
(2014) 04 BOM CK 0071
In the Bombay High Court
Case No : First Appeal No. 25 of 2008

Gopal Dattu Pal	Vs	APPELLANT
Administrator of Comunidade of Bardez		RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2014) 6 ALLMR 125 : (2014) 3 BomCR 746

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : D. Pangam, Advocate for the Appellant; R.G. Ramani, A. Kansar and Pravin Faldessai, Addl. Govt, Advocate for the Respondent

Final Decision : Allowed

Judgement

Z.A. Haq, J.—The appeal arises out of the judgment and Decree passed by the learned Ad hoc District Judge (FTC), Mapusa, in Civil Suit No. 70/2005 on 5.1.2008, dismissing-the suit filed by the plaintiffs. The plaintiff has filed the Civil Suit praying for the Decree for declaration that the allotment of the suit plots "A" and "D" made by the original defendant Nos. 1, 2, 8 and 9 in favour of the original defendant Nos. 3 and 6 are illegal and void and for directions to the defendant Nos. 1, 2, 8 and 9 to revoke the allotment of the said plots. The plaintiff had further sought decree for declaration that the construction licence issued by the original defendant No. 7 in favour of the original defendant No. 3 is illegal and void and for directions to the defendant No. 7 to revoke the construction licence dated 12.8.2005. The plaintiff sought for decree for mandatory injunction directing the defendant No. 3 to demolish the structure constructed by the defendant No. 3 in the suit plot "A". The plaintiff further prayed for decree for permanent injunction restraining the defendant Nos. 3 to 6 from undertaking any construction on the suit plots "A; and "D" and from interfering with the suit plots or any part thereof in any manner whatsoever. The plaintiff had prayed for the other ancillary reliefs.

2. The case of the plaintiff is that the defendant Nos. 3 and 6 submitted applications on 24.0.2001 to the defendant No. 2 requesting for allotment of plots. At that time, the defendant No. 4, who is the brother of the defendant No. 3 and the defendant No. 5, who is the brother of the defendant No. 6, were the President and the Attorney of the defendant No. 2 and therefore the suit plots were allotted to the defendant Nos. 3 and 6 by giving a go by to the procedure and overlooking the provisions of the Code of Comunidade. The plaintiff has stated in the plaint that the defendant Nos. 3 and 6 had furnished false information and had sworn false affidavit in support of their claim and got the suit plots allotted in their favour inspite of the fact that they are having their own residential houses in their respective properties at Village Bordem. The case of the plaintiff is that the allotment of the suit plots in favour of the defendant Nos. 3 and 6 itself being illegal; the construction licence granted in favour of the defendant No. 3 on 12.8.2005, is illegal and the defendant No. 3 cannot undertake construction pursuant to the above mentioned licence.

3. The defendant No. 2 filed its written statement and opposed the claim made by the plaintiff. The defendant No. 2 justified its decision recommending the allotment of the suit plots in favour of the defendant Nos. 3 and 6. The defendant No. 2 submitted that the defendant Nos. 3 and 6 had complied with all the statutory requirements and were eligible for the allotment of suit plots in their favour.

4. The defendant No. 3 filed his written statement, opposing the claim made by the plaintiff. In so far as the eligibility of the defendant No. 2 for the allotment of the suit plot, the submission made by the defendant No. 2 in his written statement is as follows:

14. The contents of para 11 of the plaint are not admitted. The defendant has fulfilled all the conditions laid down under the law for the grant of plot for construction of residential house.

5. The defendant No. 6 filed his written statement and raised the defence on the same lines as that of the defendant Nos. 2 and 3. As far as the issue of the eligibility of the defendant No. 6 is concerned, the pleadings are in paragraph 15 of the written statement, as follows:

15. The contents of para 11 of the plaint are not admitted. The defendant has fulfilled all the conditions laid down under the law for the grant of plot for construction of residential house.

6. The learned trial Judge framed the issues and completed the trial of the Civil Suit and by the impugned judgment, has concluded that the plaintiff has not proved that the defendant Nos. 3 and 6 are not qualified for the allotment of the suit plots. The issue regarding the jurisdiction of Civil Court to entertain and decide the civil suit was also framed by the learned trial Judge in view of the pleadings of the parties. The learned trial Judge has concluded that the plaintiff (which in fact should be defendant), has failed to prove that the Court has no

jurisdiction to try the suit.

7. I have heard Shri Pangam, learned Advocate appearing for the appellant, Shri Ramani, learned Advocate appearing for the respondent Nos. 1 and 2, Mr. Kansar, learned Advocate appearing for the Respondent Nos. 3 and 6 and Shri Pravin Faldessai, learned Addl. Government Advocate, appearing for the respondent Nos. 8 and 9. I have examined the record with the assistance of the learned Advocates. After hearing the learned Advocates, the following points arise for my determination:

- (i) Whether the civil suit is barred by limitation ?
- (ii) Whether the defendant Nos. 3 and 6 are eligible for the allotment of the suit plots under the provisions of Article 334-A of the Code of Comunidade ?
- (iii) Whether the civil suit is maintainable at the behest of the original plaintiff ?
- (iv) Whether the judgment passed by the learned trial Judge is proper and in consonance with the facts and the documents on the record and the provisions of the Code of Comunidade and the guidelines made by the Government ?

