

Esha//Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 611 OF 2023
WITH
WRIT PETITION NO. 848 OF 2024 (F)**

1. Mr. Lawrance Pereira, son of late Mr. Roque Pereira, 70 years of age, married, and his wife
 2. Mrs. Juliana Pereira, wife of Mr. Lawrance Pereira, 65 years of age, married, Both residents of H.No. 4/133, Porba Vaddo, Calangute, Bardez, Goa.
- ... PETITIONERS

Versus

1. M/s Kay Jay Constructions Co. Pvt. Ltd. With registered office at 5, National House 27, Raghunath Dadajee Street, Fort Mumbai-400001,
Represented herein by its Director Haresh Dayaram Kotwani, Resident of 21, Anjali, Behind Radio Club, Colaba Bombay- 40000.
 2. Mrs. Maria Sebastiana Pinto daughter of Late Roque Pereira 75 years of age, married, and her husband,
 3. Mr. Bernard Ignatius Pinto, son of Ignatius Pinto 65 years of age, Married Both residents of H. No. 4-133, Porba Vaddo, Calangute, Bardez, Goa.
- ... RESPONDENTS

Mr. Abhijeet Gosavi with Mr. Amay Phadte, Mr. Guruprasad Naik and Mr. Austin C. D'Souza, Advocates for the Petitioners in Writ Petition No. 611 of 2023.

Mr. Amay Phadte and Mr. Austin C. D'Souza, Advocates for the Petitioners in Writ Petition No. 848 of 2024 (F).

Mr. Jatin Ramaiya with Mr. Omkar Thakur, Advocates for

Respondent No. 1 in both Writ Petitions.

Mr. Kapil Kerkar, Advocate for Respondent Nos. 2 and 3 in both Writ Petitions.

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 3rd APRIL 2024

PRONOUNCED ON: 15th APRIL, 2024

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.
2. Both these Petitions are taken up together for arguments and disposal with the consent of the parties since the same are connected.
3. Heard learned Counsel Mr. Abhijeet Gosavi appearing with Mr. Amay Phadte, Mr. Guruprasad Naik and Mr. Austin D'Souza for the Petitioners, Mr. Jatin Ramaiya with Mr. Omkar Thakur for Respondent No. 1 and Mr. Kapil Kerkar for Respondent Nos. 2 and 3, in both these Petitions.
4. Writ Petition No. 611 of 2023 is filed challenging the order passed by the learned Executing Court dated 06.09.2023 thereby refusing to stay the execution proceedings.

5. The Petitioners are the Objectors in Special Execution Application No. 13/2017/B, who filed an Application under Order XXI, Rule 97, 99 and 101 of CPC thereby claiming that the Petitioners have right, title and interest in the suit property as Mundkars and since a Petition is filed for declaration of Mundkar before the Mamlatdar, the execution be stayed.

6. In order to understand the matter, it is necessary to disclose a few facts. A property exists in the village Calangute bearing Survey No. 362/10-B having a dwelling house bearing No. E-4/133-C. Respondent No. 1-M/s Kay Jay Constructions Company Private Limited filed a suit against Respondent Nos. 2 and 3 namely, Maria Pinto and Bernard Pinto bearing Special Civil Suit No. 3/2010 claiming specific performance of a contract.

7. Respondent No. 2-Maria Pinto and Respondent No. 3-Bernard Pinto executed a Memorandum of Understanding (MoU) whereby they agreed to sell the property to M/s Kay Jay Constructions Company Private Limited for the amount mentioned therein. The said Special Civil Suit was decreed on filing the consent terms between Respondent Nos. 1, 2 and 3 vide decree dated 09.09.2010. Since Respondent Nos. 2 and 3 failed to convey the title and possession of the suit property, Respondent

No. 1 filed Execution Proceedings No. 13/2017 before the learned Trial Court, which is still pending.

8. The Petitioners claiming to be the brothers of Maria Pinto and Bernard Pinto [Respondent Nos. 2 to 3], approached the learned Mamlatdar by filing an Application for declaration of mundkarship, which is registered as Mundkarial Case No. 6/2018. The learned Mamlatdar passed an ex-parte order thereby restraining the Respondents therein from creating any third party interest. The said mundkarial proceedings are filed by the Petitioners against Jose Fernandes and others including Maria Pinto and Bernard Pinto. In the said Application for declaration of mundkarship filed before the Mamlatdar, it is claimed that the name of Roque alias Roquim Pereira i.e father of the Petitioners is recorded in other rights column of survey holding as Mundkar of House No. E-4/133 with one well. It is further claimed that said Roque Pereira and his wife Maria e D'souza e Pereira are survived by Respondent Nos. 2 and 3 therein as well as the present Petitioners. The Petitioners claimed mundkarial rights in the said house on the basis of inheritance. The Application further states that Respondent Nos. 1 to 5 are the landlords whereas Respondent Nos. 6 to 19 are the other legal heirs having right in the suit house along with the Petitioners.

