

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 98 OF 1997.

1. Mr. Joazinho Cardozo,
major, married.
2. Mr. Pedro Raimundo Abdon
Marcelino Cardozo,
major, married,
all r/o Near Market,
Ribandar, Goa. ... Appellants.

VERSUS

1. Mr. Carlos Romualdo Fernandes,
major, married,
r/o Kumbharvaddo, Mercas,
Goa.
2. Nicolau Sobrinho Trust,
a Trust, having their
Office at Patriarchal Palace,
Altinho, Panaji, Goa. ... Respondents.

Mr. V. Amonkar, Advocate for the Appellants.

Mr. A.A. Borkar, Advocate for the Respondent No.1.

CORAM: N. A. BRITTO, J.

DATE: 29TH MARCH, 2004.

ORAL JUDGMENT:

Heard learned Advocate Shri Amonkar on behalf of the Appellants and learned Advocate Shri Borkar on behalf of the Respondent No.1.

2. The learned Addl. District Judge, Panaji has apportioned 60% of the compensation payable to respondent No.1 - Carlos R. Fernandes as tenant and the remaining balance of 40% to Respondent No.2 -

Nicolau Sobrinho Trust as owner.

3. Learned Advocate Shri Amonkar submits that respondent No.1 has already filed a case for obtaining declaration of tenancy before the Mamlatdar and the same is pending and therefore this appeal be kept pending until the issue of tenancy is decided by the Mamlatdar.

4. By virtue of several decisions of this Court including the unreported decision dated 14.10.98 in F.A. No.99/94 filed by Shri John Manuel Rodrigues, this Court has held that the issue of tenancy cannot be decided by the Reference Court and has got to be decided by the Mamlatdar. In my opinion, no useful purpose will be served by keeping this appeal pending before this Court, since the matter of apportionment will be required to be decided at the first instance by the Reference Court, depending upon the answer given by the Mamlatdar to the plea of tenancy raised by respondent No.1.

5. In the circumstances, therefore, the Judgment and Award of the learned Addl. District Judge, Panaji, dated 9.6.97 is hereby set aside and the dispute regarding apportionment is remanded to the

learned Addl. District Judge, Panaji. The same is to be decided by the learned Addl. District Judge, Panaji after the decision of the Mamlatdar.

N. A. BRITTO, J.

sl.