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IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.50 OF 2019

1. Shri Namdev Rajaram Gawde
S/o Late Rajaram Vithal Gawde
Aged 46 years of age, business,
Represented by petitioner no.2,
his wife

2. Smt. Namrata Nandev Gawde,
Aged 40 years, advocate,

Both r/o H. N 599, Warchawada,
Morjim, Pernem Goa. Presently residing at
S-5, Block 3, 2nd Floor,
Madhu-Vihar Co-op. Hsg. Sty.
St. Inez, Panaji-Goa.

... Applicants.

Versus

1. Shri Waman Sadashiv Joshi,
s/o late Sadashiv Kashinath Joshi,
major of age,

2. Shri Raghunath Sadashiv Joshi
s/o late Sadashiv Kashinath Joshi,
major of age, Govt. Servant, and his wife,

3. Mrs. Uma Raghunath Joshi
w/o Raghunath Sadashiv Joshi,
major of age, Govt. Servant

All r/o H.No.500, Warchawada,
Morjim, Pernem, Goa.

4. Rajaram Vithal Gawde
Son of late Vithal Gawde
(Since deceased) Through LRs

(a). Shri. Vasudev Rajaram Gawde,
Son of late Rajaran Gawde,
Major of age, business and his wife,

(b). Smt. Vandana@ Nirmala Vasudev
Gawde,
Major of age, housewife,
Both r/o. 4-A/28, Valis Bhat,
St. Inez, Panaji - Goa,

(c) Mr. Devanand Rajaram Gawde
s/o Late Rajaram V. Gawde,
Major of age, businessman, and his wife

(d). Smt. Darshana @ Sangeeta
Devanand Gawde,
Major of age, Housewife,

Both r/o H.No.599, Warchawadda,
Morjim, Pernem,Goa.

(e). Smt. Lata @ Sweta Shamsunder
Gawas,
d/o. late Rajaram Gawde,
major of age, housewife, and her husband

(f). Shri. Shamsunder Laxman Gawas,
Major of age, service,
Both r/o. H. No. not known, Masoda,
Valpoi, Sattari - Goa

(g).Smt. Ranjana @ Shrutika Shridhar
Gawas,
d/o. late Rajaram Gawde, major of age,
housewife and her husband

(h). Shri. Shridhar Mohan Gawas,
Son of Mohan Gawas, major of age,
Both r/o. H. No. not known, Vadi,
Nadora,
Bardez - Goa

5. Smt. Chandrawati Rajaram Gawde
(Expired)
Wife of late Rajaram Vithal Gawde
6. Shri Kashinath Vithal Gawde (Expired)
s/o Late Vithal Gawde,

7. Shri Tukaram Kashinath Gawde,
s/o Kashinath Gawde,
major of age, Govt. Service, and his wife

8. Smt. Tejasvi Tukaram Gawde,
major of age, housewife,

Both r/o c/o Ramesh Vasudev Shetgaonkar,
H.No.573, Varchawadda,
Morjim,Pernem,Goa.

9. Smt.Malini Krishna Sawant,
d/o of Shri Kashinath Gawde,
major of age, married , housewife, and her
husband

10. Shri Krishna Ramchandra Sawant,
s/o of late Ramchandra Sawant,
major of age,

Both r/o H.No.372, Auchitwada,
Asnora, Bardez, Goa.

11. Smt. Shalini Ghanashyam Naik,
d/o Kashinath Gawde
housewife, and her husband,

12. Shri Ghanashyam Keshav Naik,
s/o Shri Keshav Naik,
major of age,

Both r/o H. No. 115, Khairat vaddo,
Revoda, Bardez, Goa.

13. Smt. Nalini Ramesh Shetgaonkar,
d/o Shri Kashinath Gawde,

major of age, housewife and her husband,

14. Shri Ramesh Vasudev Shetgaonkar,
s/o Late Vasudev Shetgaonkar,
major of age,
Both r/o H.No.573, Varchawadda,
Morjim, Pernem, Goa.

15. Smt. Shalinibai @ Sushilabai R. Joshi
(Expired)
Wife of late Ramnath Joshi

16. Mr. Kashinath Ramnath Joshi
son of late Ramnath Joshi
major of age, and his wife,

17. Mrs. Nutan Kashinath Joshi
Major of age,

Both resident at A-10/102,
Veena Nagar, L .B Shastri Road,
Opposite to Gabriel India,
Mulund (East)-Mumbai.