9. After filing such mundkarial proceedings, the Petitioners moved an Application before the Executing Court by way of an objection under Order XXI, Rule 97 of CPC claiming that since the mundkarial issue is pending before the Mamlatdar, the execution proceedings be stayed.

10. The learned Trial Court by the impugned order, rejected such an Application on the ground that since the pleadings in the mundkarial Application and the fact that the grounds in the execution proceedings are not tallying with each other, therefore, there is no need for staying the execution proceedings. The learned Trial Court observed that the sale deed dated 29.08.1996 shows that Judgment Debtor No. 1 along with her brother purchased an area of 390 square metres, which was sub-divided under Survey No. 362/10-B wherein Judgment Debtor No. 1 constructed a new house bearing No. E-4/133-C. Thus, the claim raised by the Petitioners is distinct and separate from the decree which is passed. Such findings are challenged before this Court in the present Petition.

11. Writ Petition No. 848 of 2024 (F) is filed thereby challenging the order passed by the learned Executing Court dated 12.03.2024 rejecting the Application for re-calling the order dated

15.02.2024. Vide order dated 15.02.2024, the learned Executing Court closed the evidence of the Objectors.

12. The background of Writ Petition No. 848 of 2024 (F) needs to be elaborated. First Appeal No. 1124 of 2021 (F), filed by the Petitioners along with Civil Application No. 1125 of 2021 (F) were decided by this Court vide order dated 15.11.2022, which reads thus:

“1. This appeal takes exception to an order dated 22.03.2022 passed by the Learned Civil Judge “A” Court Mapusa, Goa, whereby the application at Exhibit D-25 filed by the appellants under Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908 objecting to the execution of the decree passed by the Learned Civil Judge Senior Division at Mapusa Court in Special Civil Suit No. 3/2010/A has been rejected.

2. The Learned Counsel for the appellants has contended that the trial Court, in adjudicating such application has not adhered to the procedure under the said provisions of Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908. It is submitted that no opportunity to lead evidence was granted to the appellants.

3. On the other hand, learned Counsel for the respondents has supported the impugned order. However, he could not dispute the appellants'

contention that the necessary procedure was not followed by the trial Court in adjudicating the appellants' objections as the law would mandate. Learned Counsel in these circumstances has fairly stated that the appellants' application can be adjudicated afresh, however keeping open all contentions of the respondents/decreed holders.

4. In my opinion in the peculiar facts of the case and as parties agree that no reasons were provided in disposing of the application in question, it would be in the interest of justice that the application filed by the appellants under Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908 be adjudicated afresh by the Executing Court. All contentions of the respondents/decreed holders as also of the appellants on merits of their respective case are expressly kept open. The appellants are also permitted to make necessary amendment so far as the valuation of the suit property is concerned and pay the necessary Court fees in that regard.

5. All contentions of the parties are expressly kept open. The Executing Court shall decide the execution proceeding as expeditiously as possible and within a period of six months from the date of this order.

6. The proceedings are disposed of, in the above terms. No costs."

13. In Writ Petition No. 611 of 2023 when the above facts of the order passed in First Appeal No. 1124 of 2021 (F) were brought to

the notice of this Court while considering the stay Application, this Court passed the following order:

“1. Heard Mr. Supekar, learned Counsel for the petitioner, Mr. Ramaiya, learned Counsel for respondent No.1 and Mr. Kelkar, learned Counsel for respondents No.2 and 3.

2. Mr. Ramaiya submits that in First Appeal No.1124 of 2021(F) filed by the petitioner an order was passed by this Court on 15/11/2022 which reads thus:

“1. This appeal takes exception to an order dated 22.03.2022 passed by the Learned Civil Judge “A” Court Mapusa, Goa, whereby the application at Exhibit D-25 filed by the appellants under Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908 objecting to the execution of the decree passed by the Learned Civil Judge Senior Division at Mapusa Court in Special Civil Suit No. 3/2010/A has been rejected.

2. The Learned Counsel for the appellants has contended that the trial Court, in adjudicating such application has not adhered to the procedure under the said provisions of Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908. It is submitted that no opportunity to lead evidence was granted to the appellants.

3. On the other hand, learned Counsel for the respondents has supported the impugned order. However, he could not dispute the appellants' contention that the necessary procedure was not followed by the trial Court in adjudicating the appellants' objections as the law would mandate. Learned Counsel

in these circumstances has fairly stated that the appellants' application can be adjudicated afresh, however keeping open all contentions of the respondents/decree holders.

4. In my opinion in the peculiar facts of the case and as parties agree that no reasons were provided in disposing of the application in question, it would be in the interest of justice that the application filed by the appellants under Order 21 Rule 97, 99 and 101 of the Code of Civil Procedure, 1908 be adjudicated afresh by the Executing Court. All contentions of the respondents/decree holders as also of the appellants on merits of their respective case are expressly kept open. The appellants are also permitted to make necessary amendment so far as the valuation of the suit property is concerned and pay the necessary Court fees in that regard.

5. All contentions of the parties are expressly kept open. The Executing Court shall decide the execution proceeding as expeditiously as possible and within a period of six months from the date of this order.

