

(1998) 12 BOM CK 0075

In the Bombay High Court

Case No : Civil Revision Application No. 191 of 1998

Mr. Diogo Afonso

APPELLANT

Vs

Mrs. Annie Afonso

RESPONDENT

Date of Decision : 02-12-1998

Acts Referred:

Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 25

Citation : (1999) 101 BOMLR 784

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—The petitioner challenges the Judgment and Order dated 10th August, 1998 passed by the Additional District Judge, North Goa, Panaji, in Miscellaneous Civil Appeal No. 13/98. By the impugned Order, the Lower Appellate Court while allowing the Appeal has set aside the Order of the temporary injunction granted by the Trial Court in Civil Miscellaneous Application No. 258/97/D to Regular Civil Suit No. 142/97 by its Order dated 19th January, 1998. By the said Order, the Trial Court had restrained the respondent from doing any construction in the suit plot till the disposal of the suit. The Lower Appellate Court has, however, holding that the respondent has claimed to be mundkar and the materials on record do not show that the reconstruction of the house is being done beyond the original plinth area, has set aside the order of temporary injunction and has dismissed the application for temporary injunction filed by the petitioner.

2. Upon hearing the Advocates for the parties and on perusal of the record, it is seen that the petitioner had filed the suit for permanent injunction to restrain the respondent from doing any construction in the suit property which is claimed to be owned and possessed by the petitioner. It is the case of the petitioner that there existed house No. 195/1 in the suit property and the same was being occupied by the respondent. The said house demolished some time on 17th

August, 1997 by the respondent and that the respondent attempted to put up altogether new construction by extending the original plinth area. It is on the other hand the case of the respondent that she was living in the said house for more than 40 years. Her ration card disclosed the number of the suit house, her name is entered in the Electoral Roll pertaining to the suit house. The water and electricity connections in the suit house stand in her name and she had also telephone connection in the suit house standing in her name. It was her case that the gas connection as well as the house tax stands in the name of the respondent and her name is recorded in the other rights column in the Record of Rights in respect of the said property and therein it is recorded "Annie Dulcina Alphonso has got right to live in the house" and, therefore, she is the mundkar in respect of the said house and she has been reconstructing the said house within the original plinth area. The materials placed on record disclose that the attempt on the part of the respondent to seek necessary declaration of her mundkarial right in respect of the suit house had been proved futile in view of dismissal of the application in that regard by the Mamlatdar. The Appeal carried to the Additional Collector was also dismissed and the order of dismissal of claim of mundkarship by the Mamlatdar was confirmed by the Additional Collector. It is true that the respondent has preferred revision application dismissing her claim of mundkarship in the suit house.

3. As the matter stands today, undisputedly, there is no declaration of mundkarial right in favour of the respondent in respect of the house which has been already demolished. Prima facie it appears that the said house existed in the suit property till August, 1997. It cannot be disputed that the jurisdiction to decide whether a person is a mundkar or not exclusively vests with the Court of Mamlatdar in terms of the provisions of law as contained in Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. Undisputedly, there is no such declaration obtained by the respondent in respect of the said house. The attempt to obtain such declaration has also been proved futile.

4. It is true that there are various facts disclosed in the pleadings by the respondent regarding her occupation in the house which was demolished in August, 1997. The said facts at the most would disclose the possession of the respondent in respect of the said house prior to its demolition. The said facts are of no help to the respondent to disclose restoration of possession of the area which was occupied prior to demolition of the said house. The respondent has not denied the claim of the petitioner that the petitioner is the owner of the property. Apart from the claim of mundkarship the respondent has not disclosed any claim or interest in the right of the property. As against this, it is the case of the petitioner that the respondent was occupying the house by permission. Being so, it is not permissible for the respondent No. 1 to reconstruct any structure therein without the consent of the petitioner.

5. Moreover, in view of the fact that the respondent has already claimed to be mundkar and the same is pending before the Administrative Tribunal and the

decision of the Mamlatdar or Additional Collector cannot be said to be final unless and until the said proceedings are finally determined in terms of the provision contained in Section 25 of Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. The respondent, therefore, would be certainly entitled to seek necessary modification, if so justified, in the order of the Trial Court granting temporary injunction against the respondent upon the final disposal of the said proceedings. However, till then, the respondent is certainly not entitled to proceed with any construction in the suit property.

6. The interference by the Lower Appellate Court in the order of the Trial Court solely on the ground that the respondent has claimed to be mundkar and the proposed construction is not beyond the plinth area is certainly in improper exercise of its jurisdiction. The mere claim of mundkarship in the absence of necessary materials on record in support of the plea of mundkarship by the respondent cannot entitle the respondent to proceed with the reconstruction of the said house in the said property.

7. In the result, therefore, the revision application succeeds. The impugned Order is set aside. The respondent may move before the Trial Court for modification of the order of the Trial Court granting temporary injunction in case the respondent succeeds in the revision application before the Administrative Tribunal in respect of her claim for mundkarship and the Trial Court, if such application is filed shall dispose of the same on its merits. No order as to costs. Rule is made absolute in the above terms.