
(2014) 09 BOM CK 0180
In the Bombay High Court
Case No : Second Appeal No. 34 of 2004

Conservator of Forest

APPELLANT

Vs

Vinayak M. Fotto

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2015) 6 ALLMR 294 : (2014) 6 BomCR 353

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : D. Lawande, Government Advocate, Advocate for the Appellant;
Valmiki Menezes and V. Shetye, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard learned Counsel for the respective parties.

2. This Second Appeal is directed against the judgment and decree dated 26/06/2003 passed by the learned Additional District Judge, Mapusa ("First Appellate Court", for short) in Regular Civil Appeal No. 40/2001. The said appeal was filed against the Judgment and decree dated 16/02/2001 passed by the learned Civil Judge Senior Division, Bicholim ("trial Court", for short) in Regular Civil Suit No. 9/1989.

3. The appellants and respondent no.7 were the defendants in the said suit whereas respondents no. 1 to 6 were the plaintiffs. The parties shall hereinafter be referred to as per their status in the said suit.

4. The original plaintiff had filed the said suit for recovery of possession and permanent injunction. The case of the plaintiffs, in short, was as follows:

The original plaintiff was in possession of the suit property known as "Dongrat" or "Khairat" situated at Revora, Bardez, Goa and bearing survey no. 176/0, as tenant/deemed purchaser. The said property was belonging to defendant no. 3

and leased to him prior to independence and he was regularly paying rent to the defendant no. 3 and extracting cashew juice from the apples collected from the suit property. The defendant no. 1 started plantation of trees near the area of the said property bearing survey no. 176/0 and intended to extend the planting operation in the suit property. The defendants no. 1 and 2, without any right, forcibly took possession of the suit property from the plaintiff. Notice u/s 80 of the CPC (C.P.C.) was issued to the defendants no. 1 and 2 but they failed to hand over the possession. Hence, the suit.

5. The defendants no. 1 and 2, by their written statement, alleged as follows:

The suit property had been given to the defendant no.1, by the defendant no. 3 for planting purposes under Social Forestry Scheme from June, 1986. The defendant no. 3 in its meeting dated 11/05/1986 gave consent for afforestation in the suit property and, therefore, the defendants no. 1 and 2 are in exclusive possession of the suit property from June, 1986 and have carried out plantation work. The suit property is not a cashew garden but a barren land with a few cashew trees. The plaintiff was in possession of the suit property for a temporary period from 1965 to 1967 and thereafter the possession was taken back by the defendant no. 3 as no works were done by the plaintiff. The plaintiff had paid an amount of Rs. 9/- only for the limited period from 1965 to 1967 and, therefore, the plaintiff has not been in possession.

6. The defendant no. 3 Comunidade did not file any written statement and also did not contest the claim of the plaintiffs.

7. Following issues were framed by the trial Court:

i) Whether the plaintiff proves that he was in possession of the suit property till 1987 which was leased to him prior to independence?

ii) Whether the defendants no. 1 and 2 proves that suit suffers from the non-joinder of necessary parties, namely Shri Tukaram Krishna Sawant, Shri Jairam Shankar Sawant and Chandrakant Mukund Sawant?

(iii) Whether the defendants no. 1 and 2 prove that under the programme of Social Forestry, the suit property was given to defendant no.1 for planting purpose under Social Forestry scheme from June, 1986 and since that time they alongwith State of Goa are exclusively in possession and occupation of the suit property?

8. The plaintiffs examined Vinayak M. Fotto, the plaintiff no. 1(a) as PW1 , Shri Everesto Sa Pinto as PW2 and one Anant L. Mayekar as PW3. The defendants no. 1 and 2 examined the Range Forest Officer namely Shrinivas Gawas Dessai as DW1 and one Jana L. Naik, Deputy Range Forest Officer as DW2.

9. Upon consideration of the entire evidence on record, the trial Court found that the plaintiff did not produce any declaration from the Competent Authority i.e. the Court of Mamlatdar establishing that he is the tenant of the suit property.

The trial Court held that the plea of tenancy was vague, without required details. It was held that the suit property was held by the plaintiff in auction during the period from 1965-67 and by virtue of auction no interest in the property was granted and once the period of auction was over, the said licence came to an end. As regards the entry of the name of the original plaintiff in survey records, the trial Court held that the survey records did not confer title and the provisions of Land Revenue Code cannot be acted upon for the purpose of deciding the proceedings u/s 18-C of the Agriculture Tenancy Act and Rules made thereunder which provide for elaborate procedure for making entries of names of tenants in the land revenue record for the purpose of Agricultural Tenancy Act. The trial Court found that there was no evidence at all to show as to when the plaintiff was dispossessed. It was held that the plaintiff failed to prove that he was in possession of the suit property and that the same was leased to him prior to independence. The trial Court held that as per the records, pursuant to the grant of suit property in favour of defendant no.1, defendant no.1 carried out plantation in the suit property. The issues no. 1, 2 and 3 were all answered in the negative. The suit came to be dismissed.