8. The learned trial Judge has held that the cause of action for filing the suit had arisen only after the issuance of the allotment Order, which in the present case is on 24.3.2005. The civil suit is filed on or about 2.12.2005. The learned trial judge has rightly held that the suit is not barred by limitation. The findings of the learned trial Judge is not challenged by the Respondents. It is held that the suit as filed by the plaintiff is not barred by limitation.

9. The defendants had raised a specific plea that the civil suit at the behest of the plaintiff is not maintainable and in support of this submission, the defendants relied on the judgment reported in 2003(1) Goa L.T. 293 in the case of (Vaikunta Kushali Saunto Vs. Shri Shivaji Venkatesh Kudchadkar & ors.)¹, The learned trial Judge has accepted the submissions made on behalf of the defendants that the Civil Suit filed by the plaintiff is not maintainable. In the judgment in the case of Vaikunta Kushali Saunto (supra) it is held that a component has no right to independently maintain a suit in respect of the property belonging to the Comunidade.

Shri Pangam, learned Advocate for the appellant-plaintiff, has submitted that the grievance of the appellant is that the original defendants including the Comunidade acted illegally and, therefore, the submission made on behalf of the defendants that the suit can be filed only by the Comunidade, is fallacious. The learned Advocate for the appellant in support of his submission has relied on the judgment reported in 1990 (1) Goa Law Times 91 in the case of (Mr. Apolinario C. Fernandes & 2 ors. Vs. Mr. Victor Jose P. D'Souza & 5 ors.). The learned Advocate for the appellant has also relied on the judgment reported in Kochkunju Nair Vs. Koshy Alexander and Others, in the case of [Kochkunju Nair Vs. Koshy Alexander & ors.) and has submitted that the plaintiff is entitled to file the civil suit as he has a right in the properties of the Comunidade and his

rights are affected by the illegal allotments of the suit plots to the defendant Nos. 3 and 6. In my view, the submissions as made on behalf of the appellant relying on the judgment in the case of Kochkunju Nair Vs. Koshy Alexander & ors. (supra), cannot be accepted as the judgment is given in a totally different context. The plaintiff has relied on paragraph 9 of the above mentioned judgment. However, it is undisputed that the plaintiff is a Senior Component and Ex-President of the Comunidade of Bordem i.e. defendant No. 2. In view of this fact and considering the relief sought by the plaintiff which is against the Comunidade, in my view, the ratio laid down by the judgment given in the case of Apolinario C. Fernandes (supra), would apply. In para 12 of this judgment, this Court has held as follows:

12. In the present case, the suit filed by the first respondent is to declare that the plot of land No. 410 belongs to the Comunidade and further that the Procurador and the governing bodies of the Comunidade had no power to admit the claim of the appellant herein in the suit filed by them. This kind of relief sought indirectly affects the interests of the first respondent as a "joneiro" and therefore, it is obvious as rightly held by the District Judge, that he has locus standi to file the suit. There is no reason in the circumstances, for interference with the impugned judgment.

The conclusions of the learned trial Judge relying on the judgment in the case of Vaikunta Kushali Saunto Vs. Shri Shivaji Venkatesh Kudchadkar & ors. (supra) are not sustainable. It has to be held that the plaintiff has locus to maintain the Civil Suit.

10. The defendants have submitted that the plaintiff could have filed appeal to the Administrator against the decision of the Comunidade and as the plaintiff had a remedy of appeal, the civil suit filed by the plaintiff is not maintainable. The submissions as made on behalf of the defendants, cannot be accepted as it is not in consonance with the facts. The plaintiff has challenged the allotment of the suit plots to the defendant Nos. 3 and 6 by the Government. An appeal to the Administrator is provided against the decision of the Comunidade. In the present case, there is no decision by the Comunidade to allot the plots and as per the provisions of Article 334-A of the Code of Comunidade, the powers to allot the land/public plots is with the Government. The Comunidade has only to process the application submitted by the applicants for allotment of the plots and forward it to the Collector who in turn has to make his recommendations and the decision has to be taken by the Government. The learned Advocate for the respondents have not been able to point out any provision which provides for an appeal to the Administrative Tribunal against the recommendations of the Collector and the decision of the Government. Moreover, the Civil Court u/s 9 of the CPC has the jurisdiction to try and decide all the civil suits except which are expressly or impliedly barred by any law. Therefore, the submissions made on behalf of the Respondents that the suit is not maintainable and the plaintiff should have filed an appeal to the Administrator has to be rejected.

11. Shri Pangam, learned Advocate appearing for the appellant, has submitted that the Form I and XIV in respect of the properties owned by the family of the defendant Nos. 3 and 6 clearly show that they are having vast properties and they are not entitled for the allotment of the plots as per the guidelines framed by the Government. The Form I and XIV (Exhibit No. 63) shows that the father of the defendant No. 3 is the occupant of the property. The Form I and XIV (Exhibit No. 64) shows that the father of the defendant No. 6 is the occupant of the property. The Form I and XIV (Exhibit No. 65) show that the father of the defendant No. 3 is the co-occupant of the property. On the basis of these documents, it cannot be said that the defendant Nos. 3 and 6 are the owners/occupants of the properties as alleged by the plaintiffs.

