



Sonam

**IN THE HIGH COURT OF BOMBAY AT GOA  
APPEAL FROM ORDER NO. 12 OF 2026  
WITH  
CIVIL APPLICATION NO.34 OF 2026**

**PRAMOD PRABHAKAR GAWADE ... APPELLANT**

**Versus**

**RADHIKA GOPAL DESSAI AND 13 ORS ... RESPONDENTS**

Mr. Deepak Gaonkar with Mr. Samir Gaonkar, Advocates for  
the Appellant

Mr. Swapnil N. Dabholkar, Advocate for Respondent Nos. 8  
and 9.

**CORAM:- VALMIKI MENEZES, J.**

**DATED :- 17<sup>TH</sup> APRIL 2026**

**ORAL ORDER**

1. Registry to waive office objections and register the matters.
2. This is an Appeal from Order against the Judgment and Decree dated 29/09/2025 passed by the Court of District Judge- 2 Mapusa in Regular Civil Appeal No. 18/2019. By the impugned Judgment and Decree, the Trial Court has set aside the Judgment and Decree dated 03.01.2019, passed by Civil

Judge Junior Division at Pernem in Regular Civil Suit No. 84/2014, which has dismissed the said suit.

3. Before considering the impugned Judgment, on its merits, certain facts which are relevant to the decision are rendered below:

(a) The Plaintiffs in Regular Civil Suit No. 83/2014 have claimed to be the agricultural tenants of the suit property bearing Survey Nos. 148/4 and 148/8 of the village Arambol. It is a different matter that the Plaintiff claims to be a co-tenant along with the Defendants in the suit, who are Appellants herein. It is the Plaintiff's case that one Sale Deed dated 01.02.2012, came to be executed by the owners of the said two properties in favour of the Defendant No. 1/Appellant herein. According to the Plaintiffs, since they are agricultural tenants of the suit property, they are deemed purchasers under the Goa Daman and Diu Agricultural Tenancy Act, 1964 and therefore the Sale Deed in favour of Defendant No.1 was nullity. With this cause of action, the Plaintiffs filed an application bearing Tenancy Case No. 264/2015. That application for declaration of the Plaintiffs' right as agricultural tenants under Section 7 of the Tenancy Act came to be filed on 11.08.2014. In that application, the Plaintiffs also sought for reliefs of temporary injunction to restrain Defendants

from interfering with the survey records of the suit property. That application has been pending since the year 2014, without the Plaintiffs/Appellant herein have commenced their evidence.

(b) Subsequently, on 07.11.2014, the Plaintiffs filed Regular Civil Suit No. 83/2014 before the Court of Civil Judge Junior Division at Pernem seeking a declaration that the Sale Deed dated 01.02.2012 is a nullity. Permanent injunction was also sought from the Civil Court in the said suit.

(c) The Trial Court recorded evidence of the parties without even framing any issue of Tenancy, dismissing the suit, returning a finding that the Plaintiffs have not proved that they were the tenants of the suit property.

(d) This Judgment came to be challenged before the District Court, which has now passed Judgment and Decree setting aside the orders of the Trial Court and remanded the matter back to the Trial Court, directing to frame the issue of Tenancy in the following terms:

*“Q. Whether the plaintiffs no.1 and 8 prove that they, defendant 5 and 6 or defendant no.1 are the agricultural tenants of the suit property through their ancestors?”*

Apart from remanding the matter back to decide the issue, no other direction has been given to the Trial Court to decide the issue.

4. The substantial question of law for the determination of the Appeal is as follows:

“Whether the impugned Judgment and Decree remanding the case back to the Trial Court to try the additional issue as framed is contrary to law?”

