

PETITIONER:
MRS. JUDITH FERNANDES & ORS

Vs.

RESPONDENT:
CONCEICAO ANTONIO FERNANDES & ANR

DATE OF JUDGMENT: 22/08/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
VENKATASWAMI K. (J)

CITATION:
JT 1996 (7) 639 1996 SCALE (6)292

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The plaintiffs are the appellants in this appeal. On January 18, 1967 the original plaintiff No.1 executed a deed of lease for a period of six years in favour of the defendant-Respondent No.1 herein (hereinafter referred to as the Respondent) in respect of the lands in question containing coconut trees. On May 5, 1972 notice of termination of the lease was given by the aforesaid plaintiff. There is no dispute that the lease expired in January, 1973. On October 10, 1973 the plaintiffs filed a suit for eviction of the defendant. During the pendency of the said suit amendments were introduced in the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as the Act). The amendments were introduced by the Fifth Amendment Act which came into force with effect from April 20, 1976. The Trial Court decreed the suit which decree was affirmed by the court of Appeal. However, the High Court on appeal filed by the defendant-respondent set aside the said decree saying that Civil Court had no jurisdiction to entertain the suit after coming into force of the Fifth Amendment Act.

It may be mentioned that by the Amending Act aforesaid in Section 2(1A) new definition of 'agriculture' was introduced. Section 2 (7A) defined 'garden' to mean land used primarily for growing coconut trees, arecanut trees, cashew nut trees and mango trees. In view of aforesaid introduction of sub-section (7A) in Section 2 the expression 'garden' shall include the land used primarily for growing coconut trees. Section 7 of the Act provides that if any question arises whether any person is or was a tenant or should be deemed to be a tenant under this Act, the Mamlatdar shall, after holding an enquiry, decide such question. In view of Section 8 of the Act no tenancy of any land shall be terminated and no person holding land as a tenant shall be liable to be evicted therefrom save as provided under the Act. Section 58 of the Act is as follows:

"Bar to jurisdiction of Courts

(i) No suit or other proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

(ii) Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under Act shall be questioned in any Civil or Criminal Court."

In view of sub-section (2) of Section 58 of the Act, no court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government. It can be said that aforesaid sub-section (2) of Section 58 prescribes a bar on the power of the Civil Court to entertain a suit for settling, deciding or dealing with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government.

As already mentioned above, the suit on behalf of the plaintiffs had been filed on October 10, 1973 when the Fifth Amendment was not in force and Section 2(7A) was not in the Act. It can be said that on the date of filing of the suit the expression 'agriculture' as defined then did not include the land which was being used primarily for growing coconut trees. The necessary corollary thereof shall be that any suit for eviction filed against a person in possession of such land which was being used primarily for growing coconut trees was not barred by sub-section (2) of Section 58. It cannot be disputed that after the amendment aforesaid and the introduction of Section 2(7A) which defines 'garden' to include land used primarily for growing coconut trees, the provisions of the act became applicable even in respect of lands growing coconut trees and the bar prescribed in sub-section (2) of Section 58 became applicable.

On behalf of the appellants it was urged that as on the date when the suit in question had been filed the bar of sub-section (2) of Section 58 was not applicable, it was well within the jurisdiction of the Trial Court to decree the said suit which was affirmed by the Court of Appeal. As such, the High Court should not have set aside the decree passed in the suit in question. As a first impression this argument is attractive especially when it is an admitted position that the date on which the Trial Court passed the decree, the Fifth Amendment had been declared to be ultra vires. It may be mentioned that the aforesaid judgment declaring the Fifth Amendment to be ultra vires has been set aside by this Court and the said amendment has been held to be legal and valid in the case of Union of Territory of Goa. Daman and Diu vs. Lakshmi Bai Narayan Patil & Ors. reported in (1990) 4 SCC 102. In this background, we have to proceed that when the Fifth Amendment came into force, it was a valid piece of legislation. The only question which remains to be examined is as to what effect it shall have to suits which were pending before the Civil Courts. This aspect has also been examined by this Court in the case of Inacio Martines (d) through LRs. v. Narayan Hari Naik & Ors.

reported in (1993) 3 SCC 123, wherein it was observed as follows:

"After the amendment came into force, the provisions of the Act became applicable to the lands in question which were primarily used for growing coconut trees and receiving produce therefrom. By virtue of Section 7 any question whether a person is a tenant or a deemed tenant was required to be decided by the Mamlatdar and the jurisdiction of the civil court stood ousted by Section 58 (2) of the Act. The question is whether this subsequent change in the law deprived the civil court of jurisdiction which it undoubtedly possessed on the date of the institution of the suit. Three situations, therefore, develop in the context of the provisions of the Act as amended by the fifth amendment, namely, (i) the civil court retains jurisdiction or (ii) the civil court is precluded from deciding, even incidentally, questions falling within the ambit of Section 7 of the Act or (iii) the civil court's jurisdiction is wholly ousted. Since the Act is silent as to the fate of pending litigation after the fifth amendment the situation arising on the amendment of the Act must be decided on first principles. If a suit is filed to recover possession of agricultural land from a trespasser and no dispute arises, the adjudication whereof is required to be done by the special machinery set up under the Act, the civil court will continue to have jurisdiction. If, however, the defendant raises a dispute which is required to be resolved by the special machinery under the Act, a question will arise what procedure the civil court should adopt. There may arise a situation where the entire dispute pending before the civil court can be adjudicated by the special machinery only and not the civil court, what procedure should the civil court follow in such a situation?.....

Before we answer those questions we must decide on the impact of the fifth amendment on pending litigation. The question whether the fifth amendment is prospective or retrospective really recedes in the background if we examine the question from the angle whether the civil court can decide

any question falling within the jurisdiction of the special forum under the Act in a pending litigation in the absence of an express provision in that behalf. If the question of tenancy in regard to agricultural land cannot be decided by the civil court under the Act and there is no express saving clause permitting the civil court to decide the same, it is obvious that any decision rendered by the civil court would be without jurisdiction.

So far the facts of the present case are concerned, the plea of the defendant-respondents was that they were tenants of the land in question having coconut trees, as such the Civil Court had no jurisdiction to pass the decree for eviction against them, because of subsection (2) of Section 58 of the Act. From a bare reference to subsection (2) of Section 58 it is apparent that the bar has been placed on the court from settling, deciding or dealing with any question which is by or under the said Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government. In the present case, no doubt the suit had been filed on October 10, 1973 but the Trial Court passed the judgment and decree on January 27, 1983, the Fifth Amendment having come into force with effect from April 20, 1976, several years before the passing of the decree. According to us, the bar of sub-section (2) or Section 68 became applicable. In this background, the High Court was justified in setting aside the judgment and decree passed by the Trial Court which had been affirmed by the Court of Appeal. We find no ground to take a view contrary to the view taken by the High Court. Accordingly, the appeal fails and it is dismissed. No costs.

In order to expedite the disposal of the dispute, we direct that the plaint, written statement and other connected records which had been filed before the Civil Judge, Senior Division, Quepem, be transferred to the concerned Mamlatdar of the area within whose jurisdiction the disputed lands are situate. We further direct that the Mamlatdar shall pass appropriate orders in accordance with law as early as possible, preferably within six months from the date of the receipt of the records.