

(2011) 09 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 816 of 2010

Shri Datta alias Dattaram Narayan Bhagat	APPELLANT
Vs	
Smt. Crecencia Tindade, (Deceased) Through her legal representatives	RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 2(p)

Citation : (2011) 09 BOM CK 0135

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

Bench : Single Bench

Advocate : J. P. Mulgaonkar, for the Appellant; S. R. Rivonkar, Advocate for respondent no. 1(a) and Mr. S. Y. Thali, Advocate for respondent nos. 1(b) and (c), for the Respondent

Final Decision : Dismissed

Judgement

F. M. Reis, J

1. Heard Shri J. P. Mulgaonkar, learned Counsel appearing for the petitioners, Shri S. R. Rivonkar, learned Counsel appearing for respondent no.1(a) and Shri S.Y. Thali, learned Counsel appearing for respondent nos. 1(b) and 1(c). The above petition has been filed praying inter alia for a Writ of certiorari or a Writ in the nature of certiorari calling for the records of the Mundkar Revision Application No. 45/1996 in the Administrative Tribunal for examining the legality thereof and quashing and setting aside the judgment and order dated 12.06.2009 passed by the learned President, Administrative Tribunal, Panaji dismissing Mundkar Revision Application No. 45/1996, the judgment and order dated 22.8.1996 passed by the Collector in Case No. 53-90- MUND/APL and the order dated 30.03.1988 of the Mamlatdar of Bardez at Mapusa holding that the petitioners were not the mundkars of the suit house.

2. It is the case of the petitioners that the deceased Smt. Crecencia Tindade who

is represented by legal heirs mentioned as respondent no.1 filed a civil suit bearing No. 112/1974 against the petitioners in the Court of Civil Judge Junior Division at Mapusa, for eviction of the petitioners from the suit house and for mandatory injunction to pull down the alleged extension to the suit house and restore the same to its original condition. In the said suit, the petitioners have filed their written statement taking a plea that the petitioners were residing in the suit house as mundkars. Accordingly, the issue to that effect was referred to the learned Mamlatdar for a decision under the provisions of Goa, Daman and Diu Mundkar Act. By judgment dated 29.9.1983, the learned Mamlatdar decided the said issue referred by the Civil Court, holding that the petitioners are not the mundkars of the suit premises. Being aggrieved by the said judgment, an appeal was preferred by the Petitioners before the Collector challenging the said order of the learned Mamlatdar. By order dated 11.3.1986, the learned Collector allowed the said appeal and after setting aside the order of the Mamlatdar remanded the matter to the learned Mamlatdar to give a fresh decision on merits. After the said remand, the learned Mamlatdar passed the said order dated 30.3.1988. The learned Mamlatdar came to the conclusion that the petitioners were not the mundkars of the suit house. Being aggrieved by the said order of the learned Mamlatdar, an appeal was preferred by the petitioners before the learned Collector, North Goa, Panaji, who by judgment dated 22.8.1996 rejected the appeal preferred by the petitioners. Being aggrieved by the said judgment of the Collector, a Mundkar Revision Application No. 45/1996 was preferred before the learned Administrative Tribunal. By the judgment and order dated 12.6.2009, the Administrative Tribunal dismissed the said revision preferred by the petitioners. Being aggrieved by the said order passed by the said authorities, the Petitioners have preferred the above Writ Petition.

3. Shri J. P. Mulgaonkar, learned Counsel appearing for the petitioners has vehemently argued that the findings recorded by the Courts below are perverse inasmuch as according to him, there is no admission on the part of the petitioners which has been inferred by the Courts below to come to the conclusion that the petitioners come within the scope of the exception of mundkar u/s 2(p) of Mundkar Act. The learned Counsel further submitted that the findings of Courts below are perverse as there is no material on record produced by the respondent to establish that the petitioners are not the mundkars of the suit premises. The learned Counsel has taken me through the impugned judgments and pointed out that the Courts below have erred in appreciating the evidence on record and have come to a wrong conclusion that the petitioners are not the mundkars of the suit premises. The learned Counsel further pointed out that there are no pleadings to the effect that the petitioners were caretakers of the suit premises.

4. On the other hand Shri S. R. Rivonkar, learned Counsel appearing for respondent no.1(a) has pointed out para 8 of the written statement and submitted that the petitioners themselves have accepted that they were allowed to live in the suit premises so as to carry out the repairs to the house for

maintenance .The learned Counsel further submitted that the Courts below have considered the overall evidence on record adduced by the parties and have come to the right conclusion that the petitioners are not the mundkars of the suit premises. The learned Counsel further pointed out that on the basis of material on record, there is no error committed by the Courts below to come to the conclusion that the petitioners were occupying the suit premises as caretakers for its maintenance .