5. On perusing the impugned Judgment and Decree, the finding that the Trial Court has committed an error in deciding the right of the Plaintiffs and holding that the Plaintiffs have not proved that they are Agricultural Tenants of the suit property appears to be correct. The Trial Court ought to have, in the first place framed the issue as to whether Plaintiffs proved that they are agricultural tenants of the suit property and ought to have referred this issue to the Mamlatdar to decide, in view of the bar of the jurisdiction of the Civil Court to decide such issue. The Trial Court has proceeded to decide this issue on its own and then dismissed the suit. There is therefore a jurisdictional error on the part of the Trial Court as it has exercised jurisdiction not vested in it, and ought to have forwarded it to the Mamlatdar to declare whether the Plaintiffs were tenants of the suit property. This is more so in the light of the fact that the

Trial Court was made aware that the proof of the declaration of the Plaintiffs' right was pending before the Mamlatdar i.e. since 11.08.2014. Being aware of the situation, the Trial Court ought to have stayed the suit and waited for the declaration of the names for the claim made by them. To that extent, the District Court is right in giving a finding that the Trial Court transgressed the jurisdiction vested in it by law in deciding the issue of tenancy. However, in remanding the matter back to the Trial Court, the District Court has only framed the issue as to whether Plaintiff Nos. 1 and 8 and Defendant Nos. 5, 6 and 7 are agricultural tenants of the suit property through their ancestors. There is obviously an error in framing this issue. Plaintiffs no doubt claims that they are co-tenants along with Respondent Nos. 1, 5 and 6 to the suit property. In the application for declaration of the right of tenancy filed before the Mamlatdar, the Appellants are Plaintiff No. 1 (Radhika Dessai) and Plaintiff No. 8 (Sheela Dabholkar). Other Plaintiffs have not filed any application for a declaration of their right to tenancy. Under the law, if one of the Plaintiffs succeeds in proving their right to the suit property, the execution of the Sale Deed dated 01.02.2012 itself would be void.

6. Considering these facts, the order of remand directed framing of the issue as to whether the Plaintiffs proved that they are agricultural tenants of the suit property bearing Survey Nos.

148/4 and 148/8 ought to have been framed by the Trial Court and referred to the Mamlatdar to be tried along with pending application for declaration of tenancy, which was filed by Plaintiff Nos. 1 and 8. The claim of the Plaintiffs in the plaint to right of the tenancy is in paragraph no. 9 thereof, where the Plaintiffs have stated that they and Defendant Nos. 1, 5 and 6 are in exclusive possession, enjoyment and cultivation of the suit property as agricultural tenants thereon, and before them Shankar Ramchandra Gawde was in possession, enjoyment and cultivation of the suit property as agricultural tenant. Shankar Ramchandra Gaude is the father of Plaintiff Nos. 1 and 8. In the face of these pleadings, the issue as framed by the District Court is obviously erroneous. The issue ought to have been framed in the following manner i.e. “Whether the Plaintiffs prove that they are agricultural tenants of the suit property?” This issue ought to have been framed and referred by the Trial Court to the Mamlatdar, whilst keeping the suit in abeyance till a decision was obtained by the appropriate forum on such issue.

7. Considering these facts, I answer the substantial question of law partly in the affirmative. The Appeal is partly allowed, and the impugned Judgment and Decree stand modified to the extent that the Trial Court is now directed to frame the following issue:

“Whether the Plaintiffs prove that they are agricultural tenants of the suit property?”

On framing such issue, the Trial Court shall stay further proceedings and refer this issue to the Joint Mamlatdar-II at Pernem, who is seized of hearing Tenancy Case No. 264/2015 (newly numbered as TNC/DEC/12/2018/MAA-III) with a direction that issue of tenancy referred shall be heard with pending Tenancy Application No. 12/2018.

8. The order of remand shall be modified to this extent. On the Tenancy issue being framed and referred to the Mamlatdar, the Joint Mamlatdar-II of Pernem is requested to record evidence of the parties and dispose of the tenancy application and the issue of tenancy which will now be referred to him preferably within a period of one year from the date of receipt of the reference from the Court of Civil Judge Junior Division, Pernem. The parties shall cooperate with the Mamlatdar by examining their witnesses in an expeditious manner. The Civil Court is requested to expedite the reference of the newly cast issue and to prepone the date now fixed on 27.08.2026 to 28.04.2026 at 10.00 a.m., when the parties shall appear before the Court and assist the Court in framing the reference and referring the same to the Mamlatdar. The decree shall be drawn up in the above terms.

9. In view of the disposal of the present Appeal from Order, Civil Application No. 34 of 2026 also stands disposed of.

**VALMIKI MENEZES, J.**