

JACINTA DE SILVA

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v.

ROSARINHO COSTA & ORS.
(Civil Appeal No. 4002 of 2014)

MARCH 25, 2014

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**[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]**

Code of Civil Procedure, 1908: Suit for eviction filed before the Mamlatdar on the ground that defendant no.2 was in illegal occupation of the house owned by plaintiffs-respondent no.1 and 2 - Said suit dismissed for default - Fresh suit filed by respondent no.1 and 2 for declaration that they are owners of the house - Decreed - Execution proceedings - Heirs of judgment debtor objected to the execution proceedings - Executing court rejected execution application holding that trial court had no jurisdiction to try the suit - High Court set aside the said order and also rejected the argument that the suit was barred by res judicata as the case filed before the Mamlatdar by respondent no.1 and 2 was dismissed - Held: High Court duly took note of the fact that no plea with regard to the jurisdiction of the civil court was taken by defendant No.1 in the written statement - On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property - High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto - High Court held that the issues tried by trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act - High Court further held that the lis was with regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights - In these circumstances, High Court correctly held that the trial court had jurisdiction to entertain

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A *the suit - There was no question of application of the principle of res judicata in the given facts - Trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so - Res judicata.*

B The plaintiffs-respondents no. 1 and 2 claimed to be the owner of the property which comprised of mundkarial house. They filed suit for eviction in the court of Mamlatdar against the original defendant no. 2 on the ground that the suit property was in occupation of original defendant no. 1 after death of her husband and she had ceased to occupy the suit property and the suit house was in illegal occupation of original defendant no. 2. The original defendant no. 1 challenged the jurisdiction of the Mamlatdar to try the matter on the ground that her husband was the owner of the house. The said proceedings before the Mamlatdar were dismissed for default and the rights of the parties remained to be adjudicated. Respondent no. 1 and 2 then filed a suit against original defendant no. 1 and 2 for declaration that they were owners of the suit house and for eviction of defendant no. 2 and possession of suit house. The suit was decreed in favour of respondent no. 1 and 2 declaring them to be owners of the suit house and further ordering eviction of defendant no. 2. No appeal was filed against the eviction decree and the decree became final.

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F An execution application was instituted seeking eviction of defendant No.2 from the suit house. The heirs of defendant No.1 comprising the appellant objected to the said proceedings contending that the suit was misconceived and the decree passed by the civil court was a nullity. The executing court after considering such objection of the judgment-debtor rejected the said execution application. The High Court held that the objections which were filed before the executing court by the judgment-debtor, was nothing but an attempt to stall and defeat the execution proceedings and further held

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that the said mundkarial house was occupied by defendant No.2 without the consent and/or permission of the respondent Nos. 1 and 2. The High Court also rejected the argument on behalf of defendant no.1 that since the suit was not maintainable as the case filed before the Mamlatdar by respondent no.1 and 2 was dismissed, therefore, the suit was barred by res judicata. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

HELD: 1. The High Court duly took note of the fact that no plea with regard to the jurisdiction of the civil court was taken by defendant No.1 in the written statement. On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property. It was further submitted that husband of defendant no.1 was never a mundkar of the plaintiffs and he was the owner of the said house. The High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto. In this factual matrix, the High Court held that the issues tried by the trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act. The High Court further held that the lis was with regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights. In these circumstances, the High Court correctly held that the trial court had jurisdiction to entertain the suit. There was no question of application of the principle of res judicata in the given facts. The trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so and the trial court had jurisdiction to entertain the suit. Therefore, the executing court was totally wrong in holding that the civil court lacked inherent jurisdiction. The reasons given by the High Court in the

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A matter cannot be interfered with in the given facts. [Paras 8, 9 and 10] [111-F-H; 112-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4002 of 2014.

B From the Judgment and Order dated 17.11.2009 of the High Court of Bombay at Panaji in W.P. No. 483 of 2003.

M.N. Krishnamani, Bhavanishankar V. Gadnis, V. Santhana Lakshmi, A. Venayagam Balan for the Appellant.

C The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

D 2. This appeal has been filed by the appellant challenging the order passed by the High Court wherein the High Court was pleased to set aside the order passed by the Executing Court in connection with an execution application. The Executing Court held that the decree passed by the Civil Court was without any jurisdiction and thereby it is a nullity and accordingly dismissed the said execution proceedings.

E 3. The facts revealed in this case are that respondent Nos.1 and 2 are the owners of the property known as "Madel" situated at Curtorim, Salcete, Goa, which was allotted to them by a Deed of Partition registered before the Notary Public. In F the property exists a residential house and a mundkarial house (suit house bearing No. 1124). The said mundkarial house was in occupation of one Jose Francisco D'Silva (hereinafter referred to as 'Jose') prior to 1977 as a Mundkar of respondent Nos.1 and 2 and after the death of said Jose in October, 1977, G the original defendant No.1 - Mrs. Filomena - who is the wife of said Jose, succeeded him. It appears that in the year 1980, respondent Nos.1 and 2 found that respondent No.7 (Shri Naik, being original defendant No.2) was residing illegally and without authority in the suit house. Respondent Nos.1 and 2 further H learnt that the original defendant No.1 (Mrs. Filomena) had

started residing with her daughter at Verna. Respondent Nos.1 and 2, therefore, by a letter dated 12th August, 1980, called upon original defendant No.2 (Shri Naik) therein to vacate the said house and hand over possession to the respondent Nos. 1 and 2.