18. Shri Vithal Ramnath Joshi
son of late Ramnath Joshi
major of age, and his wife

19. Smt. Vidya Vithal Joshi
Major of age,
Both resident of F-3,
Saraswati Co-operative Housing
Society, Yeshwant Nagar, Ponda Goa.

20. Smt. Manisha Yeshwant Joshi,
Widow of Late Yeshwant Joshi,
r/o block no. 12,3rd Floor,
Bharadwaj Building, Dr. Pissurlekar
Road, Panaji Goa.

21. Mrs. Anagha Ninad Deshpande

d/o Late Yeshwant Joshi, major
and her husband

22. Mr. Ninad Ravindra Deshpande
Major of age,

Both resident of D-493,
Gangavesh, Kolhapur, Maharashtra.

23. Mrs. Aditi alias Trupti Ashwin Kotnis,
d/o Late Yeshwant Joshi,
Major of age, house wife,
and her husband

24. Mr. Ashwin Mukund Kotnis
Major of age,

Both r/o C/o Ashwin Kotnis -S.P.No. 1,
Officer's Club Road,
Kadampadi Velipalyam,
Nagapattinam 611001.
Tamil Nadu.

Smt. Sushila Manohar Bakhale,
d/o Late Shripad Kashinath Joshi
major of age, housewife,
and her husband,

Shri Manohar Govind Bakhale,
s/o late Govind Bakhale,
major of age,

Both r/o H. No. 377,
Chikali, Agapur Durbhat,
Ponda, Goa.

... Respondents.

Mr D. Zaveri, Advocate-Amicus Curiae.

Applicant No.2 in person.

Mr Prasheen Lotlikar with Mr Bhavesh Lotlikar, Advocates
for Respondent Nos.1 to 3.

Ms Sneha D. Shetye, Advocate for Respondent Nos.4(A) to 4(H) and 7 to 14.

CORAM: **BHARAT P. DESHPANDE, J.**
RESERVED ON: **15 June, 2023**
PRONOUNCED ON: **06 July, 2023**

JUDGMENT:

Initially vide order dated 05.01.2023, this revision application was dismissed after hearing the learned Amicus Curiae and the learned Counsel for the Respondents. Subsequently, the Applicant No.2 who appears in person filed Miscellaneous Civil Application No.167/2023 for recall of the order dated 05.01.2023 on the ground that she was unaware about the date of the matter which was fixed on 05.01.2023 and accordingly, failed to appear and argue the matter. Vide order dated 27.04.2023, in Miscellaneous Civil Application No.167/2023, the prayer of Applicant No.2 was allowed since the Respondents also agreed for recall of the order dated 05.01.2023 and to give an opportunity to Applicant No.2 to argue the matter afresh.

2. Accordingly, the matter was taken up at the admission stage itself with the understanding that it would be decided finally, with consent of the parties.

3. Heard learned Amicus Curiae Mr D. Zaveri, the Applicant No.2 in person, learned Counsel Mr Prasheen Lotlikar appearing with Mr Bhavesh Lotlikar for Respondent Nos.1 to 3 and learned

Counsel Ms Sneha D. Shetye appearing for Respondent Nos.4(A) to 4(H) and 7 to 14.

4. The Applicant No.2 appeared in person and submitted that impugned order dated 15.10.2019 in Regular Civil Suit No.53/2008 is unsustainable as the learned Trial Court has erred in rejecting the application filed under Order 7 Rule 11 CPC for rejection of the plaint.

5. It is the main contention of Applicant No.2 that Trial Court is not having jurisdiction to decide the civil suit, in view of specific bar under Section 58 of the Agricultural Tenancy Act. She would submit that a declaration which the Plaintiff is seeking in the suit is in fact negative declaration claiming therein that the Applicant is not the tenant of the suit property. The other reliefs are consequential to the main relief of negative declaration.

