
(1994) 07 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 96 of 1990

Domingos Estevam V. Monteiro	APPELLANT
Vs	
Comunidade of Santo Estevam and Others	RESPONDENT

Date of Decision : 04-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 14(1)(b), 14(3), 58

Citation : (1995) 1 BomCR 580

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : F. Rebello, for the Appellant; M.B. D'Costa, for the respondents No. 3., for the Respondent

Final Decision : Dismissed

Judgement

E.S. Da Silva, J

1. This writ petition under Articles 226 and 227 of the Constitution raises an interesting question as to who, under Article 14 of the Agricultural Tenancy Act, inherits the tenancy.

2. The petitioner claims to be the son of late Maria Angelica Silveira who expired on 10-11-1980. The petitioner had a sister by name Smt. Maria Vidhentina Monteiro who was murdered by her son, respondent No. 2 after about 8 or 10 days of the death of the petitioner's mother and now the said respondent No. 2 is undergoing life sentence. The respondent No. 3 is the brother-in-law of respondent No. 2, i.e. husband of Vidhentina's daughter and after the murder of his wife by respondent No. 2, the respondent No. 3 got married second time to one Mrs. Filomena Fernandes.

It is the case of the petitioner that his late mother Maria Angelica was lawful tenant of the comunidade of St. Estevam (respondent No. 1) and till her death she was also a member of the Tenants Association in the village in respect of the

suit property. Her name was also recorded in the survey record of rights as a tenant of the suit field. The petitioner further states that he being the legal heir of his deceased mother made an application to the Mamlatdar of Tiswadi on 20-1-1982 for transfer of the tenancy in his favour u/s 14 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, (hereinafter called the Act) and the said application was registered by respondent No. 4 as TNC/2/82. On 5-4-1982 the Attorney of respondent No. 3 Mrs. Filomena Fernandes moved an application as intervenor on the ground that the suit field was being personally cultivated from 1960 by the late Vidhertia as exclusive tenant and that the respondent No. 2 being her son and the respondent No. 3 being her son-in-law were the only legal heirs of late Vidhertia. Consequent upon this application, on 30-6-1982 the respondent No. 4 added the respondents No. 2 and 3 as parties. In the meantime and because the Attorney for respondent No. 3 one Cipriano Ribeiro attempted to interfere in the property, petitioner moved an application for temporary injunction against him. By order dated 20-1-1983, the respondent No. 4 granted the said injunction. In appeal, the learned Deputy Collector by order dated 17th June, 1983, remanded the case to the Mamlatdar with a direction to dispose it on merits. Thereupon respondent No. 4 after hearing all the parties and recording evidence by order dated 30-10-1985 dismissed the petitioner's application on the ground that the suit paddy field was cultivated by Vidhertia and not by the petitioner's mother.

3. Aggrieved by this order, the petitioner moved the respondent No. 5 in appeal, but the Deputy Collector, North Goa, by judgment and order dated 23-8-1988, dismissed the appeal on the ground that the suit paddy field was being cultivated by the late Maria Vidhertia and not by the petitioner. A revision filed by the petitioner against the judgment of the Deputy Collector to the Administrative Tribunal met again with no success and by judgment and order dated 13-12-1989 the Tribunal rejected the application in limine on the ground that the impugned order of the Deputy Collector was not contrary to law and that there was no error in the procedure followed by the courts below. It is this judgment of the Administrative Tribunal along with the judgments of the Mamlatdar of Tiswadi Taluka as well as the judgment of the Deputy Collector, Panaji which are the subject matter of challenge in this petition.

4. Shri F. Rebello, learned Counsel for the petitioner, has submitted that in the records of the comunidade the petitioner's mother is shown as tenant of the suit paddy field. Her name is Angelica Silveira and she expired on 10-11-1980 after which his application was filed on 20-1-1982 for a declaration that the tenancy of the paddy field should be deemed as continued with him. Filomena Fernandes the second wife of the son-in-law of the late Vidhertia Monteiro, the deceased sister of the petitioner, moved an application on behalf of her husband. In this application which was purportedly filed on behalf of the late Vidhertia's son and son-in-law Filomena is not claiming any tenancy of theirs qua the comunidade of St. Estevam (respondent No. 1) and instead she claims the right of tenancy on behalf of her mother-in-law Vidhertia who, according to the respondent, was

