

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVIEW APPLICATION NO. 11 OF 2002.

IN

CIVIL REVISION APPLICATION NO. 116 OF 2001.

Manuel Barreto Xavier,
resident of Pajifond,
Margao, Goa.

...

Petitioner.

VERSUS

1. Naraina Biku Naique,
resident of Pajifond, Margao.

2. Smt. Zaiu Naique,
(since deceased, represented
by L.R.'s.):

2(i) Damodar Narayan Naik
2(ii) Nayan Damodar Naik.
2(iii) Ramdas Narayan Naik.
2(iv) Savita Ramadas Naik.
2(v) Vinod Narayan Naik.
2(vi) Lauka V. Naik.
2(vii) Pandurang Narayan Naik.
2(viii) Sumitra Narayan Naik,
All residents of H.No.66-C,
Pajifond, Margao, Goa.

3. Shrikant Naique,
major, resident of Pajifond,
Margao, Goa.

4. Shrikant Naique,
major resident of Pajifond,
Margao, Goa.

5. Prema Naique,
resident of H.No.66-B,
Pajifond, Margao.

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Respondents.

Mr. C. Mascarenhas, Advocate for the Petitioner.

Mr. P.K. Gude, Advocate for the Respondents Nos.1, 2(i) to
2(viii) and 3.

CORAM: V. C. DAGA, J.

DATE: 25TH JULY, 2002.

ORAL ORDER:

Heard parties finally.

2. Respondent no.4 absent inspite of service.

3. The petitioner in Review Petition is seeking review of the Order passed by the learned Single Judge of this Court (Smt. K.K. Baam, J.) dated 2nd August, 2001 whereby the revision application was dismissed as not maintainable.

4. In order to appreciate the rival contentions, it is necessary to turn to the relevant list of dates which would throw sufficient light on the controversy involved in the case.

5. On 15.9.75 the suit was filed;

8.3.76 is a date on which written statement was filed;

12.3.76 is the date on which earlier Act was repealed and the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 ("The Act" for short) was brought on the statute book.

6. Under Section 13 of the said Act, the Civil Court had no jurisdiction from the 'Appointed Day' to deal with the issue required to be decided by the Mamlatdar under the said Act. In the result, the trial Court framed a relevant issue and referred it to the

Mamlatdar on 8.10.76, with the result the suit came to be stayed. Accordingly the Mamlatdar proceeded to decide the issue and the same was decided by him by Order dated 2.5.79. Under Section 24, the order of the Mamlatdar is final, subject to the orders in appeal. The appeal against this order of Mamlatdar was preferred and the same was dismissed on 6.8.98. It is thus clear that on 9.12.97 when the appeal under 1975 Act was pending the Civil Court had no jurisdiction to deal with the said suit till the issue referred to the Mamlatdar was finally decided. However, it appears that the Civil Court during the pendency of the Appeal against the order of the Mamlatdar dismissed this suit for want of prosecution. The petitioner/original plaintiff finding that the order dismissing the suit was clearly an error on the part of the trial Court and that the order of dismissal was without jurisdiction moved an application for restoration of Suit alongwith an application for condonation of delay, which came to be dismissed. As a matter of fact, when this mistake on the part of the Trial Court was brought to the attention of the trial Court, it ought to have restored the said suit suo motu. The Trial Court instead of restoring the suit, chose to dismiss the application seeking restoration of the suit.

7. The above order dismissing the application for restoration was a subject-matter of revision. It appears that the aforesaid aspect of the matter has been

lost sight of with the result the revision came to be dismissed in limine. The impugned order of which review is being sought surely suffers from an error apparent on the face of the record in view of legal position that the trial Court had no jurisdiction to deal with the matter thus the order dismissing suit was without jurisdiction. The order without jurisdiction could only have been corrected under the revisional powers of this Court, as such the revision could not have been dismissed by the learned Single Judge of this Court. The order thus suffers from an error apparent on the face of record. I, therefore, review the said order in exercise of the powers of review invoked by the petitioner/applicant in the review petition.

8. In the result, the review petition is allowed in terms of prayer clause (Para 12) which reads thus:-

" The Order dated 2.08.2001 is reviewed and the Civil Revision Application No.116 of 2001 is allowed, thereby restoring Regular Civil Suit 210/1975/F in the Court of Civil Judge Junior Division at Margao. "

9. Review Application stands disposed of with no order as to costs.

V. C. DAGA, J.

sl.