6. The Applicant No.2 would then submit that initially Section 58 of the Agricultural Tenancy Act was amended by deleting Sub-Section 2 and later on it was amended by adding Section 58B. According to her, when the statute was amended by inserting Section 58B, the jurisdiction of Civil Court was ousted to entertain the prayer for negative declaration and accordingly her application, though filed on the second occasion, ought to have been allowed thereby rejecting the plaint. In this respect, Applicant No.2 placed reliance on the following decisions:-

i. Smt. Madhumati Atchut Parab vs. Shri. Rajaram V. Parab; 2009(3) ALL MR 486,

ii. Padhiyar Prahladi Chenaji (Deceased) Through L.R.s vs. Maniben Jagmalbhai (Deceased) Through L.R.s and Ors.; Civil Appeal No.1382/2022,

iii. Smt. Isabella Johnson vs. M.A. Susai; 1991 AIR 993,

iv. Dattaram A. Arolkar & Others vs. The Mamlatdar of Mormugao & others; 2000(4) Bom.C.R. 669.

7. Learned Amicus Curiae Advocate Zaveri also supported contention of Applicant No.2 and claimed that the jurisdiction of Civil Court is impliedly barred and that Mamlatdar is the authority under the Agricultural Tenancy Act who is entitled to give negative declaration. Learned Amicus Curiae relied upon the following decisions:-

i. Shri Shripad Govind Sinai alias Ava Padmanaba Kamat (deceased) vs. Shri Bhivam Dulo Velip (Since Deceased); Second Appeal No.20/2008.

ii. South Delhi Municipal Corporation and Anr. vs. Today Homes and Infrastructure Private Limited and Ors.; (2020) 12 SCC 680.

8. Advocate Prasheen Lotlikar appearing for Respondent Nos.1, 2 and 3 and Ms Sneha Shetye appearing for Respondent Nos.4 and 7 to 14, supported the impugned order and claimed that relief claimed in the suit cannot be granted by the Mamlatdar and therefore, the Civil Court is having jurisdiction under Section 9 of the CPC. Mr Lotlikar placed reliance on the following decisions:-

i. Inacio Martins (Deceased through Lrs. vs. Narayan Hari Naik and Ors.; (1993) 3 SCC 123,

ii. ***Madhumati Atchut Parab (Smt) vs. Rajaram V. Parab and Ors.; (2009) 4 SCC 183.***

9. The rival contentions fall for determination of this Court.

10. Respondent Nos.1, 2 and 3 / Plaintiffs filed suit bearing Regular Civil Suit No.53/2008 against the Applicants and Respondent Nos.4 to 14 and others for declaration and permanent injunction. The plaint shows that there exists a property known as Bhatle Vithal Joshi admeasuring 13587 sq. mts. in Village Morjim within Taluka Pernem and bears Survey No.149/2. The Plaintiffs claimed that they are the owners and in possession of part of the property admeasuring 13037 sq. mts. The remaining portion of the property admeasuring 550 sq. mts. belongs to the Plaintiffs as well as Defendant Nos.13 to 17, 22 and 23. However, Plaintiffs claimed that the suit property is having an area of 13037 sq. mts. which exclusively belongs to the Plaintiffs and identified by letter 'Y' in green colour border in plan Annexure II attached to the plaint.

11. It is the contention of the Plaintiffs that during recent survey, entire property including the suit property is surveyed under Survey No.149/2 in the name of late Yeshwant Kashinath Joshi and late Ramnath Kashinath Joshi. It is further their contention that the Plaintiffs have amicably divided the suit property amongst themselves in the manner shown on a partition plan annexed as Annexure IV to the plaint. The plaint further shows the partition effected amongst the Plaintiffs in view of Regular Civil Suit No.36/2001 and the decree passed therein on

19.04.2007. Plaint further shows that there was one mud house indicated by number E-75 in survey plan which was in occupation of Defendant Nos.1 and 2. About 15 years back, the said house collapsed. Due to the cordial relations between the parents of the Plaintiffs and Defendant Nos.1 and 2, the said Defendant Nos.1 and 2 were allowed to construct another house nearby. The earlier mud house shown under letter E-75, therefore, does not exist as it collapsed 15 years back.

12. The plaint further shows that somewhere in 1998, there was dispute amongst the heirs of late Kashinath Joshi over the ancestral property of the Plaintiffs and Defendant Nos.12 to 23. Taking advantage of such family dispute, Defendant Nos.1 and 2 illegally erected one more structure in Part "C" of the suit property somewhere in the month of December, 2006. Such illegal structure is shown under letter 'Y' in the plan Annexure IV. Later on, the dispute between Plaintiffs and Defendant Nos.12 to 23 was settled and the consent decree was passed on 19.04.2007 thereby confirming title of the Plaintiff. Defendant Nos.1 and 2 were asked to remove the illegal structure. The said Defendant Nos.1 and 2 declined to remove such structure and started claiming mundkarial right as well as an area of 300 sq. mts. around the house. Since the Plaintiff did not want to complicate the issue, agreed to sell 300 sq. mts. of land with the said structure to the Defendant Nos.1 and 2. However, they failed to respond to such proposal.

