

(2013) 10 BOM CK 0187
In the Bombay High Court
Case No : Writ Petition No. 733 of 2009

Smt. Jaiwanti Narayan Kamat (since deceased) through Legal Representative and Others APPELLANT

Vs

Ft. Anacleto D''Mello and Others RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 6 ABR 592 : (2013) 6 BomCR 434

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

Bench : Single Bench

Advocate : A.A. Agni, for the Appellant; Valmiki Menezes, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard Mrs. Agni, learned counsel appearing for the Petitioners and Shri Valmiki Menezes, learned counsel appearing for the Respondents. The above petition, inter alia, seeks for a writ of certiorari or writ in the nature of certiorari to quash and set aside the Judgment and Order dated 13.05.2009 passed by the learned Administrative Tribunal and the Orders dated 05.01.2006 and 16.03.2004 passed by the learned Deputy Collector and S.D.O. Panaji, and the learned Joint Mamlatdar, Panaji.

2. Briefly, the facts of the case as stated by the Petitioners are that the Petitioners reside in a House No. E-119 situated at Goltim, Navelim, surveyed under No. 10/26 of which the Respondents are the owners/Bhatkars thereof. It is also the case of the Petitioners that in view of the consent obtained from the Respondents and due to deemed consent, they have been residing in the suit house since the year 1973 and, as such, on account of deemed consent, as no suit for eviction has been filed against them on the ground that they were trespassers, they are entitled to occupy the house as Mundkars. The Respondents filed a Civil Suit No. 222/1992, inter alia, claiming that the Petitioners had trespassed in the house bearing No. E-119 and they have failed to vacate the same and, consequently, sought to evict the Petitioners from the

suit house. The Petitioners filed their written statement, inter alia, claiming that they are the Mundkars of the suit house and as such an issue was referred to the learned Mamlatdar of Tiswadi, vide Order dated 22.10.1997, by the Civil Court in terms of the Mundkar Act. The learned Mamlatdar after holding a due inquiry, by an Order dated 16.03.2004, decided the issue in the negative. An Appeal was preferred in terms of the said Act to the learned Deputy Collector which also came to be dismissed on 05.01.2006. Thereafter, a revision was preferred by the Petitioners before the learned Administrative Tribunal which also came to be dismissed by the Order dated 13.05.2009. All the said Orders passed by the said authorities below are sought to be challenged in the present proceedings.

3. Mrs. Agni, learned counsel appearing for the Petitioners, has taken me through the impugned orders specifically the Order passed by the learned Deputy Collector and pointed out that despite of it being well settled that the First Appellate Court has to scrutinize every material produced before him whilst deciding the Appeal, the learned Deputy Collector has summarily rejected the claim of the Petitioners. The learned counsel has pointed out that there were several grounds raised by the Petitioners to establish that the findings of the learned Mamlatdar on the issue framed by the Civil Court were erroneous and the learned Deputy Collector having failed to scrutinise the material or consider such submissions, has erroneously exercised jurisdiction bestowed on him to decide such Appeals. Learned counsel further pointed out that there was material on record to establish that all the ingredients to claim that the Petitioners are Mundkars were established by the petitioners which have not at all been considered by the authorities below. The learned counsel thereafter has taken me through the Judgment of the learned Administrative Tribunal and pointed out that it was incumbent upon the learned Tribunal to find out that there was no application of mind on the part of the Deputy Collector whilst passing the impugned Order and exercised its jurisdiction by setting aside the Order of the First Appellate Court. The learned counsel further pointed out that as the Tribunal has not considered the contention of the Petitioners that there was total non-application of mind on the part of the learned Deputy Collector, this itself has vitiated the Judgment of the Tribunal. Learned counsel pointed out that as the First Appellate Court has not scrutinized the evidence on record it has vitiated the impugned Orders and, as such, the impugned Orders passed by the learned Tribunal and the Deputy Collector deserves to be quashed and set aside. Learned counsel further pointed out that the Tribunal has also erred in relying upon the undertaking dated 21.06.1987 whilst coming to the conclusion that the claim of the Petitioners that they were the Mundkars of the suit house, cannot be accepted. The learned Counsel further pointed out that there was dispute with regard to the signature on the document which should have been considered by the authorities below in terms of the provisions of the Evidence Act. The learned counsel further pointed out that the authorities below have erroneously relied upon the documentary evidence on record to come to the conclusion that the Petitioners have failed to establish that they are occupying the suit house from