12. However, the plaintiff has placed on record the copy of the sale-deed dated 8.2.2005 (Exhibit 17) which shows that the defendant No. 3 has purchased plot No. 39 admeasuring 608 square metres of the property known as "Piranchi Condivoril" also known as "Piranchi Cond" or "Pirachi Con", situated at Village Sarvan, within the limits of Village Panchayat of Karapur-Sarvan, Taluka and Registration Sub-District of Bicholim, District North Goa. The above mentioned sale-deed shows that the defendant No. 3 has purchased this property along with Shri Shankar Dattaram Pal. Relying on the sale-deed, the learned Advocate for the appellant has submitted that the defendant No. 3 being the owner of the land, purchased vide above referred sale-deed, was not entitled for the allotment of the plot. The learned Advocate for the defendant No. 3 has submitted that the land is purchased by Shri Shankar Dattaram Pal and the defendant No. 3 in their capacity as Directors of the Company and not in their individual capacity and, therefore, it cannot be said that the defendant No. 3 is the owner of the property in his personal capacity and there is no bar for allotment of the suit plot in favour of the defendant No. 3.

13. The defendant No. 3 had submitted an application requesting for the allotment of the plot on 24.3.2000 and after the application is processed by the Comunidade and recommended by the Collector, the Government issued the Order dated 24.3.2005. The sale-deed on which the appellant has relied is dated 8.2.2005. Thus, the sale-deed is prior to the allotment of the suit plot by the Government. This aspect is not considered by the learned trial Judge.

Whether the plot purchased by the defendant No. 3 is in the radius of 8 kilometres from the Comunidade from which he intends to take land on lease, has to be considered by the trial Court.

14. According to Article 334 of the Code of Comunidade, all the properties asked for in lease has to be auctioned publicly which has to be announced in the Government Gazette with antecedence of atleast fifteen days. Article 334-A of the Code of Comunidade carves out exception to this procedure and lays down that the Comunidade may subject to such guidelines as the Government may from time to time issue, grant on lease land to the persons/institutions as stated in Clauses (i) to (ix) of Article 334-A of the Code of Comunidade. The learned

Advocate for the appellant has pointed out that the Rules called as Goa, Daman and Diu Legislative Diploma No. 2070 have been made which regulate the allotment of lands.

Clause 3 of these Rules provides for the eligibility of the persons for allotment of the land and reads as follows:

3. Eligibility- (1) The applicant to be eligible for allotment of a land should not own any residential accommodation or a build site within a radius of 8 kms. from the Comunidade from which he intends to take land on lease.

(2) An application to be eligible for grant of land on lease without auction shall not be a person whose annual income from all sources exceeds Rs. 60,000/-.

Whether the purchase of the plot by the defendant No. 3 by the sale-deed dated 8.2.2005 was in his individual capacity or as the Director of the Company, has to be considered by the trial Court and the effect of the sale-deed on the legality of the allotment by the Government is also to be considered by the trial Court.

15. On considering the material on record, it is clear that the parties have not brought on record anything to show that the defendant Nos. 3 and 6 were having income not exceeding Rs. 60,000/- per annum from all sources. Though this issue is not raised in the civil suit, the eligibility of the defendant Nos. 3 and 6 for being entitled for allotment of the plot is to be considered and the statutory rules cannot be overlooked.

16. Shri Pangam, learned Advocate for the appellant, has relied on the judgment reported in 1992 (Supp. 2) Bom. C.R. 44 (P.B.) : 1995 (2) Goa L.T. 367 in the case of (Shri Michael Charles D'Souza. Vs. Ganesh V.V. Gaonkar) specifically paragraph Nos. 54, 55, 56 and 57 and has argued that the burden was on the defendants to prove that the defendant Nos. 3 and 6 were entitled for the allotment of plots. Relying on the above mentioned judgment, the learned Advocate has submitted that the decision of the Government to allot the plots in favour of the defendant Nos. 3 and 6 without considering as to whether they fulfil the eligibility criteria according to the guidelines made by the Government, is unsustainable.

17. Considering this aspect, the impugned judgment passed by the learned trial Judge dismissing the suit, cannot be maintained and it has to be set aside. The matter has to be remanded to the trial Court for considering the issue relating the allotment of the plots in favour of the defendant Nos. 3 and 6. The parties are at liberty to place on record additional pleadings and the documents, if they desire. The trial Court is directed to decide the civil suit afresh after giving the parties an opportunity to produce additional documents, if any, and to permit them to lead evidence, if required.

18. The appeal is accordingly allowed. The judgment and decree passed by the learned trial Court on 5.1.2008 is set aside. The civil suit is remanded to the trial Court for deciding it in accordance with law. In the circumstances, the parties to

bear their own costs.