
(2014) 07 BOM CK 0030
In the Bombay High Court
Case No : Second Appeal No. 114 of 2006

Sebastiao Lucas

APPELLANT

Vs

Paulino Fernandes

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Specific Relief Act, 1963 — Section 35

Citation : (2014) 07 BOM CK 0030

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Nigel Da Costa Frias, Advocate for the Appellant; C. Padgaonkar holding for G. Teles, Advocate for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard Mr. Nigel Da Costa Frias, learned counsel appearing for the appellant and Mr. C. Padgaonkar holding for Mr. G. Teles, learned counsel appearing for the respondents.

2. The above Second Appeal came to be admitted by order dated 20.07.2007 on the following substantial questions of law.

1. Whether a person who is not a party to the order passed by the Authorities mentioned in Section 31(2) of the Mundkar Act, is an exception to the bar expressly set out in the said provision and can question the orders passed by such authorities in any Civil or Criminal Court ?

2. Whether a suit impugning the only orders passed under the Mundkar Act, without seeking any relief of injunction or declaration of ownership, would be maintainable in view of the bar contained in Section 31(2) of the Mundkars (Protection from Eviction) Act, 1975 ?

3. The respondents filed a suit inter-alia seeking for declaration that the judgment and order dated 15.01.1990 passed by the learned Mamlatdar under

the provisions of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (herein after referred to as the "Mundkars Act") as null and void and also for setting aside the order of the Dy. Collector dismissing the appeal filed against the order of the Mamlatdar. In the said suit, an application under Order 7 Rule 11 of the CPC came to be filed by the appellant for rejection of the plaint essentially on the ground that the order passed by the Mamlatdar under the provisions of the Mundkars Act cannot be questioned in the suit. The learned Trial Judge allowed the application filed by the appellant and rejected the plaint filed by the respondents. Being aggrieved by the said judgment, the respondents preferred an appeal before the learned Lower Appellate Court which came to be allowed by judgment and order dated 28.06.2006. The learned Appellate Court after hearing the parties has come to the conclusion on perusal of the plaint that the averments therein disclose that it is the case of the respondents that they were not parties to the proceedings which resulted in the said order dated 15.01.1990 passed by the learned Mamlatdar and that such order was obtained behind the back of the respondents. The learned Judge as such came to the conclusion that this aspect would have to be examined by the learned Trial Court only after recording of evidence and as such the question of rejecting the plaint by the learned Trial Judge was not justified. Accordingly, the judgment of the Trial Court was set aside and the appeal preferred by the respondents was allowed. The appellant thereafter filed an appeal which came to be admitted on the aforesaid substantial questions of law.

4. Mr. Nigel Da Costa Frias, learned counsel appearing for the appellant in support of the said substantial questions of law has pointed out that once there is an order passed by the Mamlatdar, the question of examining the correctness or otherwise of such order by the Civil Court is expressly barred u/s 32(5) of the Mundkars Act. The learned counsel further pointed out that though the respondents were not parties to the said proceedings, as according to him the bhatkar was in fact a party to the proceedings, it was not open to the respondents to challenge the said order before the Civil Court. The learned counsel has taken me through the judgment of the Trial Court and pointed out that the learned Trial Judge has rightly appreciated the evidence on record and come to the conclusion that the suit filed by the respondents was barred and allowed the application filed under Order 7 Rule 11 of the Civil Procedure Code.

5. On the other hand, Mr. C. Padgaonkar holding for Mr. G. Teles, learned counsel appearing for the respondents has supported the impugned judgment. The learned counsel has pointed out that once it is not disputed that the respondents were not parties to the proceedings before the learned Mamlatdar the order passed therein would not bind the respondents. The learned counsel further pointed out that the order was passed on the back of the respondents and such mischief resorted to by the respondents cannot be justified and the Civil Court can examine the said aspect on its own merits. The learned counsel further pointed out that the analogous provisions of Section 35 of the Specific Relief Act would have to be considered which provides that a declaration obtained would

bind only the parties to the proceedings or their successors. The learned counsel as such points out that the substantial questions of law be answered in favour of the respondents.

6. I have considered the submissions of the learned counsel and I have also gone through the records. The fact that the respondents were not parties to the proceedings before the learned Mamlatdar is not disputed. The averments in the plaint essentially are that the proceedings initiated by the appellant were behind the back of the respondents and as such the orders passed therein are not binding on the respondents. This aspect would have to be examined on its own merits after the evidence is recorded in the suit. Once it is not in dispute that the respondents were not parties to the proceedings before the learned Mamlatdar, it is very difficult at this stage to take a view without recording evidence whether in fact such orders would be binding on the respondents. In such circumstances, considering the averments in the plaint, I find that the question of rejecting the plaint under Order 7 Rule 11 of the CPC cannot be sustained. The learned Lower Appellate Court has rightly appreciated the material on record to allow the appeal preferred by the respondents and reject the application filed by the appellant under Order 7 Rule 11 of the Civil Procedure Code. Needless to say that all the contentions raised by the appellant in defence to the suit would have to be examined by the learned Judge on its own merits after recording of evidence. The substantial questions of law are answered accordingly. The appeal stands accordingly rejected. The contentions raised by the appellant would have to be examined in the context of the written statement filed by the appellant and the trial Court will have to frame an issue based on the pleadings of the parties. The parties are directed to appear before the learned Trial Court on 25.08.2014 at 10.00 a.m. The appeal stands disposed of accordingly.