5. Shri S. Y. Thali, learned Counsel appearing for respondent nos. 1(b) and 1(c) has adopted the submission of the learned Counsel for respondent no.1(a).

6. On perusal of the material on record, I find that the petitioners at para 8 of the Written statement have inter alia stated that the petitioner no.1 and her husband were requested by the respondent and her husband to repair the house which was in dilapidated condition and to live therein and to look after the house and the surrounding property including the trees therein. The said pleadings of the petitioners itself disclose that the petitioners were allowed to repair the house and to live therein so as to look after the said house.

7. Section 2(p) of the Mundkar Act reads as follows :

"Mundkar" means a person who, with the consent of the bhatkar of the person acting or purporting to act on behalf of the bhatkar lawfully resides with a fixed habitation in a dwelling house with or without obligation to render any services to the bhatkar and includes a member of his family but does not include :-

(i) a person paying rent to the bhatkar for the occupation of the house:

(ii) a person paying servant or a chowkidar who is paid wages and who resides in an outhouse, house-compound or other portion of his employer's residence:

(iii) a person employed in a mill, factory mine workshop or a commercial establishment and is residing in the premises belonging to the owner or person in charge of such mill, factory, mine, workshop or commercial establishment and in connection with his employment in such mill, factory, mine, workshop or commercial establishment and

(iv) a person residing in the whole or part of a house belonging to another person or in an outhouse existing in the compound of the house, as a care-taker of the said house or for purposes maintaining it in habitable condition.

Sub-clause (iv) of the said provision clearly provides that the person residing in the whole or part of a house belonging to another person or in an out-house existing in the compound of the house, as a caretaker of the said house or for the purpose of maintaining it in a habitable condition is expressly not included to be a mundkar within the meaning of Section 2(p) of the Mundkar Act. The learned Mamlatdar after appreciating the evidence led by the parties has come to the conclusion that the petitioners do not come within the meaning of a mundkar under the Mundkar Act. The learned Mamlatdar has also noted the evidence

adduced by the parties including that of the witness Mr. Jose Marcus Lobo who has stated that the suit house was given to the petitioners to look after the said house.

8. Whilst disposing the appeal preferred by the petitioners, the learned Collector by judgment dated 22.08.1996 has come to the conclusion that the said house was in a dilapidated condition and late husband of the petitioner was allowed to occupy the same by the respondent to maintain it in habitable condition. The learned Collector has also considered the admission of the petitioner no.1 in his examination in chief that they were asked by the bhatkar to stay in the house because the said house may collapse at any time. The learned Collector as such has come to the

conclusion that the petitioners are not the mundkars within the meaning of Section 2(p) of the Mundkar Act. In the revision preferred by the petitioners before the learned Tribunal, the judgments of the said authorities were confirmed and the revision was rejected. The learned Tribunal has come to the conclusion on the basis of the evidence on record that the petitioners were the caretakers of the suit house and cannot be considered to be mundkars of the suit premises. The revision as such came to be rejected.

9. Considering the definition of mundkar and the findings of the fact recorded by the authorities below, I find no perversity in such findings of the Courts below. The authorities have rightly appreciated the evidence on record and considered even the admissions of the petitioners to come to the conclusion that the petitioners were not the mundkars of the suit premises as they were care-takers.

10. The Apex Court in the judgment reported in 2008(4) SCC page 451 in the case of B. K. Muniraju V/s State of Karnataka and others, has held at para 22 thus :

22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

11. In the light of the above, I find that there is no case for any interference by this Court under Article 227 of the Constitution of India in the conclusions arrived by the Courts below. Apart from that, it is also to be noted that the civil suit was filed much before the Mundkar Act came into force as it was filed in the year

1974. The said aspect has also been noted by the Courts below to come to the conclusion that the suit for eviction of the petitioners was already pending when much before the date under the Mundkar Act.

12. The learned Counsel appearing for the petitioners was unable to point out any perversity in the said findings. The findings by the Courts below are on the basis of the evidence adduced by the parties nor has the learned Counsel for the petitioners pointed out that any inadmissible evidence was relied by the Courts below to arrive at such findings. On going through the impugned judgments, I find that there is no justification for any interference in the impugned judgments passed by the authorities below and as such, I find no merit in the above petition which is summarily dismissed.