
(2008) 02 BOM CK 0132
In the Bombay High Court
Case No : Writ Petition No. 105 of 2008

Mr. Afonso Mascarenhas and Others

APPELLANT

Vs

Mr. Nelson de Miranda and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2008) 02 BOM CK 0132

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : V. Rodrigues, for the Appellant; M.B. D'Costa with Mr. J.A. Lobo, Advocate for Respondent Nos. 3 and 4, for the Respondent

Judgement

1. Heard Mr. V. Rodrigues, learned Counsel on behalf of the Petitioners and Mr. M. B. D'Costa, learned Senior Counsel on behalf of Respondent Nos. 3 and 4. Challenge in this petition is to the Order dated 29-11-2007 of the learned Civil Judge, Jr. Division, Margao passed in Execution Application No.16/94/D. However, learned Counsel appearing on behalf of the Petitioners fairly submits that the Petitioners at present do not have any grievance against the points decided by the said order.

2. Nevertheless, learned Counsel on behalf of the Petitioners submits that the impugned Decree which was passed under then Decree No. 43525 is a nullity as the same could not have been passed in the light of the provisions of Section 22(4) of the Goa Buildings(L.R.E) Control Act, 1968. Learned Counsel on behalf of the Petitioners further submits that the lease deed between the Respondents and the Petitioners was of the year 1956 and the suit for eviction of the Petitioners was filed on 23-11-1976 for non payment of rent. Learned Counsel further submits that the Petitioners had deposited the rent by virtue of Order of the trial Court dated 4-12-1978 until the Decree was passed and since the rent was deposited, the Civil Court had no jurisdiction to pass the Decree sought to be executed in the light of sub-section(4) of Section 22 of the said Act. In support of

the said submission, learned Counsel on behalf of the Petitioners has placed reliance on a Division Bench Judgment of this Court in the case of Goa Advocates' Welfare Fund(1997 (1) G.L.T. 131) and Shri Isidore Joaquim De Cruz v. Shri Gundu G. Desai and others(1999 (1) Goa L.T. 111). Learned Counsel further submits that the points raised as regards lack of jurisdiction of the trial Court in passing the said Decree could be raised in ancillary or collateral proceedings and in this context learned Counsel has placed reliance on the decision of C. Mackertich Vs. Steuart and Co., Ltd, as well as in Sarwan Kumar and Another Vs. Madan Lal Aggarwal, .

3. On the other hand, learned Senior Counsel on behalf of Respondent Nos. 3 and 4 contends that the Petitioners could have raised this point of nullity in case there was lack of inherent jurisdiction. Learned Senior Counsel further submits that the provisions of the said Decree then in force had provided that in terms of Article 41 rent had to be paid in double plus compensation and it is not the case of the Petitioners that they had complied with any of the said provisions. In reply, learned Counsel on behalf of the Petitioners submits that against the Decree sought to be executed the Petitioners are intending to file an appeal.

4. I have perused the decisions cited on behalf of the Petitioners. Admittedly, the point raised in this petition as regards the Decree sought to be executed being a nullity is being raised for the first time. It was not raised in the objections filed and decided by the impugned Order. There can be no dispute that the remedy provided to raise the question of the validity of the Decree is u/s 47 C.P.C. Section 47 C.P.C. provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court. For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed and all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section. At the same time it must be stated that an executing Court is not entitled to investigate into the question of validity of the Decree when on the face of it there is nothing illegal in it. Writ jurisdiction cannot be considered as ancillary or collateral proceedings relating to execution proceedings. Since the Petitioners had a remedy by way of Section 47 C.P.C. to question the validity or nullity of the Decree, in my view, this is not a fit case to exercise extraordinary jurisdiction. The petition is therefore hereby dismissed.

Authenticated copy of the Order be given to the learned Counsel for the

Petitioners.