
(1998) 12 BOM CK 0081

In the Bombay High Court

Case No : Civil Revi. Application No. 176 of 1998

Manuel Caetano Gonsalves Patricio

APPELLANT

Vs

Antonio Braganza and another

RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 7A

Citation : (1999) 3 ALLMR 45 : (2000) 1 BomCR 453

Hon'ble Judges : R. M. S. Khandeparkar, J

Bench : Single Bench

Advocate : J. P. Mulgaonkar, for the Appellant; N. K. Sawaikar For Respondent
No. 1 N.N. Sardessai, for the Respondent

Final Decision : Allowed

Judgement

R. M. S. Khandeparkar, J.—This petition arises from Order dated 18th July, 1998 whereby the trial Court in Regular Civil Suit No. 165/95/C has ordered the deletion of two issues, one, whether the Defendant/Petitioner proves that the Court lacks jurisdiction to entertain the suit, and the other, pertaining to the claim of agricultural tenancy rights of the Petitioner to the suit property.

2. The facts, in brief, relevant for the decision are that the Respondent No. 1 has filed the said suit for declaration that the Respondent No. 1 has right in the property bearing survey No. 112/1 of Calapur village pursuant to grant of lease by the Respondent No. 2 in respect of the said property for the purpose of extraction of stones since 1971 and further for direction to the Mamlatdar of Record of Rights to register the name of the Respondent No. 1 in the "Other Rights" column in Form 1 & XIV in respect of the said property as well as for declaration that the Petitioner has no right to the suit property and his name from "Other Rights" column in respect of the said property be deleted. The claim of the Respondent No. 1 is not disputed by the Respondent No. 2. However, the Petitioner who is the Defendant No. 2 in the suit, has seriously contested the claim of the Respondent No. 1 and it is the contention of the Petitioner that the

entire property bearing survey No. 112/1 is an agricultural property and the Petitioner is lawful tenant in possession thereof since 1966 and in the course of acquisition of some portion of the said property, he had been paid 50% of compensation by the Government on the ground that the Petitioner is tenant in respect of the said property. On the basis of the pleadings of the parties, various issues were framed including the following issues as issues Nos. 5 and 6:-

"Issue No. 5:- Whether the Defendant No. 2 proves that this Court has no jurisdiction to try and entertain the present suit?

Issue No. 6:- Whether the Defendant No. 2 proves that he is an agricultural tenant in possession of the entire Lote No. 622 on payment of yearly rent of Rs. 51/-?"

After framing of the said issues, an application dated 19-2-1998 was filed by the Respondent No. 1 praying for deletion of the above quoted two issues, whereas the Petitioner had filed another application dated 11-12-1997 requesting that the issue No. 5 be referred to Mamlatdar for his decision and till then the suit be stayed. The trial Court, however, merely referring to the judgment of this Court in the matter of Shri Inacio M. Dias v. Palmira Valadares reported in 1996 (3) All MLR 362, ordered for the deletion of the said issues Nos. 5 and 6 quoted above and dismissed the application dated 11-12-1997 filed by the Petitioner.

3. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the Respondent No. 1 who is the Plaintiff in the suit, has categorically stated in the plaint that Lote No. 622 is surveyed under No. 112/1 in the village of Calapur, comprising of rocky and barren land with the exception of some cashew trees towards the southern and eastern portion and the Petitioner was allowed to collect cashew apples from the said trees and that in the year 1971 the Respondent No. 1 was granted lease by the Respondent No. 2 to extract stones from the said property and since then the Respondent No. 1 is in possession of the said property for the purpose of extraction of stones, excluding the portion, wherein there were cashew trees and which was acquired by the Government. As against this, the Petitioner who is the Defendant No. 2 in the said suit, has stated in the written statement that the entire property is an agricultural property and the same is in possession of the Petitioner since 1966 as lessee thereof on payment of yearly rent of Rs. 51/- to the Respondent No. 2 and the Government had paid 50% of compensation to the Petitioner acknowledging him to be the tenant in respect of the said property on acquisition of portion thereof. In the background of these pleadings, it is evident that the claim of the Petitioner is that the entire land of the said property is an agricultural land and he is the tenant in respect of the same and in that regard he pays annual rent to the Respondent No. 2, who is undisputedly the owner of the property. Though the Respondent No. 1 in the plaint has stated that the suit property is rocky and barren land, he has simultaneously also stated that the property comprises of cashew trees towards the south and eastern portion. The presence of the Petitioner in the suit property does not appear to be in dispute in

view of the pleadings though the exact nature of land of the suit property has to be established in the course of the evidence to be led by the parties. It is, however, undisputed fact that the Petitioner was allowed to collect the cashew apples from the cashew trees in the said property. This fact read along with the pleadings of the Petitioner to the effect that the suit property was granted on lease to him since 1966 and he has been paying annual rent of Rs. 51/- to the Respondent No. 2, disclose clearly the claim of the Petitioner to be the tenant of an agricultural property.

4. It is also not in dispute that in terms of Section 7-A of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, it is for the Mamlatdar to decide the nature of the land when the same is disputed by the parties. Simultaneously, it is not in dispute that there is already a proceeding pending before the Revenue Authorities regarding the claim of tenancy of the suit property by the Petitioner against the Respondent No. 2. Moreover, the Respondent No. 1 is not a party to the said proceedings.

5. Considering the pleadings of the parties in the suit, it cannot be disputed that, prima facie, the issue regarding the nature of the land as well as the claim of tenancy of the suit property clearly arises in the matter and in that regard the trial Court was justified in framing issue No. 6 as it was framed as quoted above. In fact, based on pleadings, the trial Court ought to have framed an issue regarding the nature of the land in the following manner:-

"Whether the Defendant No. 2 proves that the entire property bearing survey No. 112/1 of Calapur village is an agricultural land?"

6. Once the pleadings clearly disclose the necessity to frame the issue regarding the claim of tenancy and the nature of land, it cannot be said that the trial Court has exercised its jurisdiction judiciously while allowing the application of the Respondent No. 1 and ordering the deletion of issues Nos. 5 and 6 quoted above. The trial Court in that regard, without applying its mind to the pleadings on record, has clearly failed to exercise its jurisdiction judiciously by ordering the deletion of the said two issues as well as failing to frame the necessary issue regarding the nature of land.

7. In this view of the matter, therefore, the impugned Order cannot be sustained and is liable to be quashed and set aside and, simultaneously, the trial Court is required to be directed to frame additional issue regarding nature of land as quoted above. After framing the said issue, the same along with the issue No. 6 quoted above are to be referred to the Mamlatdar of the concerned taluka in order to decide the same in terms of the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 and until those issues are finally decided, the civil suit filed by the Respondent No. 1 is required to be stayed unless necessary occasion arises to proceed with the suit.

8. In the result, therefore, the Petition succeeds. The impugned judgment and order is hereby quashed and set aside. The application dated 19-2-1998 filed by

the Respondent No. 1 before the trial Court is hereby dismissed. The issues Nos. 5 and 6 framed by the trial Court on 19-6-1997 are restored. The trial Court is further directed to frame an issue regarding the nature of land as quoted above. The trial Court is further directed to refer issue No. 6 as well as the issue regarding the nature of land to the Mamlatdar of the concerned taluka for his decision on those issues and to stay the civil suit till the receipt of the final decision from the concerned Authorities on the said two issues. The Rule is made absolute in the above terms with no order as to costs.