exclusively cultivating the suit paddy field although the same was in the name of her mother Maria Angelica as a lessee of the suit field. Learned Counsel further submits that in the said application there is not a single averment that Vidhertia had claimed at any time sub-tenancy of the field through her mother and the only case is that Vidhertia was cultivating the field. Learned Counsel invited my attention to sections 4 and 5 of the Act which admittedly came into force on 8-2-1965 which, while dealing with the question of persons deemed to be tenants and of the right of the persons holding on the date of liberation has, amongst other things, provided that if after 1st July, 1962 and 8-2-1965 a sub-tenant cultivates the land under lease, such a sub-tenant becomes the tenant and principal tenant loses the right of tenancy. According to the learned Counsel, if Filomena by her application dated 5-4-1982 had claimed that Vidhertia was the sub-tenant of Maria Angelica then only the late Vidhertia would be declared as tenant and to that extent her heirs would be entitled to exclusively continue with the tenancy. The learned Counsel referred to the judgment of the Mamlatdar and urged that from the evidence of the respondent nothing has come on record to indicate that Vidhertia was cultivating the field as sub-tenant of Maria Angelica. There is also nothing in the pleadings regarding Vidhertia's sub-tenancy. At the highest, the learned Counsel said, it can be concluded that Vidhertia was cultivating the paddy field with the consent or knowledge of Maria Angelica. This, according to the learned Counsel, could not take her case within the purview of section 4 of the Act. The learned Counsel tried to impress upon me that this would not visualize a situation wherein a mother wanted to keep the tenancy in favour of her daughter when she had a son. Besides the said tenancy would imply consideration for the tenancy and nothing was proved or pleaded by the respondent.

It was further submitted that the petitioner has produced two documents namely (1) certificate issued by the comunidade showing that her mother Maria Angelica was the tenant of the suit paddy field and (2) survey records showing Maria Angelica as tenant of the Comunidade land. Learned Counsel argued that with these two documents the petitioner had fully discharged the burden cast upon him to show that his mother was the tenant of the suit paddy field. The learned Counsel made a grievance that the Mamlatdar dismissed his application on the ground that the petitioner had failed to prove that he was the only heir of Maria Angelica. If it was so, the learned Counsel continued, the Mamlatdar could very well mould the relief in terms of section 14(3) read with section 14(1)(b) of the Act. Learned Counsel then contended that what emerges from the evidence is that Maria Angelica alone was the tenant and this evidence has not been displaced. According to the learned Counsel documentary evidence was to be held as best evidence in the matter and the only document which the respondent could lay hands in support of his claim that Vidhertia was actually cultivating the paddy field even during the lifetime of Maria Angelica is the document of hiring of agricultural tractors in the years 1978 and 1979. Admittedly this cultivation could not be referred to a period between 1-7-1962 and 8-2-1965 so as to bring

Vidhertia's case within the purview of sections 4 and 5 of the Act. Besides there was no plea or evidence led by the respondent that Vidhertia was the sub-tenant of the paddy field and also no proof of any consideration purportedly paid to Maria Angelica was brought on record by the respondent. The learned Counsel further complained that the judgment of the Collector shows that he has fallen in the same error. The appellate Court has not given a definite finding with regard to either tenancy or sub-tenancy on the part of Vidhertia or on the point of her alleged exclusive cultivation of the paddy field. It has only referred to a fair possibility of Vidhertia having cultivated the paddy field rather than late Maria Angelica or the petitioner. Lastly learned Counsel has found fault with the impugned judgment of the Tribunal which according to him was a non-speaking one and had mechanically affirmed the previous judgments of the courts below without proper application of mind thus deserving to be quashed and set aside.

