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(1998) 03 BOM CK 0002

In the Bombay High Court

Case No : Second Appeal No. 10 of 1995

Shri Sagun Dipu Harmalkar and others — APPELLANT

Vs

Ramakant Ramnath Harmalkar and others — RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 — Section 10
Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 — Section 13, 2, 25, 32, 33

Citation : (1998) 3 BomCR 846

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

Bench : Single Bench

Advocate : Mrs. A.A. Agni, for the Appellant; Sanjay Usgaonkar, for the Respondent

Judgement

R.K. Batta, J.—The respondents (hereinafter referred as plaintiffs) had filed a suit against the appellants (hereinafter referred as defendants) for their eviction from the suit house and vacant possession thereof and also for perpetual injunction from causing any obstruction to the plaintiffs in the enjoyment of the said property. The plaintiffs'' case, in brief, is that they had purchased the suit property by Sale Deed dated 28-10-67 along with the store room; prior to 26-9-67 the defendants were residing in their parental house at a distance of 50 metres from the suit property but on 26-9-67 they forcibly broke open the lock of the said store room and occupied the same and soon thereafter constructed a kitchen.

2. The defendants, on the other hand, claimed that they were using the said premises as dwelling house as mundkars. This suit was filed on 15-7-68 and on 7-6-1972 the plaintiffs had filed an application u/s 10 of the Goa, Daman and Diu (Protection from Eviction of Mundkars, Agricultural Labourers and Village Artisans) Act, 1971 (hereinafter referred as 1971 Act) for declaration that the defendants were not mundkars. When the question of mundkarship was raised

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by the defendants in the suit, on a joint application filed by both the parties the issue of mundkarship was referred to the Mamlatdar by the Civil Court vide Order dated 21st September, 1977 u/s 13 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (hereinafter called the 1975 Act). It appears that the evidence of both the parties on application u/s 10 of the 1971 Act had already been completed prior to 1975 Act came into force and the parties did not lead any evidence after the reference u/s 13 was made. The Mamlatdar vide judgment dated 12-9-80 held that the defendants were not mundkars. These findings were confirmed by the Addl. Collector in appeal and by the Administrative Tribunal in Mundkar Revision Application No. 15/ 81 vide judgment dated 31st August, 1988. The plea of mundkarship was thus finally decided by the Administrative Tribunal. Based upon those findings, the Civil Judge decreed the suit and this decree was upheld by the learned Addl. District Judge, Panaji in appeal vide judgment dated 17th October, 1994. The defendants have come in second appeal challenging the findings of the two courts below and the appeal was admitted on the following substantial questions :---

(A) Whether the Civil Court can proceed to decide the suit for eviction of the defendants from the suit house wherein the defendants have claimed mundkarship, unless the Mamlatdar decides the issue of mundkarship within the meaning of the term mundkar under the Act of 1975, on the basis of evidence recorded alter 12-3-1976 ?

(B) Whether a decision given by Mamlatdar on the basis of the materials placed before it in relation to the issue of mundkarship as contemplated under the Act of 1971 can be considered as the decision in relation to the issue of mundkarship under the Act of 1975 ?

(C) Whether Civil Courts have jurisdiction to order eviction of a person who has claimed mundkarship and who had no opportunity to lead any evidence in support of his plea before the Mamlatdar after the implementation of Act of 1975 ?

(D) Whether the judgment of Mamlatdar deciding the issue of mundkarship under the Act of 1975 on the basis of evidence recorded under the Act of 1971 is conclusive for the purpose of section 13 read with sections 32 and 33 of Act of 1975 ?

(E) Whether the defendants are entitled to raise the issue of mundkarship under Act of 1975, when undisputedly he had no opportunity to prove his claim of mundkarship within the meaning of the term "Mundkar" under the Act of 1975, even though there is a decision of Mamlatdar that such person is not a Mundkar within the meaning of term Mundkar under the Act of 1975 on the basis of evidence recorded under the Act of 1971 ?

(F) Whether the evidence recorded under the Act of 1971 can be considered to be the evidence for the purpose of decision or the plea of mundkarship under the Act of 1975 ?

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(G) Whether the Civil Courts will have jurisdiction to issue decree of eviction against a person claiming to be Mundkar but who had no opportunity to prove his claim of mundkarship under the Act of 1975 ?