13. It is further contention of the Plaintiffs that during new survey operation, the suit property and the remaining part was surveyed under Survey No.149/2 in the name of late Yeshwant Kashinath Joshi and late Ramnath Kashinath Joshi as occupants. However, the name of one Vithal Kuso Gawde is wrongly recorded in the tenants column. Similarly, there are erroneous entries in the name of Vithal Kuso Gaude, Rajaram Vithal Gaude and Kashinath Vithal Gaude in the cultivator's column. It is further contention of the Plaintiffs that the said persons by name Vithal Kuso Gaude, Rajaram Vithal Gaude and Kashinath Vithal Gaude i.e. Defendant Nos.1 to 3 had no right whatsoever in the suit property which is always enjoyed and possessed by the Plaintiffs and other co-owners. It is their case that late Vithal Kuso Gawde was never tenant but he was only appointed on wages for collecting coconuts from the suit property. Their names were therefore recorded in the tenants column by erroneous entries. Finally, Plaintiffs prayed to declare that the Defendant Nos.1, 2 and 3 are having no right of whatsoever nature in the suit property surveyed under Survey No.149/2 and the Plaintiffs are entitled to get the names of such Defendants deleted from the occupant's column and cultivator's column.

14. The Defendant Nos.1, 2 and 3 filed their written statement denying the entire case of the Plaintiffs and claimed tenancy rights over the suit property. The said Defendants filed an application for dismissal of the suit and/or rejection of plaint on the ground that such suit is barred under Section 58B of the Agricultural Tenancy Act. The learned Trial Court after hearing the arguments,

passed the impugned order dated 15.10.2019 thereby rejecting such application and holding that Civil Court is having jurisdiction to decide the suit, which is challenged in the present revision.

15. It is a fact that earlier application filed by the Defendants for rejection of the plaint was rejected by order dated 04.02.2010. The revision filed before this Court challenging such dismissal was dismissed vide order dated 20.04.2010 in Civil Revision Application No.6/2010. The Defendants then challenged the order of this Court by filing Special Leave Petition No.18331/2010 before the Apex Court which was disposed of on 24.08.2015. It is necessary to quote that at that time it was brought to the notice of the Hon'ble Apex Court that vide amendment to Goa Agricultural Tenancy (Amendment) Act, 2014 published in the Official Gazette of 25.09.2014, Section 58(2) was deleted. The Hon'ble Apex Court after considering such amendment and Section 58 as then was, observed that after the amendment, position is to the effect that there is no bar of Civil Courts jurisdiction with regard to the matters covered by the Act. Even Section 60D was inserted which provides for validation of notice, proceedings and orders of the Joint Mamlatdar which protects those proceedings which came to be initiated pursuant to the notice issued which were ultimately decided, only got validity. The Apex Court observed that in such circumstances and by virtue of amendment, the position got reinforced to the effect that jurisdiction of the Civil Court remains and available for the parties.

16. However, the second application vide Exhibit 76 was filed in the year 2019 for rejection of plaint in view of the subsequent amendment dated 31.08.2017 by which Section 58B of the Agricultural Tenancy Act was inserted, which reads thus:-

“58B. 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, Administrative Tribunal or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.”

17. Thus, the second application filed after the amended provision, cannot be considered as barred even though earlier application under Order 7 Rule 11 CPC was rejected by the Trial Court, confirmed by this Court and later on SLP against it was rejected due to a change in the law itself. Even otherwise, there cannot be any estoppel against a law which is settled proposition.

18. In the case of *South Delhi Municipal Corporation* (supra), the Hon’ble Apex Court observed in para No.12 as under:-

“Wherever a right or liability, not pre-existing in common law is created by a statute and that statute itself provides a machinery for enforcement of such right or liability, both the right/liability and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the jurisdiction of the civil court is impliedly barred.”