the year 1973 though there was enough oral evidence on record to dispute the said contentions which have not at all been taken note of by the authorities below. The learned Counsel further pointed out that evidence on record clearly established that the Petitioners are deemed Mundkars and, as such, the impugned Orders passed by the authorities below deserve to be quashed and set aside. The learned counsel as such submits that the impugned judgments passed by the authorities be set aside. In support of her submission, the learned counsel has relied upon the Judgment of our Court reported in Thereza Cordo Vs. Venkatesh Lotlikar and Others, .

4. On the other hand, Shri Valmiki Menezes, learned counsel appearing for the Respondent Nos. 2(a), 2(b) and 2(b)(i), 3, 7, 9 and 11, has supported the impugned Judgment. The learned counsel has pointed out that the authorities below upon appreciating the material on record have come to the conclusion that the contention that the petitioners are the Mundkars of the disputed house, have not at all been established. Learned Counsel further pointed out that documentary evidence specially the undertaking of the year 1987, would negate the plea of the Petitioners that they have been occupying the suit premises since the year 1973. Learned counsel further pointed out that the Petitioners are trespassers into the property of the Respondents and the claim put forward by the Petitioners is far fetched and does not at all require consideration. Learned counsel further submits that the fact finding Courts have upon scrutiny of the material on record, has come to the conclusion that the Petitioners are not Mundkars of the disputed house and this Court in a Writ Petition cannot reappraise such evidence and, as such, the above Petition deserves to be rejected. Learned counsel further submits that in exercise of powers under Article 227 of the Constitution of India, there is no ground made by the Petitioners for interference in the impugned Orders and, as such, the petition deserves to be rejected. The learned counsel further pointed out that though the Order of the First Appellate Court is not elaborate, nevertheless, the finding therein establish that the Deputy Collector has concurred with the findings of the Joint Mamlatdar and, as such, no infirmity can be found in the impugned Order. Learned counsel has, thereafter, taken me through the judgments of the Administrative Tribunal and pointed out that the Tribunal has considered the evidence and the material on record and has come to the conclusion that the petitioners cannot claim to be Mundkars of the suit house. Learned counsel further submits that marshalling the oral evidence of the Petitioners on the face of the documentary evidence which has been adduced by the respondents is not at all necessary and pointed out that the authorities below have considered the said evidence whilst coming to the conclusion that the Petitioners are not Mundkars of the disputed house. Learned counsel as such submits, that there is no case for any interference in the impugned Judgments and, as such, the above Petition deserves to be summarily rejected.

5. I have carefully considered the submissions of the learned counsel and with their assistance, I have also gone through the records. Mrs. Agni, learned