5. Mr. B. D'Costa, learned Counsel for respondent No. 3, while conceding that the petitioner, as the son of the deceased tenant Maria Angelica was one of the heirs and successors and as such entitled, in principle, along with the other heirs, to continue with her tenancy, has however, submitted that the application to the Mamlatdar dated 20th January, 1982 "for transfer of the paddy field" made by the petitioner is absolutely misconceived and incompetent because, even assuming that the same was filed u/s 14 of the Act, the petitioner was not entitled to claim alone the right to continue with his deceased's mother's tenancy. Learned Counsel contended that the right of an heir and successor of a deceased's estate, bearing in mind that the right of tenancy is also an asset of the estate, is merely a potential and notional right which crystallizes only after this right is determined consequent upon institution of inventory proceedings or execution of a deed of "Habilitacao Notarial", followed by a partition suit or deed. According to the learned Counsel, the petitioner came to the Court just claiming exclusive right to the paddy field and not to request the Mamlatdar to declare him as one of the interested parties in the estate of his late mother or to ask him to determine what would be his share or right in her tenancy. Thereupon and because the respondent also took an extreme stand claiming on his part exclusive rights of cultivation in respect of the suit field, the real issue before the Mamlatdar could not be either placed before him or adjudicated in this case. As such although the order of the Mamlatdar appears to be bad and without jurisdiction, the learned Counsel urged that the prayer of the petitioner that the relief sought for by him should be moulded has no justification and/or lacking foundation either in facts or in law. Reliance was placed by the learned Counsel in this respect in the case of Om Prakash and others Vs. Ram Kumar and others, , which although dealing with the provisions of the Haryana Urban Rent Act, has held that a party cannot be granted the relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. The Supreme Court has further observed that in an action by the landlord the tenant is expected to defend only the claim made against him

and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeks to enforce that cause of action in the same proceedings by suit by the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases. The learned Counsel urged that in this particular case there might be other interested parties also, inclusive of more heirs of late Vidhertia. No statement on oath in this regard was made by the petitioner or by the respondent as it would happen in case of institution of inventory proceedings wherein the "Cabeca de Casal" had to make a statement on oath regarding the existence of deceased heirs. The learned Counsel further submitted that the result which would follow consequent upon the dismissal of the petitioner's application by the Mamlatdar was not likely to cause any serious prejudice to him because he had always a right to approach the Civil Court by way of inventory proceedings in order to establish that he was one of the heirs of the deceased tenant and that being the tenancy rights to the field one of the assets of her estate, this asset should be partitioned amongst the heirs of his deceased mother. It was further contended on behalf of the respondent that the petitioner's application was filed after the Fifth Amendment to the Act whereby the tenants were held to be deemed owners of the land cultivated by them. The said amendment has bestowed on the tenants the right to purchase the field and at this stage a similar issue could arise as to who had the right to purchase. Then the question which had to be adjudicated would be as to who were the heirs of the deceased tenant. Hence, according to the learned Counsel any declaration made by the Mamlatdar's Court at this stage holding the petitioner and the respondent entitled to the tenancy might preempt the right of other heirs of the deceased tenant and therefore the Mamlatdar could not deprive them from their legitimate rights. It was further urged that by dismissing the petitioner's application to be declared as an exclusive tenant of the suit field or that the tenancy of the deceased Maria Angelica had continued with him, neither the Mamlatdar or for that matter the appellate or revisional authority had declared the respondents as legitimate tenants of the suit field. The learned Counsel brought also to my attention that under the proviso to sub-section (2) of section 4 of the Act the question of the physical or legal indivisibility of the field also could occur as the said proviso stipulates that no partition or sub-division shall be permissible if the share allotted to any heir or any co-parcener together with any other land already held by him is less than 1/3 hectare of morod land and 1/4 hectares of Khajan or kher land. Thus, according to the learned Counsel, the whole exercise of the petitioner was wrong and misleading because the real issue which could have been sought to be determined by the Mamlatdar was the allotment of the tenancy rights of the deceased tenant to her legitimate heirs. The learned Counsel vehemently contended that by his application the petitioner sought to misdirect the Mamlatdar from the real issue by claiming the sole right of the tenancy through his mother on the ground that he was exclusively cultivating the field along with her. The learned Counsel said that in terms of

section 14(1)(b) of the Act the tenancy was to be inherited by all the heirs of the deceased tenant irrespective of who was actually cultivating it.