19. The application under Order 7 Rule 11 for rejection of plaint was filed with specific averments regarding the amendment to Section 58B and the decision of the Apex Court in the case of ***Madhumati Atchut Parab (Smt) vs. Rajaram V. Parab and Ors.***; (2009) 4 SCC 183.

20. Said application was filed on 28.02.2019 by the Defendant/Applicant herein claiming therein that an amendment has been brought out to Goa Agricultural Tenancy Act vide amendment Act, 2017 due to which the Civil Court lost jurisdiction to decide present suit. Specific reference is made to Section 58B which has been inserted vide amendment Act, 2017 claiming therein that such Section 58B expressly bars jurisdiction of Civil Court to decide any question which is required to be decided by the Mamlatdar under the Tenancy Act. It is then claimed in para No.5 of the application that the suit is essentially for a negative declaration to delete the name of Vithal Kuso Gaude from the survey records and to declare that said Vithal was not a tenant of the suit property. Further, it has been claimed that due to clever drafting, the prayers have been made in the suit in such a manner to show the jurisdiction with the Civil Court and that prayer clause (b) is the main relief for declaration in negative form regarding the tenancy of Vithal Kuso Gaude. Finally in para No.10, reference to *Madhumati Atchut Parab* (supra) is mentioned wherein the Apex Court observed that Mamlatdar has jurisdiction to grant a negative declaration.

21. Vide the impugned order, the learned Civil Court observed in para 4 that vide earlier order dated 04.02.2010, similar application was rejected and the matter was carried upto Supreme Court but thereafter, amendment has been carried out in the Tenancy Act giving jurisdiction to Civil Court and later on again to the Court of Mamlatdar. However, the learned Trial Court observed in para No.6 that the Defendant cannot reagitate the same issue after being decided against them and not set aside by the Hon'ble Apex Court due to the change in law. Such observation is in fact against the settled proposition of law as there cannot be estoppel against provision of law which has been inserted subsequent to the passing of such orders. Section 58B of the Tenancy Act came to be inserted in the year 2017 whereas order of the Apex Court is dated 24.08.2015.

22. The learned Trial Court completely lost sight of averments made in the application and more specifically insertion of Section 58B and the observation of the Apex Court in the case of *Madhumati Atchut Parab* (supra) observing that Mamlatdar has power to give negative declaration. In the light of above, the submissions advanced on behalf of Applicant No.2 and the learned Amicus Curiae needs to be considered. In the case of *Madhumati Atchut Parab* (supra), the Hon'ble Supreme Court impliedly overruled the decisions in the case of ***Sitabai Vaze vs. Administrative Tribunal Goa***; 1996(2) Goa Law Times 246, ***Vaman Naik vs. the Administrative Tribunal***; 1999(1) Goa Law Times 203 and expressly overruled ***Dattaram Arolkar vs. Mamlatdar of Mormugao***; AIR 2001 BOM 74.

23. In the case of *Inacio Martins* (supra), suit for restoration of possession was filed by Inacio on the ground that he was lawful tenant and that he had not been dispossessed in accordance with the law. The Trial Court found that Inacio was dispossessed illegally and without following procedure and hence the suit was decreed. Both the opponents preferred appeal which was dismissed by the First Appellate Court, upon which Second Appeal was preferred before the High Court which came to be allowed. While dealing with this aspect, the Apex Court considered the impact of the Amendment Act No.17/1976 and observed that the impact of fifth amendment was to the effect that the issue where Defendant No.1 was a tenant in respect of the land in question should be referred to the Mamlatdar for decision and after his decision is received by the Civil Court, if the issue is held against Defendant No.1, the Civil Court may consider passing of a decree in eviction, but if on the other hand is held to be tenant, the Civil Court may be required to dismiss the suit. Similarly, in para No.11, the Apex Court observed that the impact of fifth amendment may give rise to a situation where the remedy lies entirely under the Act and may have to be taken in the manner prescribed by law under the Act. For example, whether a person who is a deemed tenant under Section 4 of the Act if evicted from the land on or after 01.07.1962, his remedy under Section 8(2) is to approach the authority under the Act for recovery of possession of the land of which he has been dispossessed. In such a situation, remedy may not be the one available in the case of a tenant other than a deemed tenant whose case is not covered by Section 8(2) of the

Act. But in the case of a deemed tenant who has been evicted from the land on or after 01.07.1962 since a remedy has been provided under the Act, the jurisdiction of Civil Court stands wholly barred by virtue of Section 58(2) of the Act. In such a situation, the Civil Court would not be competent to pass any order for restoration of possession to the deemed tenant. His remedy would, therefore, be entirely under the Act.

