

CIVIL REVISION APPLICATION NO.100 OF 2000

Shri Vishwanath Gopal Kamat  
(since deceased), represented  
by legal representatives:

- 1(a) Mrs. Pushpavati Vishwanath Kamat;
- (b) Mr. Nanda Kumar Vishwanath Kamat;
- (c) Mr. Uday Vishwanath Kamat;
- (d) Mr. Satish Vishwanath Kamat;
- (e) Mrs. Sunita Vishwanath Kamat;
- (f) Miss Kunda Vishwanath Kamat.

All residents of Pilerne,  
Bardez-Goa.

... Applicant.

versus

1. Mr. Jose Ivo Romano  
Reginaldo das Dores Lopes  
and his wife;
2. Mrs. Otilia Filomena de  
Cunha Souza e Lopes,  
through their Power of  
Attorney Holder, Dr. Rui  
Ponciano de Cunha e Souza,  
residing at Mapusa,  
Bardez-Goa.

... Respondents.

Mr. Carlos da Silva, Advocate for the Applicant/Original  
Defendants.

Mr. Joseph Vaz, Advocate for the Non Applicant/Original  
Plaintiff.

CORAM: P. V. HARDAS, J.

DATED: 22ND FEBRUARY, 2002.

**ORAL JUDGMENT**

This Revision has been filed against the Order

dated 10th February, 2000, passed by the Civil Judge, Senior Division, Mapusa, in Special Civil Suit No.39/98/A, on the application Exhibit M-15 filed by the Defendants for referring the Issues No.4 and 5 to the Mamlatdar as the jurisdiction of the Civil Court to decide those issues is ousted. The learned Trial Court after hearing the learned Advocates for the Plaintiffs and the Defendants rejected Exhibit M-15 filed by the Defendants on the ground that the jurisdiction of the Court would depend upon the averments which are made in the plaint. According to the learned Trial Court, the defence which was taken by the Defendants in the written statement would not govern the jurisdiction of the Court. Reliance was placed by the learned Trial Court on a Judgment of the Supreme Court in the matter of **Abdulla Bin Ali and others v. Galappa and others** reported in (1985) 2 SCC 54.

2. Mr. Carlos da Silva, the learned Advocate appearing for the Applicant/Original Defendants has very ably argued on behalf of the Applicant and has submitted that in view of the provision of the Tenancy Act, the jurisdiction of the Civil Court to decide the Issues no.4 and 5 is ousted. Issues No.4 and 5 read as under:-

1. Whether the defendant proves that the suit property is agricultural land within the meaning of the Agricultural Tenancy Act?

2. Whether the defendant proves that he is deemed owner of the suit property under the amended law relating to agricultural tenancy?

3. Mr. Carlos da Silva, learned Advocate appearing for the Applicant/Original Defendants has placed reliance on a Judgment of the Supreme Court in the matter of **Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi** reported in (1979) 2 SCC 495. In the aforesaid Judgment of the Supreme Court, the Supreme Court has held thus:-

"If a person intending to purchase agricultural land files a suit for enforcing a contract entered into by him and if the suit is resisted on the ground that the plaintiff is ineligible to buy agricultural land not for any other reason except that it is prohibited by Section 63 of the Tenancy Act, an issue whether the plaintiff is an agriculturist would directly and substantially arise in view of the provisions of the Tenancy Act though not in a proceeding under the Tenancy Act. In such a case it would be no answer to the provisions of Sections 85 and 85-A to say that the issue is an incidental issue. In a civil suit nomenclature of the issue as principal or subsidiary or substantial or incidental issue is hardly helpful because each issue, if it arises has to be determined to mould the final relief".

4. Mr. Joseph Vaz, the learned Advocate appearing for the Non Applicant/Plaintiff has urged

before me that the Plaintiff had filed a suit seeking for a declaration that the suit property is not a paddy field. According to the learned Advocate appearing for the Non Applicant/Original Plaintiff, the Plaintiff had also prayed that the name of the Applicant be ordered to be deleted or cancelled from the column of tenant as the same was obtained by fraud. According to the learned Advocate appearing for the Non Applicant/Original Plaintiff, the Civil Court was justified in refusing to refer to the Issues no.4 and 5 to the Mamlatdar for decision as according to the learned Advocate appearing for the Non Applicant/Original Plaintiff, the Mamlatdar was not competent to issue a negative declaration. In support of his contention, he has relied on a Judgment of this Court in the matter of **Vaman Naik and another vs. Administrative Tribunal and others** reported in 1999(1) Goa L.T. 203. The ratio of the aforesaid Judgment at para 22 reads thus:-

"Mamlatdar is not empowered to entertain an application for negative declaration to the effect that opponent is not a tenant of an agricultural property".