6. In order to appreciate the rival contentions of the learned Counsel we may usefully refer to the scheme of the Act as far as the inheritance of the tenancy is concerned. Section 58 imposes a bar to jurisdiction of courts and its sub-section (2) provides 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 or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court. In other words this provision means that any issue which under the Act can be settled or adjudicated by the Mamlatdar has to be decided only by him and his decision is final. Section 14 which deals with the rights of tenants and makes them heritable prescribes in its sub-section (1) that where a tenant dies, the landlord shall be deemed to have continued the tenancy - (a) if such tenant was a member of a joint family, to the surviving member or members of the said family, and (b) if such tenant was not a member of a joint family, to his heir or heirs on the same Terms and Conditions on which such tenant was holding it at the time of his death. In terms of sub-section (2) the surviving members, or as the case may be, the heirs, to whom the tenancy is continued under sub-section (1) shall be entitled to partition and sub-division of the land leased subject to the conditions mentioned in Clauses (a) and (b) of the said sub-section, further providing that if any question arises regarding the shares or the apportionment of the rent payable by the sharers, it shall be decided by the Mamlatdar whose decision shall be final. Further the proviso to the aforesaid sub-section with regard to the embargo put on the Mamlatdar not to sub-divide land unless the tenant or tenants would get that much acreage of land in order to avoid fragmentation. Sub-section (3) reads that where any question arises as to the person or persons in whose favour tenancy is deemed to have been continued under the previous provisions, such question shall be determined by the Mamlatdar after hearing the landlord and other persons interested in the matter. Proviso to the aforesaid sub-section says that nothing in this sub-section shall preclude the rights of parties being determined by a Court of law. This shows that if the Mamlatdar has allotted the shares of the tenancy of a deceased tenant without intimating all the heirs of the deceased tenant, their rights are always protected and they can approach the Court of law to assert or ascertain their rights.

7. Mr. Rebello has sought to explain the petitioner's application in the light of this scheme of the Act and has submitted that the original tenant Maria Angelica having expired on 10-11-1980 although in terms of section 14 the tenancy would devolve to all her heirs, normally the daughters used to relinquish their rights in favour of the sons. It is in this context that the petitioner made his application under the provisions of section 14 and it was at this juncture that some other interested parties came to the Court asking the Mamlatdar to reject the petitioner's application by alleging that they were the real tenants of the paddy

field. Hence, according to the learned Counsel, the issue was to determine as to whether it was the petitioner or respondents who were the real tenants of the field. The learned Counsel reiterated that the intervenor claimed the right on the basis that the deceased tenant had a daughter and therefore sought to derive his rights through that daughter. Thus the situation was that both the son of Maria Angelica i.e. brother of Vidhertia and the heirs of the petitioners' sister, the daughter of Maria Angelica were arraigned before the Court. At no time the intervenor did say that there were other heirs of Vidhertia. The intervenor did not also raise the issue that the tenancy was part of the estate of the deceased original tenant Maria Angelica. The respondents therefore claimed their right as an independent right on behalf of Vidhertia by contending that it was she who was the real tenant of the field. It was not their case that Vidhertia's right was the right claimed from her deceased mother. On the contrary the claim was that Vidhertia was the sole and exclusive tenant of the paddy field. Thus, according to the learned Counsel, on a harmonious interpretation of the relevant provisions the Mamlatdar was not precluded to decide under sub-section (3) who were the heirs of the deceased tenant and the parties need not either execute any "Habilitacao Notarial" deed or file Inventory proceedings to establish their quality of heirs of Maria Angelica before approaching the Mamlatdar to get inheritance of the tenancy rights of the deceased tenant. It was submitted by the learned Counsel that when the Mamlatdar dismissed his application he practically held that he was not the heir of his mother. Indeed the Mamlatdar did decide the issue of his not being the heir of the deceased tenant and thus he closed to him all the avenues inspite of the fact that in his application he had raised the issue of his being the heir of his deceased mother. According to the learned Counsel the matter was therefore to be necessarily remanded for the purpose of the Mamlatdar deciding the issue as to who were the heirs in terms of section 14(1) (b) read with sub-section (3) of the Act.

8. Mr. D'Costa, learned Counsel, strongly objected to the prayer of remand sought for by the petitioner and contended that there was no question of this Court obliging the petitioner on this aspect. It was submitted in this regard that firstly no such relief was ever pleaded or prayed by the petitioner in his application. Besides sub-section (3) was to be harmoniously constructed bearing in mind the succession laws prevailing in Goa. He also referred to the proviso to sub-section (3) which gives right to the parties to approach the Civil Court including the ones who were already parties in the proceeding before the Mamlatdar. Thus any such decision on this point by the Mamlatdar would be always a provisional one and the parties could always reagitate the issue in the Court of law.