24. Thus, the Apex Court in *Inacio Martins* (supra) considered totally different scenario as to whether a tenant was evicted prior to 01.07.1962 i.e. the status of deemed tenancy and what could be the remedy available for such tenant. The matter in hand is totally on separate facts altogether. The observations of the Apex Court in the case of *Inacio Martins* (supra) would not help Respondents herein but in fact the last observations would support the case of Applicant which says that if the remedy is entirely available under the Act, the jurisdiction of Civil Court would be barred.

25. In the case of *Madhumati Atchut Parab* (supra), the Apex Court categorically observed in para No.30 as under:-

“When the legislature has provided that the landlord can seek a negative declaration in respect of the category of person mentioned in Section 4(1) of the Goa Tenancy Act, it cannot conclusively lead to the conclusion that in other cases, namely, where the question arises as to whether a person is or is not a tenant, the Mamlatdar is not conferred with any power to grant a negative declaration that the person concerned is not a tenant in respect of the disputed property. Accordingly, we are of the

view that the Mamlatdar had the jurisdiction to declare a negative declaration, that is to say, a particular person is not a tenant under Section 7 of the Goa Tenancy Act and, therefore, the judgment of the High Court cannot be sustainable.”

26. In the case of *Shripad Govind Sinai* (supra), the learned Single Judge of this Court while dealing with Second Appeal No.20/08 observed in Judgment dated 20.10.2022 that RCS deserves to be rejected by resorting to the provision of Order 7 Rule 11 of CPC on the ground that the Civil Court was not having jurisdiction to decide the question which is required to be decided by the Mamlatdar under the Tenancy Act. In that case, the prayers in the suit was in respect of grant of declaration that the Defendants are not the tenants in respect of hilly portion. The said suit was dismissed whereas appeal filed against it was also rejected. On considering the prayers of grant of negative declaration, which was main relief, the jurisdiction of Civil Court was ousted by virtue of Section 58B of the Agricultural Tenancy Act. Learned Single Judge has placed reliance in the case of *Madhumati Parab* (supra) and observed that the plaint ought to have been rejected for want of jurisdiction.

27. There is no dispute that Section 58B was introduced with effect from 31.08.2017 and it clearly creates a specific bar to the jurisdiction of the Civil Court over the question which is required to be settled, decided, dealt with by the Mamlatdar, Tribunal, Collector, Administrative Tribunal or Government under the said Act.

28. Section 7 of the Agricultural Tenancy Act reads thus:-

“7. Question of tenancy.- If any question arises whether any person is or was tenant or should be deemed to be a tenant under this Act, the Mamlatdar shall, after holding an inquiry, decide such question. In any such inquiry, the Mamlatdar shall presume that any statement as to the existence of a right of tenancy in a record of rights prepared in the prescribed manner under and in accordance with the provisions of this Act, is true.”

29. Thus, it clearly shows that when a question arises whether any person is or was tenant or should be deemed to be a tenant under the Act, necessarily means that a person who is not a tenant as held in the case of *Madhumati Atchut Parab* (supra), to be decided only by the Mamlatdar. Para Nos.25, 26 and 27 of *Madhumati Atchut Parab* (supra) observe thus:-

“25. It is true that under Section 4(1) of the Goa Tenancy Act, the Mamlatdar is conferred with jurisdiction to declare the category of person mentioned therein is or was not a tenant in respect of the disputed property.

26. But if we read Section 7 and the objects and reasons of the Act and considering the fact that for a limited purpose the Mamlatdar is conferred with such power to declare the negative declaration in respect of the certain category of persons under Section 4(1) of the Goa Tenancy Act, it cannot be said that while deciding the question under Section 7 of the Goa Tenancy Act, the jurisdiction of the Mamlatdar to declare that the concerned person is or was not a tenant is ousted. Accordingly, we are of the view that the High

Court was not justified in holding that a Mamlatdar is not conferred under Section 7 of the Goa Tenancy Act to deal with and decide whether the concerned person is a tenant or not a tenant in respect of the disputed property.