counsel appearing for the petitioners, has also brought a compilation of the oral evidence before the authorities below and sought to rely upon the said evidence in support of her said submission. I have duly considered the said aspect with the assistance of the learned counsel. On perusal of the judgment passed by the learned Joint Mamlatdar dated 16.03.2004, I find that the learned Mamlatdar has duly marshalled and scrutinised each and every material on record whilst passing the said Judgment. The learned Mamlatdar has taken note of the evidence of all the five witnesses examined by the Petitioners as well as the evidence of the respondents. The learned Mamlatdar found that on the basis of the contention and the material on record, the claim put forward by the petitioners is an independent claim and not through their uncle Madhukar Kamat and, as such, whether the said Madhukar was a tenant or a Mundkar is not in dispute as it is the case of the Petitioners that they are the Mundkars of the suit dwelling house and, as such, it is expected of the Petitioners to satisfy the predicates of the Mundkar Act to establish their claim. The learned Mamlatdar further found that the duly promulgated record of rights do not show the name of the petitioners therein with regard to their alleged claim. Hence, the presumption u/s 105 of the Land Revenue Code was drawn whilst rejecting the claim put forward by the petitioners. The learned Mamlatdar has also taken note of exhibit R-20 collectively which are house tax receipts produced by the Respondents showing the payment of tax from the year 1964 till the year 1985 in respect of House No. E-119. The learned Mamlatdar, has also taken note of the fact that the house tax receipt produced by the Petitioners at exhibit A-4 for the years 1985 to 1988, were in fact paid on behalf of one of the Respondents. The learned Mamlatdar has also relied upon the electoral rolls produced by the Respondents at exhibit A-1 collectively as well as the election rolls for the years 1975, 1981, 1983, 1988 and 1995 at exhibit R-5 wherein the names of the Petitioners Jaiwanti Kamat and her husband is shown in respect of House No. 116 from 1975 and 1981 only. The learned Mamlatdar rejected the oral evidence of the witnesses examined by the petitioners on the ground that they have stated on the basis of information given by the petitioners and that there was no documentary evidence produced on record to establish the said statements. The learned Mamlatdar has also relied upon the undertaking at exhibit R-4 and rejected the contents of the Petitioners that as attesting witnesses were not examined, said document cannot be relied upon on the ground that every document does not require attestation and the law does not require that an undertaking has to be attested. The learned Mamlatdar also took note of the fact that the Petitioner admitted his signature at point 4. The learned Mamlatdar also took note of the fact that the predicate of consent has not been established by the Petitioners and rejected the said claim.

6. The learned Deputy Collector whilst deciding the Appeal preferred by the petitioners, has taken note of the fact that Madhukar Kamat and Narayan were brothers and the claim of mundkarship was by the wife of the said Narayan and the children who were appellants before him. The learned Deputy Collector also took note of the fact that the Lease Deed on record clearly shows that Madhukar

was a tenant and had expired somewhere in the year 1986. The Deputy Collector also noted that in the electoral rolls, the names of the Petitioners were from post 1991. The learned Deputy Collector also took note of the fact that electricity bills were of recent origin. The learned Deputy Collector also noted that house tax receipts produced by the respondents go against the claim put forward by the petitioners. The learned Deputy Collector also took note of the fact that witness No. 1 of the Petitioners had admitted that prior to coming to reside in the suit house, they were staying in house No. E-116 which reflected in the year 1981 electoral rolls of Cumbarjua constituency. The learned Deputy Collector also took note of the agreement which was admitted by Narayan which had been executed between the Respondent and himself though he disputed the contents thereof. The learned Deputy Collector noted that the Petitioners have failed to establish their case to the effect that they are Mundkars of the disputed house and that the documents speak for themselves and it goes to establish that the claim has not been established and, consequently, dismissed their claim.

7. The learned Administrative Tribunal whilst considering the revision preferred by the petitioners by judgment dated 13.05.2009 whilst examining and marshalling the evidence on record and has found that the contention of the Petitioners being illiterate and did not know the contents of the undertaking dated 21.06.1987 and that they have signed the same under misrepresentation, does not hold good. The learned Tribunal has also taken note of the provisions of Section 68 of the Evidence Act as well as Section 72 with regard to proof of document. The learned Tribunal also took note of the fact that in view of the admitted position that Madhukar Kamat was in possession of the suit house as a tenant, some other person cannot claimed to be in fixed habitation of the same premises. The learned Tribunal also took note of the fact that the learned Mamlatdar has rightly appreciated the material on record to reject the claim put forward by the Petitioners considering the evidence therein. The contentions of Mrs. Agni, learned counsel appearing for the Petitioners, that the learned Deputy Collector has not considered or scrutinized the material on record, has been dealt With by the learned Tribunal. At Para 14 of the Judgment and found that what the learned Advocate for the petitioners considered as observations of the learned Deputy Collector, are in fact arguments of the Advocate for the Petitioners which were re-produced by him. The learned Deputy Collector after reassessing the entire evidence on record, has arrived at a conclusion that although the petitioners are claiming to be Mundkars, they have not in any way managed to prove their case. The learned Administrative Tribunal, as such, rejected the revision filed by the Petitioners.