9. In my view and although I am in agreement with Mr. Rebello that the reasoning advanced by the Mamlatdar in support of the impugned order is erroneous and incompetent because he has failed to address to the real issue of inheritance of the tenancy u/s 14(1)(b) of the Act, however, the same cannot be faulted within its final conclusion that the petitioner's prayer was impermissible

and thus not to be granted. Therefore the prayer for remand, by moulding or shaping the relief, so as to enable the Mamlatdar to decide the issue of inheritance of tenancy in terms of sub-section (3) does not seem to arise when the petitioner's application itself and the intervention motion of the respondents as well did not raise any such question and instead both the parties sought to misdirect the Mamlatdar from the real issue in controversy. Indeed the question to be placed before the Mamlatdar, in terms of section 14(1)(b) read with sub-section (3), should be in whose favour the deceased tenancy was deemed to continue amongst her heirs. The Mamlatdar was required to decide this issue.

doubt that the question as to in whose favour the tenancy inheritance is directly linked with the question as to who are the heirs of a deceased tenant, but who is going to determine such issue?

10. Mr. Rebello wants me to harmoniously read section 14(1)(b) and sub-section (3) of section 14 and held that it is the Mamlatdar who should decide also the question of heirship which would permit him to adjudicate the issue of inheritance of the tenancy. Reliance placed by learned Counsel in this respect on this very provision of sub-section (3) and to which we have already made a detailed reference appears to be quite misplaced. The learned Counsel urges that in terms of the aforesaid provision when there is a dispute amongst the heirs of the deceased tenant with regard to their legal status, it is for the Mamlatdar to decide the issue and the proviso takes care of a situation wherein the Mamlatdar so adjudicates without taking into account the interest of those heirs who might have been left out of the inheritance of the tenancy. However, it is impossible to acceded to his submission because in my judgment the determination of the legal status in relation to inheritance of a deceased person (*de cujus*) amounts no doubt to adjudication of the personal rights of a person which falls exclusively within the province and jurisdiction of the Civil Courts. Besides, we have also to bear in mind the special laws still prevailing in this State which regulates the inheritance of a deceased person and the procedure to be followed in the partition of this estate. As per the law in force the question as to who is the heir of a deceased person is to be necessarily determined through a deed of "Habilitacao Notarial" or by instituting inventory proceedings. Hence, as it was rightly argued by Mr. D'Costa, sub-section (3) is to be harmoniously constructed bearing in mind the succession laws prevailing in Goa.

11. Being so, it does not appear to me that to be a sound proposition of law in our case to hold that sub-section (3) enables the Mamlatdar to decide who is the heir of a deceased tenant and I say so because its very proviso rules out such construction.

Mr. Rebello contends that if this interpretation is not followed then the provision will become redundant and meaningless. With due regard it does not appear to be so. There may be situations wherein inspite of the fact of the question of heirship having been determined in the inventory proceedings or by a deed of "Habilitacao Notarial" still disputes may arise as to the inheritance of the tenancy

rights. It may happen that the share in the estate of the deceased tenant might have been adjusted in relation to one of the heirs, consequent upon the apportionment of his quota with any other asset in the name of the deceased tenant in which case he would not be obviously entitled to claim also a further share in the tenancy. However and inspite of this allotment, the same heir may still choose to raise a dispute before the Mamlatdar on this point again and the Mamlatdar will have to decide this dispute after hearing the landlord and other interested persons in the matter. It is not a question of the Mamlatdar disposing of this dispute merely on giving a say to the landlord and the interested parties, in other words, the parties in dispute. The law expressly speaks of a hearing to be given to the "other interested parties" which clearly indicates that if the question to be adjudicated by the Mamlatdar under sub-section (3) was to determine who are the heirs of the deceased tenant who actually dispute the right of continuation of his or her tenancy, there was no scope for the Mamlatdar to hear on the dispute all other interested parties. Besides the proviso shows that any decision given on the matter by the Mamlatdar regarding this type of dispute is merely a provisional one and the parties (not only those who were left out as contend by Mr. Rebello) can approach the Civil Court for a fresh and final adjudication on the same issue. This fact once again negativities the proposition sought to be propounded by the petitioner's learned Counsel that is within the competence and jurisdiction of the Mamlatdar on tenancy matters to determine who are the heirs of a deceased tenant. If any such declaration or decision is always subject to re-determination of the issue by the Civil Courts then it makes no sense to adopt an interpretation which by its very nature is self defeating.

12. In the circumstances I am inclined to hold that under sub-section (3) of section 14 of the Act the Mamlatdar has only the power to decide a dispute as to in whose favour the tenancy is deemed to continue and that the question as to who is the heir of a deceased tenant is to be exclusively adjudicated by the Civil Court according to the personal laws applicable to the citizens of this State.

13. The result is that the petition is bound to fail and the same is hereby dismissed. Rule accordingly discharged but however with no order as to costs.