

(1999) 06 BOM CK 0043

In the Bombay High Court

Case No : Civil Revision Application No. 63 of 1997

Mrs. Wallet Ferrao Braganza

APPELLANT

Vs

Mrs. Maria Libania Severina D'Souza Braganza

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Goa, Daman and Diu Agricultural Tenancy Act, 1964 — Section 14(3)

Citation : (2000) 2 ALLMR 410 : (2000) 1 BomCR 864 : (2000) 2 MhLj 108

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : S.S. Kantak, for the Appellant; U.S. Kolwalkar, for the Respondent

Judgement

R.K. Batta, J.—The petitioner had filed an application stating that the Cabeça de Casal had not disclosed two properties consisting of paddy fields of which Candido Braganza, husband of Cabeça de Casal was the tenant. This application was objected to by Cabeça de Casal, namely, the respondent and the objection taken was that the paddy fields cannot be included in the inventory proceedings since the Mamlatdar vide judgment in Tenancy Case No, 50/76 has held that the tenancy is deemed to have been continued with Cabeça de Casal u/s 14(3) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964. The learned advocate for the petitioner had placed reliance on a judgment of this Court in Domingos Estevam V. Monteiro Vs. Comunidade of Santo Estevam and Others, but in spite of that the application filed by the petitioner was rejected.

2. Learned advocate for the petitioner has submitted before me that the trial Judge has not applied the ratio laid down in the judgment in Shri Domingos Estevam V. Monteiro v. Comunidade of Santo Estevam and others (supra) properly and has erroneously rejected the application of the petitioner for inclusion of the paddy fields in the inventory proceedings. In fact, the ratio laid down in the said judgment in Shri Domingos Estevam V. Monteiro v. Comunidade of Santo Estevam and others (supra) is crystal clear and the trial Court has not applied the ratio correctly. The respondent had relied upon the judgment of the

Mamlatdar in Tenancy Case No. 50/76 which was rendered u/s 14(3) of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as "the said Act"). Section 14(3) empowers the Mamlatdar to decide the question of tenancy where the question arises in whose favour the tenancy is deemed to have been continued under the Act and this question is to be decided by the Mamlatdar after hearing the landlord and other persons interested in the matter. It is not disputed that in the Tenancy Case No. 50/76 all the legal heirs of the deceased Candido Braganza were not heard. The proviso to section 14(3) states that nothing in this subsection shall preclude the rights of the parties being determined by a Court of law. Interpreting section 14(3) and the proviso, it was held by the learned Single Judge in *Shri Domingos Estevam V. Monteiro v. Comunidade of Santo Estevam and others* (supra) that where the Mamlatdar allots the shares of a tenancy of a deceased tenant without intimating all the heirs of the deceased tenant, their rights are always protected and they can approach the Court of law to assert or ascertain their rights. During the course of hearing in the said case it had been urged that the Mamlatdar should also decide the question of heirship which would permit him to adjudicate the issue of inheritance of tenancy. However, this submission was repealed by the learned Single Judge holding that it was impossible to accede to the said submission because the determination of the legal status in relation to inheritance of a deceased person (de cujus) amounts no doubt to adjudication of the personal rights of a person which falls exclusively within the province and jurisdiction of the Civil Courts. It was also pointed out that the special laws prevailing in the State regulate the inheritance of a deceased person and as per law in force the question as to who is the heir of a deceased person is to be necessarily determined through a deed of "Habilitacao Notarial" or by instituting inventory proceedings. It was further held that the proviso to section 14(3) of the said Act shows that any decision given in the matter by the Mamlatdar on the question arising therein is merely provisional and the parties (not only those who were left out) can approach the Civil Court for a fresh adjudication of and final decision on the same issue.

3. Therefore, on the basis of the judgment rendered by the Mamlatdar in Tenancy Case No. 50/76 u/s 14(3) of the said Act, the application for inclusion of the paddy fields in inventory proceedings could not have been rejected. The trial Judge has clearly erred in rejecting the said application and not permitting the petitioner to include the paddy fields in the inventory proceedings. Therefore, the order of the trial Judge is liable to be set aside.

4. Learned advocate Shri Kolwalkar, appearing on behalf of the respondent, submitted before me that the inventory proceedings are already finalized and that the inclusion of the tenancy rights to the paddy fields, at this stage, would not be advisable as the issue would involve complicated questions of facts and law.

5. The application in question was filed when the inventory proceedings were

pending and the order denying the inclusion of the tenancy rights to the said properties is not in accordance with law and, as such, even on general principles, the inventory proceedings which have already been finalized will have to be re-opened with reference to the claim put forward in respect of the paddy fields. In this connection, my attention has been drawn by learned advocate for the petitioner to Article 1424 and Article 1434 of the Portuguese CPC which not only permits partition afresh as a consequence of decision in appeal as well as in cases where there is an omission to include some properties in the judicial partition. Therefore, the inventory proceedings shall have to be re-opened but only with reference to the claim relating to tenancy in respect of the two paddy fields. The parties shall be free to urge whatever is permissible in accordance with law before the trial Judge in the re-opened inventory proceedings as stated above.

6. For the aforesaid reasons, the impugned order with reference to the claim regarding tenancy rights is set aside and the inventory proceedings are ordered to be re-opened with reference to the claim put forward by the petitioner in respect of the tenancy rights to the paddy fields. The re-opened inventory proceedings shall be restricted only to the two paddy fields. The revision is partly allowed with no order as to costs.

7. Revision partly allowed.