
(2014) 08 BOM CK 0032
In the Bombay High Court
Case No : Second Appeal No. 5 of 2008

Laxmi Guirmaji Fal Desai

APPELLANT

Vs

Comunidade of Sirvoi

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 58(2)

Citation : (2014) 08 BOM CK 0032

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

Bench : Single Bench

Advocate : Anthony D'Silva, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

U.V. Bakre, J.—Heard Mr. D'Silva, learned Counsel appearing on behalf of the appellants.

2. This appeal challenges the judgment and decree dated 30/07/2007 passed by the learned Ad hoc District Judge-I, FTC-I (First Appellate Court, for short) in Regular Civil Appeal No. 31/1997, which in turn was filed against the judgment and decree dated 26/03/1997 passed by the learned Civil Judge, Senior Division, Quepem (Trial Court, for short), in Regular Civil Suit No. 72/1978/A.

3. The appellants are the legal heirs of the original defendants whereas the respondent is the plaintiff. The parties shall hereinafter be referred to as per their status in the said suit.

4. The plaintiff had filed the said suit for permanent injunction, mandatory injunction and for damages against the original defendant. The suit property was described in the plaint to be known as "Xancaria vorli Murdy" commonly known as "Godgal" bearing matriz no. 528 and survey no. 156/1 of Sirvoi village. According to the plaintiff, the said defendant became deemed owner of the land bearing survey no. 156/2, but had no right of whatsoever nature to the suit property. Alleging that the defendant trespassed the suit property by cutting the

forest growth for doing cultivation therein and erected two huts therein, the plaintiff filed the suit. It was alleged by the defendant that in Tenancy Case no. 23/1971 filed against one Divakar Sirvoikar and the plaintiff, the defendant was declared as deemed tenant of the paddy field known as "Godgal" which is in three adicoes (lancoes), situated at Sirvoi, since 1963. According to the defendant, the said three adicoes (lancoes) correspond to the entire area under survey no. 156, with all its sub-divisions.

5. Accordingly, as per the rival contentions of the parties, the Trial Court framed issues. The issue no. 5 as framed was as under:

5. Whether the defendant proves that entire plot surveyed under no. 156 with its sub divisions is the property Godgal which is in possession and enjoyment of the defendant since 1963, as lessee in three lancos?

6. The plaintiff examined its attorney, Shri Gajanan Shirvoikar as PW1 and one Shri Vithal Shetkar as PW2 whereas the defendant examined himself as DW1 and two witnesses namely Shri Pundalik Gaonkar as DW2 and Shri Chandru Gaonkar as DW3. Upon consideration of the material on record, the learned Trial Court dismissed the suit. However, the Trial Court went in the issue of agricultural tenancy and answered the said issue no. 5 in the negative.

7. The plaintiff filed the said Regular Civil Appeal no. 31/1997. The learned First Appellate Court allowed the appeal and set aside the judgment and decree of the Trial Court and further allowed the prayers (a) and (b) made in the suit. It is against the said impugned judgment and decree, the present Second Appeal has been filed which is admitted on the following substantial questions of law:

(I) Whether the first Appellate Court was justified under the circumstances to permit the Respondent to produce additional documents contrary to the provisions of O. 41, R. 27, C.P.C.?

(II) Whether the Civil Court could not have proceeded to decide the suit in the light of the plea taken by the Defendants that they were tenants in respect of the holdings under survey No. 156/1?

8. After hearing learned Counsel appearing on behalf of the defendants, I am of the view that only the substantial question at serial no. II above would be relevant for disposal of the present appeal.

9. Indisputably, the defendant had claimed to be agricultural tenant of the suit property bearing survey no. 156/1 along with other sub divisions of survey no. 156. It was not the finding of the Trial Court that the plea taken by the original defendant was vague. In any case, issue no. 5 regarding the tenancy of the defendant was actually framed by the Trial Court. In terms of the Section 58(2) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, 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 or Government, and no order passed

by these authorities under this Act shall be questioned in any Civil or Criminal Court.

10. In spite of above bar created by Section 58(2) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, the learned Trial Court decided the question of tenancy of the defendant and held that he was not the tenant. The learned First Appellate Court in the impugned judgment has observed that it is the case of the defendant that he is holding the land as an agricultural tenant. The First Appellate Court knew that the lower Court had framed one of the issues as to whether the defendant proves that the entire plot surveyed under no. 156/1 with its sub-divisions is the property Godgal and he is in possession and enjoyment of the same since 1963, as lessee of three lancoes. The First appellate Court held that the defendant had no right beyond survey no. 156/2. The First Appellate Court, therefore, also went into the question of agricultural tenancy without having jurisdiction to deal with the same. The Trial Court ought to have referred the issue no. 5 to the competent authority under the Agricultural Tenancy Act and ought to have decided the suit after receipt of the decision from the said competent authority.

11. In view of the above, the substantial question of law at Sr. No. II is answered in the affirmative i.e. to say that Civil Court could not have proceeded to decide the suit in the light of the plea taken by the defendants that they were tenants in respect of the holding survey no. 156/1.

12. In view of the above, the impugned judgment and decree dated 30/07/2007 passed by the First Appellate Court as well as the judgment and decree dated 26/03/1997 passed by the Trial Court are required to be quashed and set aside and the matter is required to be remanded back to the Trial Court with a direction to refer the issue no. 5 to the Mamlatdar and to decide the suit only after receipt of the decision of the Mamlatdar on the said issue of tenancy.

13. In the result, the appeal is partly allowed.

(a) The impugned judgment and decree dated 30/07/2007, passed by the First Appellate Court, in Regular Civil Appeal No. 31/1997 and the judgment and decree dated 26/03/1997 passed by the Trial Court in Regular Civil Suit No. 72/1978/A are both quashed and set aside.

(b) Matter is remanded back to the Trial Court with a direction to refer issue no. 5 to the Competent Authority i.e. the concerned Mamlatdar and to decide the suit finally only after the receipt of decision of Competent Authority on the said issue.

(c) Parties to appear before the Trial Court on 25/08/2014 at 10.00 a.m.