8. On perusal of the said findings referred to hereinabove, I find that the claim of the petitioners that they are Mundkars of the disputed premises bearing House No. E-119, has not been established. The oral evidence sought to be relied upon by Mrs. Agni, learned counsel appearing for the Petitioners, cannot contradict the documentary evidence on record. The authorities below have taken note of the fact that the undertaking produced on record by the Respondents has been duly

proved and the contents thereof negates the claim of the petitioners that they were occupying the disputed premises with the consent of the Respondents from the year 1973. An inference of law drawn by the authorities below to the effect that when it is an admitted position that Madhukar Kamat was occupying the disputed house as tenant, another person cannot claim that he is occupying the same house as a Mundkar, cannot be doubted. The said Madhukar Kamat was the brother of Narayan who expired in the year 1986. The undertaking of the year 1987 has been duly relied by the authorities below to reject the claim put forward by the Petitioners that they were occupying the said disputed house from the year 1973. The other material referred to by the authorities below corroborate the contentions of the Respondents that the claim of the Petitioner that they are Mundkars, cannot be accepted. The contention of Mrs. Agni, learned counsel appearing for the petitioners, relying upon the judgment of the learned single Judge of this Court in the case of Thereza Cordo v. Venkatesh Lotlikar & Ors. (supra), is not at all applicable to the facts of the present case. In the present case, the learned Tribunal has taken note of the fact that the contentions of the learned counsel appearing for the petitioners that there are findings in favour of the petitioners in the judgments of the Lower Appellate Court, are in fact the submissions advanced by the learned Advocate of the petitioners. The learned Deputy Collector, has taken note of the evidence of all the witnesses and has accepted the findings of the learned Mamlatdar on the basis of the documentary evidence on record. When documentary evidence conclusively establishes the question of fact, oral evidence cannot overwrite such documentary evidence in the present case though such material has been considered by the authorities, below while disposing of the proceedings before the authorities below. Even the Apex Court in the judgment referred to in the said judgment has observed that the Appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the Court, expression of general agreement with the reasons given by the Court, decision of which is under appeal would ordinarily suffice. No doubt, a caution has been pointed out to the effect that this should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it whilst expressing such general agreement with the findings of the judgment under appeal.

9. In the case before the learned single Judge, there were no reasons at all given by the Appellate Authority whilst disposing the appeal challenging the Judgment of the Mamlatdar. In the case at hand, as pointed out hereinabove, the documentary evidence has been examined and the findings of the learned Mamlatdar have also been considered when the Deputy Collector had decided the Appeal preferred by the Petitioners.

10. Under provisions of Article 227 of the Constitution of India, this Court cannot re-appreciate the material on record to come to any contrary conclusion. The findings of the authorities below cannot be said to be perverse or contrary to the material on record. Learned counsel appearing for the Petitioners has not pointed

out any material specially documentary evidence to show that the findings arrived at by the authorities below are perverse or contrary to the evidence on record. In such circumstances, there is no failure to justice to the Petitioners which would call for any interference by this Court in the present Petition. The authorities below have rightly found that the predicates of claiming to be a Mundkar have not been established by the petitioners. Apparently, there is nothing on record produced by the petitioners which would show that the contents of the said document dated 21.06.1987 are not correct. The contents thereof which are corroborated by the other documents produced by the respondents which have been relied upon by the authorities below is sufficient to negate the claim of the Petitioners that they are Mundkars of the disputed house. Hence, I find no merit in the above Writ Petition which stands accordingly rejected.