

(1998) 11 BOM CK 0133

Bombay High Court (Goa Bench)

Case No: Second Appeal No. 8 of 1994

Daivadnya Brahman
Samajotkarshak Saunsthana

APPELLANT

Vs

Vishveshwar Apa Bhat Raikar
and others

RESPONDENT

Date of Decision: Nov. 26, 1998

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 9
- Goa, Daman and Diu Agricultural Tenancy Act, 1964 - Section 58(2), 7

Citation: (1999) 2 BomCR 595

Hon'ble Judges: R.M.S. Khandeparkar, J

Bench: Single Bench

Advocate: S.D. Lotlikar, for the Appellant; N.K. Sawaikar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.M.S. Khandeparkar, J.

This appeal arises from the judgment and decree passed in Regular Civil Appeal No. 39 of 1989 passed on 30th June, 1993, by the Additional District Judge, Panaji, whereby the judgment and decree of the trial Court dated 15th April, 1989, passed in Regular Civil Suit No. 71 of 1984 by the Civil Judge, Senior Division, Bicholim was set aside and the suit was remanded for trial. In fact, by order dated 15-4-1989, the trial Court had dismissed the suit.

2. The substantial question of law which arises for determination in this appeal is whether the suit filed by the respondent for his declaration to be the tenant of the suit property, which is admittedly agricultural land, and for recovery of possession and permanent injunction against the appellant/landlord is barred by the provision of law contained in Goa, Daman and Diu Agricultural Tenancy Act, 1964, hereinafter called as "the said Act"?

3. The respondent herein filed Regular Civil Suit No. 71 of 1984 against the appellant in respect of three properties situated at Latarbamcem, Kasarpal. It is not in dispute that the suit properties are agricultural properties. The case of the respondent in the plaint is that since 1952, the respondent is in possession of the same as the tenant thereof. The grievance of the respondent is that sometimes in February, 1994, the appellant started obstructing the respondent from enjoying the suit properties. The respondent, therefore, filed a suit with the following prayers :-

"(a) for a declaration that the plaintiff is the tenant of the suit properties including the cashew trees standing in the same;

(b) for recovery of possession of the cashew trees standing in the same;

(c) for permanent injunction restraining the defendants, their agents, servants and labourers from interfering in any manner with the lawful possession of the plaintiff of the suit properties;

(d) for costs."

4. The appellant, while contesting the claim of the respondent, raised preliminary issue regarding the lack of jurisdiction of the Civil Court to entertain and try the suit. The trial Court, on the ground that the respondent had filed some other proceedings before the Mamlatdar in respect of the subject-matter of the suit, held that the suit is barred by the principle of res judicata and dismissed the suit by its judgment and order dated 15-4-1989. The respondent, being aggrieved, filed appeal before the lower Appellate Court which was heard and disposed of by the Additional District Judge, Panaji. By the impugned order the lower Appellate Court set aside the order of dismissal of suit and remanded the matter for trial of the suit.

5. The fact that the suit properties are agricultural properties is not in dispute. In fact, the description of the suit properties in the pleadings clearly discloses the nature of the same. The suit is filed solely on the ground that the respondent/plaintiff is the tenant of the suit properties.

6. The Apex Court in the matter of [Shri Inacio Martins, Deceased through LRs. Vs. Narayan Hari Naik and others](#), has already held that by virtue of section 7 of the said Act whether a person is a tenant or deemed tenant in respect of an agricultural land is required to be decided by the Mamlatdar and the jurisdiction of the Civil Court stands ousted by section 58(2) of the said Act.

7. Considering the fact that admittedly the suit was filed for declaration of tenancy of an agricultural land against the appellant who is the owner of the property and applying the test laid down by the Apex Court in the matter of Inacio Martins v. Narayan Hart Naik (supra), and the provisions of the said Act, the suit was clearly not maintainable before the Civil Court and, therefore, it was liable to be dismissed for lack of jurisdiction to entertain the same. Both the courts, in fact, have proceeded without applying their mind to this basic aspect of the case and law

applicable thereto. In that regard, the judgments of both the courts below cannot be sustained. In the circumstances, therefore, the impugned judgment cannot be sustained and is liable to be set aside. The question formulated above is to be answered in affirmative and the suit is liable to be dismissed for want of jurisdiction of the Civil Court to entertain the same on account of the provision of law as contained in the said Act.

8. In the result, the appeal succeeds. The impugned judgment and order is hereby set aside. The suit filed by the respondent is hereby dismissed for want of jurisdiction of the Civil Court to entertain the same. There is no order as to costs.

9. Appeal succeed.