3. Learned Advocate Mrs. Agni, appearing on behalf of the appellants/original defendants, urged before me that the substantial question of law which is required to be decided by this Court is: "Whether jurisdiction was exercised by the Mamlatdar under 1971 Act or 1975 Act?". According to her, the Mamlatdar had not decided the matter under the 1975 Act and the Addl. Collector in appeal as well as the Administrative Tribunal had overlooked the fact that the Mamlatdar had not decided the controversy of mundkarship in terms of 1975 Act. In fact, if we go through the orders passed by the Mamlatdar, Addl. Collector, Administrative Tribunal Civil Judge as well as the learned Addl. District Judge, it is crystal clear that the appellants had at no stage raised this contention which is being put forward for the first time in the course of arguments. This contention was not even taken in the memo of second appeal as is clear from ground No. 4 wherein it was stated that the lower courts ought to have considered that the evidence recorded under Act of 1971 is not sufficient to decide the issue of mundkarship within the meaning of term ''Mundar'' under the Act of 1975. Thus the ground therein is that the evidence was not sufficient to decide the question of mundkarship within the meaning of 1975 Act. But nowhere it is stated in the appeal memo that the decision of the Mamlatdar was not under 1975 Act. In fact, substantial question (E) also does not raise the issue which is now argued before me in which it is admitted that even though there is a decision of the Mamlatdar that such person is not a Mundkar within the meaning of the term ''Mundkar'' under 1975 Act on the basis of evidence recorded under 1971 Act. It is crystal clear from the arguments which were advanced by the Advocate for the defendants before the Mamlatdar, Addl. Collector as well as the Administrative Tribunal that the mundkarship claim was under 1975 Act and that is how the question of section 2{p) of the 1975 Act had been argued before the said authorities. Insofar as the issue of mundkarship is concerned, the said issue had attained finality with the judgment of the Administrative Tribunal against which no further remedy was sought and this question can certainly not be agitated once again before the Civil Court.

4. There is no doubt that application u/s 10 filed under 1971 Act was pending before the Mamlatdar when reference u/s 13 was made under 1975 Act and it appears that the parties had already completed evidence before the Mamlatdar. Once reference was made u/s 13 of the 1975 Act, nothing prevented the party in case they so desired to file an application and lead further evidence. However, nothing of the sort was done and the Mamlatdar disposed of the reference u/s 13 of the 1975 Act vide judgment dated 12-9-80. Obviously, this judgment had decided the issue of mundkarship raised by the defendants under 1975 Act. The appellants cannot now be permitted to challenge the claim of mundkarship which had attained finality with the judgment of the Administrative Tribunal, in the Civil Court. Moreover, this issue was also never raised before the Civil Court or before

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the Appellate Court. The Civil Court under these circumstances also could not go into the question whether the requirement under 1975 Act were taken into consideration or not by the authorities who were competent to decide this issue and had decided the same. All these authorities had come to the conclusion that the appellants had failed to establish the element of consent of bhatkar which is pre-requisite for qualifying one to be Mundkar even u/s 2(p) of the 1975 Act. The Mundkar Act has conferred jurisdiction to decide the issue on the Mamlatdar and Civil Court has no jurisdiction to deal with or decide the same. Section 25 of the 1975 Act provides that the decision of the Administrative Tribunal shall be final in the matter. This decision cannot be reopened in the civil suit by any direct or indirect method. The ruling of the Division Bench in Shri Joseph Almeida and another v. Shri Krishnanath Narayan Prabhu and 3 others, 1987 Bom.C.R. 731 : 1990(1) G.L.T. 251 upon which reliance has been placed by the learned Advocate for the appellants does not in any manner help the appellants in the facts and circumstances of the case and the controversy involved.

5. For the aforesaid reasons, I do not find any merit whatsoever in this appeal and there is no reason or justification to interfere with the findings of the courts below. All the substantial questions of law were framed on the basis that the Mamlatdar had decided the issue of mundkarship under the 1975 Act on the basis of evidence lead under 1971 Act which contention has been negatived. After the reference u/s 13 of 1975 Act was made on 21-9-1977 and before the Mamlatdar gave his findings on the reference on 12-9-80, there was ample opportunity to lead evidence in case the parties desired, but the said opportunity was not availed and in this state a party cannot be permitted to turn around and say that no opportunity to lead evidence was given. The very basis of the substantial questions is groundless and in the light of the conclusions arrived at the substantial questions do not survive.

6. The appeal is accordingly dismissed with no order as to costs. Stay granted vide Order dated 8-9-95 is vacated.

7. Appeal dismissed.

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