

(2008) 06 BOM CK 0072

In the Bombay High Court

Case No : Appeal From Order No. 104 of 2007

Sociedade Patriotica Dos Baldios Das Novas Conquistas

APPELLANT

Vs

Sudhakar Sagun Bhandari and Another

RESPONDENT

Date of Decision : 06-06-2008

Acts Referred:

Citation : (2008) 5 ALLMR 679 : (2008) 6 BomCR 788 : (2008) 5 MhLj 391

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S. Usgaonkar, for the Appellant;

Final Decision : Allowed

Judgement

N.A. Britto, J.—Heard Shri S. Usgaonkar, learned Counsel on behalf of the appellant. The respondents who were duly served, have chosen to remain absent, continuously.

2. The appellant was the plaintiff in Regular Civil Suit No. 24/1994. The said civil suit was filed by the appellant for permanent and mandatory injunction against the respondents and the same was decreed by the trial Court by judgment/decree dated 28-11-2003. The defendants having filed an appeal to the District Court, the learned Additional District Judge was pleased to set aside the judgment and decree of the learned trial Court. The learned Additional District Judge then directed that the claim of tenancy taken by the respondents be referred to the Mamlatdar for his determination. It is this order which is under challenge in the present appeal.

3. The plaintiff is the owner of a property surveyed under No. 84/0. The defendants reside in the house which is shown by letter V-1 in form I and XIV in the name of Yeshwant Sagun Bhandari who is the grand father of the defendant and who had two brothers by name Sagun who was the father of the defendant No. 1 and Datta who was the father of the defendant No. 2 and the said house was later divided by the two brothers namely Datta and Sagun and the divisions

carried House Nos. 285 and 286 respectively. When the defendant No. 1 tried to occupy a plinth of 25.29 mtrs. etc., the plaintiffs filed a suit and obtained an ex parte interim injunction. The present suit was filed with the allegations that the defendants on or about 18-7-1994 planted cashew saplings in the said property of the plaintiff. In the written statement filed, the defendant No. 1 took a plea that they were tenants along with their family members and were now deemed purchasers of the part of the property bearing Survey No. 84/0 and as such the Court had no jurisdiction to entertain and try the suit. No issue on the said plea was framed by the trial Court but it appears that this point was argued for the first time before the learned Additional District Judge who was pleased to direct the framing of such an issue and direct that the same be decided by the Mamlatdar.

4. The learned Counsel on behalf of the appellant submitted that the plea raised by the defendants was vague and on such a vague plea no issue of tenancy could have been raised and that too for the first time before the Appellate Court. The learned Counsel further submitted that the defendants had not given any particulars as to when the said tenancy was created, by whom it was created and the area regarding which it was created and in the absence of such particulars, no issue ought to have been framed and referred to the Mamlatdar. In support of his contention, the learned Counsel has placed reliance on Pandu Dhondi Yerudkar and Another Vs. Ananda Krishna Patil, and has further submitted that same principle was followed by this Court in relation to a mundkar in the case of Mitra of Archdiocese of Goa and Daman Vs. Mr. K. Vijayadharan, .

5. This Court in Pandu Yerudkar (supra) has clearly stated that under Order 14 of the CPC an issue can only arise when a material proposition of fact or law is affirmed by one party and denied by the other. When a vague plea is made by the defendant contending that he is a tenant of the land, the Court should hesitate to frame such an issue on such a vague plea, unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. If the defendant is unable to furnish the same, the Court should not raise an issue on a vague plea that he, the defendant is a tenant on any particular piece of land. Normally the rules of pleadings require that these particulars are the minimum particulars which a man must furnish before he can request the Court to frame an issue as regards the claim made for tenancy.

Admittedly, the defendants had raised a plea of tenancy vaguely and had even not asked that an issue ought to have been framed in relation to it. It is only for the first time in appeal, such a prayer appears to have been made. Considering the facts of the case and the pleadings of the defendants the principle set out in Pandu Yerudkar (supra) is squarely applicable. In my view, the learned Additional District Judge was wrong in ordering framing of such an issue and ordering the same to be tried by the Mamlatdar.

6. In view of the above, the appeal is bound to succeed. The order dated

19-6-2007 of the learned Additional District Judge in Regular Civil Appeal No. 9/2004 is, hereby set aside, with no order as to costs. Nevertheless, the appeal will now be required to be disposed on merits, after hearing the parties.