly sub sections 3 and 4, the wordings are very clear which show that any person who is trying to dispossess the tenant could be restrained by the Mamalatdar. Thus, Section 8(A) will have to be read with Section 7 and Section 58B wherein it is provided that no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector, Administrative Tribunal or Government.

27. The dispute as pleaded in the plaint is certainly with regard to the threatened dispossession of the plaintiff who is claiming to be a tenant. Thus, the relief claimed by the plaintiff of grant of injunction is covered under Section 8A and, therefore, such a question cannot be decided by any other Court except the Court of Mamalatdar as provided in the said Act.

28. In the case of *Smt Jaya R. Deshprabhu*(supra), the learned Single Judge of this Court while dealing with similar facts, observed in paragraph 15 as under:

“15. As the point raised by the counsel for the petitioners relates to the question of jurisdiction which can be raised at any point of time as the point is not a mixed question of law and fact. The point raised is purely a question of law based on the facts pleaded in the plaint. As stated above in the plaint itself it is stated that the plaintiff is the tenant of the property and, therefore, reading the statement in the plaint itself it is clear that the suit is barred by law. The plaint ought to have been rejected by the learned trial Judge without entertaining it as the claim is specifically barred by the provisions of the Tenancy Act. To entertain a plaint for threatened dispossession by a landlord the remedy is provided for to approach the Mamlatdar’s Court and not the Civil Court. The question being a pure question of law, I allowed the counsel for the petitioners to agitate the same and having considered the arguments advanced on both sides I feel that the Civil Court had no jurisdiction to entertain the plaint. If the plaint is capable of being rejected, the interim reliefs granted by the Court below on the basis of such plaint are without jurisdiction. The interim relief granted by the lower appellate Court is, therefore, set aside subject to para (16) of this judgement.”

29. In the case of *Jose Maria Florence Xavier Cassiano Luis* (supra), the learned Single Judge of this Court in paragraph 4 observed thus:

*“4. The pleadings by the respondent, therefore, clearly disclose that the plea of the respondent before the lower Court was that he is the tenant in respect of the suit property and the petitioners being the landlords, are trying to evict him from the suit property. The learned Single Judge of this Court in *Jaya Deshprabhu and others v. Surendra Dessai* (supra), has clearly held that once a party approaches the Civil Court claiming to be a tenant of the defendant in respect of a property which is an agricultural land within the meaning of the said expression under the said Act, the Civil Court lacks jurisdiction to entertain any such suit or to grant any relief in such suit. As already seen above, in the pleadings of*

the respondent, it has been categorically stated that the respondent is the tenant in respect of the suit property and the petitioners being the landlords are trying to interfere in their possession. Being so, it is evident from the records that the Civil Court could not have entertained the suit and could not have granted any interim relief in the manner it has been granted in favour of the respondent, considering the plea of tenancy by the respondent.”

30. In the case of *Shripad Govind Sinai and others v/s Bhivam Dulo Velip* in Second Appeal No.20/2008 decided on 20/10/2022, the learned Single Judge observed thus in paragraph 13:

“13. Section 58-B of the Agricultural Tenancy Act provides that save as otherwise provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector, Administrative Tribunal or Government and no orders passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.”

31. Having said so, the dispute which is now raised in the present suit is squarely covered by Section 8(A) of the Agricultural Tenancy Act and the jurisdiction of the Civil Court to entertain such a suit is therefore barred under Section 58(B) of the said Act.

32. The learned Trial Court erred in rejecting such application and, therefore, interference in the revisional jurisdiction is warranted.

33. The revision is therefore allowed. The impugned order dated 07/09/2017 is hereby quashed and set aside. The application filed by defendant No.4 for rejection of the plaint under Order 7 Rule 11 (d) is hereby allowed. The plaint in Regular Civil Suit No.67/2017/C

stands rejected as barred by Section 58(B) of the Agricultural Tenancy Act. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.