27. Again it is needed to be mentioned that the jurisdiction under Section 7 of the Goa Tenancy Act is not confined to cases where the relationship of the landlord and tenant is admitted. In fact, it is only where the said relationship is alleged by one party and denied by the other that the question falls to be considered and the decision of the question is left exclusively to be determined by the Mamlatdar under the provision of the Act.”

30. With this settled position of law and the decisions referred above, the plaint as well as the prayer in the plaint needs to be considered.

31. Earlier, we have already considered the pleadings in much detail and, therefore, repetition of it is not necessary.

32. The prayer clauses as found in Para No.26 therefore need to be quoted for ready reference:-

“(A) Declaration that the defendants have no right of whatsoever nature to the suit property excluding the Plots “C” and “B” of the property under Survey no. 149/2 agreed to be sold to the defendants no. 1 to 11 by the plaintiffs and that the plaintiffs are entitled to get their named entered in the Occupant’s column of survey record of the said property bearing survey no.149/2.

(B) Declaration that name of Vithal Kuso Gawde appearing in the tenant's column and cultivator's column as well as the names of the defendants no. 1 & 3 appearing in the cultivator's column of the record of right of the said property under Survey no. 149/2 are wrong entries and they are liable to be deleted.

(C) Permanent injunction restraining the defendants no.1 to 11, their agents, servants, family members and/or any persons on their behalf from interfering with the possession and enjoyment of the plaintiffs of the said property under Survey. 149/2 excluding the plots "C" and "B" agreed to be sold by the plaintiffs to the defendants and further restraining the defendants no.12 to 23 their agents, servants, family members and/or any persons on their behalf from interfering with the possession and enjoyment of the plaintiffs of the suit property in any manner.

(D) Cost of the suit."

33. Prayer clause (A) is for declaration that the Defendants have no right of whatsoever nature to the suit property, excluding plot "C" and plot "B" of Survey No.149/2 which were agreed to be sold to Defendants by the Plaintiffs. Thus, the first prayer itself is claiming a negative declaration stating that Defendants are not having any right of whatsoever nature in the suit plot except the portion which they agreed to sell. A plain reading of the plaint shows that the name of ancestor of Defendant Vithal Kuso Gaude was wrongly recorded in the tenants column and also in the cultivator's column. Thus, by way of prayer clause (A), the Plaintiffs are seeking a declaration that though the name of Vithal

Kuso Gaude is recorded in the tenant's column as well as in the cultivator's column, he was not a tenant of the Plaintiffs.

34. Prayer clause (B) is again seeking declaration of removal of name of Vithal Kuso Gaude from the tenant's column and cultivator's column of the suit property being allegedly wrong entries. Prayer clause (C) is for permanent injunction against Defendant Nos.1 to 11 thereby restraining them from interfering with the Plaintiffs' possession and enjoyment.

35. Thus, from the plain reading of the plaint, it is apparent that the suit is for negative declaration that Vithal Kuso Gaude was not a tenant of the suit property. Deletion of his name from the survey records and the prayer for injunction and consequential reliefs. The main relief is for negative declaration.

36. While considering such pleadings with the prayer for negative declaration, certainly the question of tenancy as to whether Defendant/Vithal Kuso Gaude was tenant of the said property arises and accordingly Section 7 of the Tenancy Act stands attracted. Once the provisions of Section 7 stands attracted, the bar on jurisdiction of any other Court except the Court of Mamlatdar as provided under Section 58B of the Tenancy Act comes into operation.

37. Order 7 Rule 11(d) of CPC provides that where the suit appears from the statement in the plaint to be barred by any law, comes into play. Thus, the suit which is basically for grant of negative declaration claiming that Vithal Kuso Gaude was not

having any tenancy right in the suit property, cannot be entertained by a Civil Court in view of a specific bar under Section 58B of the Tenancy Act. The jurisdiction of Civil Court is exclusively ousted and only the Court of Mamlatdar is entitled to decide the said issue.

38. The impugned order, therefore, needs interference. The application filed under Order 7 Rule 11 at Exhibit 76 needs to be allowed.

39. Hence, I pass the following:-

ORDER

Civil Revision Application stands allowed.

The Impugned order is hereby quashed and set aside.

Application at Exhibit 76 in Regular Civil Suit No.53/2008 stands allowed.

The plaint in Regular Civil Suit No.53/2008 stands rejected under Order 7 Rule 11(d) of CPC.

Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

JOSE
FRANCISCO
DSOUZA
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