10. The plaintiffs filed Regular Civil Appeal No. 40 of 2001, before the learned District Court, North Goa. The defendant no. 3 did not contest the appeal. The learned First Appellate Court, however, came to the conclusion that the plaintiff established his possession on the suit property after initial lease in favour of the original plaintiff till his dispossession. It has been held that in the auction held for the triennium of 1964 to 1967, as per the certificate at Exhibit PW1/D, the property "Dongrat" was taken on lease by late Mahadeo Fatto (original plaintiff) on annual lease by payment of rent of Rs. 9/- and no auction was held since then. The First Appellate Court found that the plaintiff had produced three receipts establishing the payment of rent which were at Exhibit PW1/C colly. It was also found that two cashew juice extraction licences for the year March, 1984 and March, 1985 were produced which supported the case of the plaintiffs of their possession. It was held that rent receipts at Exhibit PW1/C colly dated 24/01/1965, 22/07/1973 and of the year 1976 would go to show that lease was not only for the period of the triennium 1965-67 but continued thereafter since rents were accepted thereafter by defendant no.3. It was further held that survey record entries have presumptive value and the name of the original plaintiff Mahadeo stood recorded in the tenant's column of Form No. I and XIV of survey no. 176 (Exhibit PW1/A) which fact was not disputed by defendants no. 1 and 2. It was found that defendant no. 3 which is admittedly the owner of the suit property had not contested the suit denying the status of the original plaintiff as tenant nor denying the rent receipts. It was held that though there was no declaration of tenancy, however, the fact remained that there was no dispute that the property of the defendant no. 3 was given in auction to the original plaintiff for the period of three years from 1965-67 and thereafter there was no auction held at all. There was no evidence to show that the plaintiff had surrendered his possession or that the defendant no. 3 had recovered the possession.

Consequently, the appeal was allowed. The Judgment and Decree of the trial Court dismissing the suit was set aside. The suit was decreed. The defendants no. 1 and 2 were directed to restore the possession of the suit property to the plaintiffs and have been also restrained from interfering with the suit property without due process of law.

11. Aggrieved by the impugned judgment and decree dated 26/06/2003 passed by the First Appellate Court in Regular Civil Appeal no. 40 of 2001, the defendants no. 1 and 2 have filed the present Second Appeal which has been admitted on following substantial questions of law :

"(a) Whether the learned Additional District Judge could have decreed the suit by reversing the Judgment of trial Court which had dismissed the suit, when restoration of possession of a land of a person claiming to be a tenant has to be granted by Mamlatdar under Goa, Daman and Diu Agricultural Tenancy Act , 1964 and the suit before Civil Court is not maintainable? Having regard to the judgment of the Supreme Court in Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others,

(b) Whether the plaintiff was required to have declaration of tenancy under Goa Agricultural Act and can the entry in Form I and XIV under Land Revenue Code, 1968 be a title document claiming relief of possession?"

12. The defendant no. 3 was duly served in this appeal also but did not contest. During the course of arguments, the learned Government Advocate filed an affidavit of the Deputy Conservator of Forest (Social Forestry Division) Ponda wherein it has been stated that the agreement of the appellant with the Comunidade of Revora, Bardez- Goa in property bearing Survey nos. 83(part), 84(part), 113(part), 114(part) and 176 for raising of plantation under Social Forestry Programme was for a period of 25 years commencing from 1st June, 1986 and the said agreement expired as from 31/05/2011. It has been further stated in this affidavit that various species of trees were planted by the defendants no.1 and 2 in the property and that they have commenced with the process of harvesting the plantation as per the agreement and this process of harvesting required an additional one year's time to be completed. Mr. Menezes, learned Counsel appearing for the plaintiffs, upon instructions, stated that the plaintiffs have no objection for the defendants no. 1 and 2 to take away the plantation made by the defendants no. 1 and 2, after dispossessing the plaintiffs. The said additional affidavit, on behalf of the appellants, is taken on record and marked as Exhibit "X" for identification. From the above, it is clear that the defendants no. 1 and 2 are only interested in taking away the trees planted by them and are not interested in retaining the possession of the suit property.

13. There is no dispute that the interest of the defendants no. 1 and 2, from the beginning, was only to carry out the plantation under Social Forestry Programme for a period of 25 years commencing from 01/06/1986. The defendants no. 1 and 2 have no other interest in the suit property, except harvesting the

plantation and taking it away. It is pertinent to note that even the defendant no. 3 i.e. the Comunidade who had given temporary possession of the property to the defendants no. 1 and 2 has not contested the suit filed by the plaintiff. The defendant no. 3 did not file any written statement denying the claim of the original plaintiff to be the tenant of the suit property. The defendant no. 3 has not denied receipts of rents issued by them to the plaintiff. There is absolutely no dispute that on account of the auction, the certificate of which is produced as Exhibit PW1/D, the suit property was given in possession of late Mahadeo Fotto, the original plaintiff on annual lease rent of Rs. 9/- for a period from 1964 to 1967. Admittedly, no auction was held thereafter and that was because the Agricultural Tenancy Act came into existence. The Form no. I and XIV in respect of the suit property, which is at Exhibit PW1/A duly shows the name of the original plaintiff as tenant of survey no. 176. The rent receipts produced by the plaintiffs are at Exhibit PW1/C colly and they are dated 24/01/1965, 22/07/1973 and of the year 1976 which are not at all denied by any of the defendants and they would show, as rightly held by the learned First Appellate Court, that the lease was not only for the period of 1965-67 but also continued thereafter. There is absolutely no evidence on record to prove that the plaintiff/s had surrendered the possession or that the defendant no. 3 had taken back the possession from the plaintiff. Hence the possession is bound to go back to the plaintiffs, from the defendants no. 1 and 2. In the circumstances above, the substantial questions (a) and (b) are both answered against the defendant no. 1 and 2 and in favour of the plaintiffs. The defendants no. 1 and 2 cannot succeed in the present appeal. The appeal is therefore bound to be dismissed.

14. In the result, I pass the following order:

(a) The second appeal stands dismissed.

(b) Considering the fact that the plaintiffs have no objection for the defendants no. 1 and 2 to take away the various trees (plantation) planted under the Social Forestry Programme, the decree of possession granted by the First Appellate Court stands deferred by one year with liberty to defendants no. 1 and 2 to harvest/ take away said trees, within the said period.

15. The appeal stands disposed of accordingly.