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4. On failure of original defendant No.2 to hand over possession, respondent Nos.1 and 2, on 30th September, 1980 filed an application bearing No.27/80 for eviction of the Mundkar in the Court of the Mamlatdar, Margao, Salcete, on the ground that Mrs. Filomena Rodrigues, i.e., original defendant No.1, has ceased to occupy the mundkarial house for more than one year. The respondent Nos. 1 and 2 received a notice from the Advocate of the original defendant No.1 dated 25th October, 1980, calling upon them not to interfere with the property of defendant No.1, claiming that she is the owner of the mundkarial house. In the said proceedings before the Mamlatdar initiated by respondent Nos. 1 and 2 for eviction of the Mundkar, defendant No.1 challenged the jurisdiction of the Mamlatdar to try the matter on the ground that her husband was the owner of the house. It appears that the said proceedings before the Mamlatdar were dismissed for default and, thus, the rights of the parties remained to be adjudicated.

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5. On 19th March, 1981 the plaintiffs, being respondent Nos.1 and 2 herein, filed a suit in the Court of Civil Judge, Junior Division, Salcete, being Regular Civil Suit No.127/81/F against defendant No.1 (Mrs. Filomena) and defendant No.2 (Shri Naik), inter alia, for the following reliefs :

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(i) Declaration that plaintiffs are owners of the suit house presently occupied by defendant No.2; and

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(ii) Eviction of defendant No.2 and possession of the suit house.

6. It is admitted by respondent Nos.1 and 2 in the plaint that the property comprised of a mundkarial house which

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A existed in the North-Eastern corner of the plaintiffs'/respondents' property. It is further stated that one Anna Mariana was the Mundkar of the plaintiffs and had been residing in the dwelling house on being permitted by the plaintiffs' ancestors. Said Anna Mariana was a Mundkar of the plaintiffs prior to Jose.

B Admittedly, defendant No.1 (Mrs. Filomena) denied the plaintiffs' ownership of the said suit house and claimed that she is the owner of the same in the Mundkar's case which was pending before the Mamlatdar of Salcete. The said suit was contested by defendant No.1 by filing written statement and it

C is further to be noted that defendant No.1 claimed title by prescription as well as by way of adverse possession. In these circumstances, the trial court framed the following issues:

D (a) whether the plaintiffs are the owners in possession of the property known as "Madel" and also an old mundkarial house in North-East corner of the plaintiff's property and that the same house was occupied by one Jose Francis D'Silva as Mundkar of the plaintiffs?

E (b) whether the widow of the said Jose Francisco D'Silva had been residing with her married daughter at Verna and neither the defendant nor their children occupied the mundkarial house?

F 7. On 31st August, 2000, the suit was decreed in favour of the plaintiffs (respondent Nos.1 and 2) declaring that the plaintiffs are the owners of the suit house which is occupied by defendant No.2 and further defendant No.2 was ordered to be evicted from the suit house. Incidentally, it is to be noted that defendant No.2 did not file any written statement before the trial court. No appeal was preferred from the said decree by any of

G the defendants and the decree attained its finality. In the circumstances, an execution application was instituted seeking eviction of defendant No.2 from the suit house. The heirs of defendant No.1 comprising the appellant also, objected to the said proceedings contending that the suit was misconceived

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executing court after considering such objection of the judgment-debtor on 11th February, 2003 rejected the said execution application.

8. Being aggrieved by the said order passed by the executing court, respondent Nos.1 and 2 filed a petition before the High Court. After considering the facts and the submissions made on behalf of the parties, the High Court held that the objections which were filed before the executing court by the judgment-debtor, was nothing but an attempt to stall and defeat the execution proceedings and further held that the said mundkarial house in the North-Eastern corner of the property was occupied by defendant No.2 without the consent and/or permission of the plaintiffs (respondent Nos. 1 and 2). The said house has been abandoned since the occupation of defendant No.2 was illegal and unauthorised. Defendant No.1 tried to rely upon the entries made in the Matriz Records and further contended that the said entry in the record had no bearing with regard to the ownership rights of the defendants, on the contrary, the plaintiffs relied upon the Certificate of Land Registration. Arguments were also put forwarded on behalf of said defendant No.1/judgment-debtor that since the suit was not maintainable as the case filed before the Mamlatdar by the plaintiffs/respondent Nos.1 and 2 was dismissed, therefore, the suit was barred by res judicata. The High Court duly took note of the fact that no plea with regard to the jurisdiction of the Civil Court was taken by defendant No.1 in the written statement. On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property. It was further submitted that Jose was never a mundkar of the plaintiffs and he was the owner of the said house. The High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto. In this factual matrix, the High Court held that the issues tried by the trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act. The High Court further held that the lis as can be seen, was with

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- A regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights. In these circumstances, the High Court correctly held that the trial court had jurisdiction to entertain the suit. We have noticed that there is no question of application of the principle
- B of res judicata in the given facts.

- C 9. In view of the factual matrix, it is absolutely clear that the trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so and we hold that the trial court had jurisdiction to entertain the suit. Therefore, the executing court was totally wrong in holding that the civil court lacked inherent jurisdiction.

- D 10. Accordingly, we hold that the reasons given by the High Court in the matter cannot be interfered with in the given facts. We affirm the reasoning given by the High Court. We find no merits in this appeal. Accordingly, we dismiss this appeal.

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Appeal dismissed.