5. Mr. Joseph Vaz, the learned Advocate appearing for the Non Applicant/Plaintiff has also relied on a Judgment of this Court in the matter of **Smt. Sitabai Ramchandra Vaze and others v. Administrative**

**Tribunal and others** reported in 1996(2) Goa L.T. 246. The ratio of the aforesaid Judgment of this Court at para 5 reads thus:-

"In my opinion, therefore, in so far as Goa Tenancy Act is concerned, the Mamlatdar will have no jurisdiction to decide on an application by a person who is not the landlord, within the meaning of the Act, in other words, no negative declaration can be given that a person is not a tenant".

6. Reliance on the aforesaid Judgments of this Court by Mr. Joseph Vaz, the learned Advocate appearing for the Non Applicant/Original Plaintiff according to me, is wholly misplaced. In the aforesaid two Judgments, the landlord therein had moved an application to the Mamlatdar seeking for a negative declaration. In that background, therefore, the learned Judges have held that the Mamlatdar was competent to give negative declaration. The facts are, therefore, clearly distinguishable and do not apply to the facts of the present case. This is a case where a suit has been filed for a declaration that the suit property is not a paddy field i.e. it is not an agricultural land and for a declaration that the Defendant is not a tenant. The Civil Court, therefore, will have to decide the question whether the suit land is an agricultural property and whether the Defendant is a tenant. If, the Civil Court is called upon to decide these two questions, according

to me, the Civil Court will not be competent to decide these questions as the jurisdiction of the Civil Court is ousted. Therefore, the ratio of the aforesaid Judgments would not apply to the facts of the present case. A perusal of the Issues at serial nos.4 and 5 would also reveal that on reference of the aforesaid Issues to the Mamlatdar for decision, the Mamlatdar would not be called upon to give a negative declaration on the Issues No.4 and 5 as framed. The aforesaid Judgments according to me do not apply to the facts of the present case.

7. Mr. Joseph Vaz, the learned Advocate appearing for the Non Applicant/Original Plaintiff referred to the Judgment in **Abdulla Bin Ali and others v. Galappa and others** (supra) where the Supreme Court has held that the allegations made in the plaint decide the forum and the jurisdiction does not depend on the defence taken by the Defendants in the written statement. In the case before the Supreme Court, the Plaintiff had filed a suit treating the Defendants therein as trespassers since the Defendants therein had denied the Plaintiffs' title to the land and, therefore, the Supreme Court had held that such a suit against the trespasser would lie only to the Civil Court since the suit was not filed on the basis of the landlord/tenant relationship, the revenue court would not have the

jurisdiction. According to me, the ratio of the Judgment of the Supreme Court referred to in **Abdulla Bin Ali and others v. Galappa and others**(supra) would not apply to the present case. The Trial Court had framed Issues and the Issue no.4 was whether the suit was an agricultural land within the meaning of Agricultural Tenancy Act as Issue no.5 is whether the Defendant proves that he is deemed owner of the suit property under the amended law relating to Agricultural Tenancy Act. According to me, both the issues have to be decided by the Mamlatdar who has been vested with the jurisdiction of the tenancy law and the jurisdiction of the Civil Court is, therefore, ousted. The Issues have been framed on the basis of the pleadings of the parties. In the present case, the jurisdiction of the Trial Court to entertain the suit is not questioned. What is questioned is the jurisdiction of the Trial Court to decide Issues No.4 and 5.

8. Mr. Joseph Vaz, the learned Advocate appearing for the Non Applicant/Original Plaintiff has also placed reliance on a recent Judgment in **Thomas Antony v. Varkey Varkey** reported in (2000) 1 SCC 35. Reliance was particularly placed at head note which reads that the Civil Court is not obliged to refer every question to land tribunal. It can consider whether the contention is patently false, mala fide or illegal.

9. In the present case, the learned Trial Court has framed the aforesaid Issues at serial no.4 and 5. The learned Trial Court has not refused to refer the issues on the ground that the contention which is raised by the Defendants in the written statement is false, mala fide or illegal. The Civil Court has refused to refer the two issues to the Mamlatdar for decision as according to the learned Trial Court, the Civil Court was competent to decide the issues and the jurisdiction of the Civil Court would be governed only on the basis of the averments in the plaint. I have already held that the Issues no.4 and 5 are required to be decided by the Mamlatdar under the Agricultural Tenancy Act and, therefore, the jurisdiction of the Civil Court is ousted to decide the aforesaid Issues.

10. In view of this, the Order of the learned Trial Court is unsustainable in law. Civil Revision Application is, therefore, allowed. The Order impugned in the Revision dated 10th February, 2000, passed by the learned Civil Judge, Senior Division, Mapusa, in Special Civil Suit No.39/98/A is quashed and set aside and the application filed by the Original Defendant at Exhibit M-15 is allowed. The learned Trial Court shall refer the Issues no.4 and 5 to the Mamlatdar for decision and



awaiting the decision of the Mamlatdar shall stay the suit.

11. Civil Revision Application is allowed with no order as to costs.

( P. V. HARDAS )  
JUDGE