6. The proceedings are disposed of, in the above terms. No costs.”

3. He submits that the petitioner deliberately suppressed such an order by which the executing Court was directed to dispose of and decide execution proceedings within a period of 6 months. He submits that the petitioner by suppressing such order, obtained an interim order from this Court thereby adjourning the execution proceedings.

4. *Mr. Supekar submits that the petitioner did not suppress such fact and has clearly averred in the petition about such order. However, he admitted that the copy of such an order was not attached along with the petition.*

5. *Mr. Ramaiya points out that the matter before the executing Court is now adjourned for only to file an affidavit and after the last adjournment given, the present petition was filed.*

6. *Mr. Supekar now submits that the petitioner will be examined on commission since the petitioner is paralysed and bedridden. The executing Court shall make necessary arrangements to examine the petitioner on commission in order to comply with the directions of this Court as per order dated 15/11/2022. It is made clear that execution proceedings shall continue irrespective of the petition pending before this Court.*

7. *Since the issue involved in the present petition is the rejection of the application filed by the petitioner for stay of the said execution in view of the pendency of claim of mundkarship, the same can be disposed of at the admission stage.*

8. *The parties are put to notice that the matter will be taken up for final disposal.*

9. *Stand over to 09/01/2024.*

10. The parties to act on an authenticated copy of this order.”

14. A bare perusal of these orders would go to show that an endeavour was made by this Court to expedite the execution proceedings as it was observed that such proceedings as well as the objections filed by the Petitioners were unnecessarily delayed.

15. It is also a fact that directions given by this Court in the order dated 30.11.2023 and the earlier order dated 15.11.2022 were not complied with later and spirit by the learned Executing Court and also by the parties to the proceedings. Even extensions were sought on two occasions which were granted by this Court. Finally, the learned Executing Court vide order dated 15.02.2024 closed the evidence of the Objectors. An Application filed for recalling such an order was then rejected by the impugned order dated 12.03.2024 with a reasoned order. The Petitioners are challenging the order dated 12.03.2024 so also the order dated 15.02.2024 in the present Petition.

16. With this backdrop, it is necessary to understand the factual aspects, which go to the root of the matter.

17. The Petitioners are claiming to be the legal heirs of late Roque alias Roquim Pereira and his wife Maria, through whom they are claiming inheritance to the mundkarial structure which is bearing No. E-4/133 in survey number 362/10. In Form I and XIV of Survey No. 362/10 and specifically in the other rights column, House No. E-4/133 is shown in the name of Roquim Pereira (Mundkar). Admittedly, there is no declaration obtained by the parents of the Petitioners showing that they are the Mundkars of the said house, however, a document is placed on record which shows that by order dated 12.08.1985 passed by the Joint Mamlatdar of Bardez, Mapusa Goa in case No. MND/SR/CAL/572/84, Maria Antonia D'Souza, resident of Prabhuwado, Calangute is registered as Mundkar under Section 29(4) of the Goa Daman and Diu Mundkar (Protection from Eviction) Act of the dwelling House No. E-4/133 situated in the property of Shri Jose Fernandes, Bhatkar at Prabhuwado Calangute, situated in revenue village vide Survey No. 362/10. Thus, the above document would clearly go to show that Maria Antonia D'Souza was registered as Mundkar of dwelling House No. E-4/133 situated in Survey No. 362/10 of Calangute.

18. There is no dispute that late Roque Pereira and his wife Maria D'Souza are the parents of Petitioner No. 1 and other

siblings including Respondent Nos. 2 and 3. Respondent No. 2, Ms. Maria Pinto is therefore the sister of Petitioner No. 1.

19. Somewhere in August 1996, the original landlords sold a part of the said property admeasuring 390 square metres to Respondent No. 2-Ms. Maria Pinto and one Mr. Francis Pereira. A copy of the sale deed is placed on record which is executed on 29.08.1996 between Mr. Josue Fernandes Alvares and others as Vendors and Respondent No. 2-Ms. Maria Pinto and Mr. Francis Pereira as Purchasers. The sale deed shows that the Vendors are absolute owners in possession of property bearing Survey No. 362/10 situated at Calangute. It further shows that the Purchasers i.e. Respondent No. 2-Ms. Maria Pinto and Mr. Francis Pereira are declared as Mundkars vide order of the Joint Mamlatdar dated 12.08.1985 in case No. MND/SR/CAL/572/84 and that parties agreed to settle the matter outside the Court and thus, the deed of sale is the outcome of the said settlement.

20. The sale deed further shows that the Vendors agreed to sell to the Purchasers a separate plot of land/Plot-A containing an area of 390 square metres of which, the Purchasers are the Mundkars, for a consideration of Rs.25,000/- (Rupees Twenty-Five Thousand only). The schedule of the property which was sold reads thus:-

“All that mundkarial plot of land or plot ‘A’ containing an area of 390 sq. mtres. situated in the Village of Calangute within the Gram Panchayat area of Calangute, Taluka and Sub District of Bardez, North Goa District and State of Goa, described in Land Registration office of Bardez under No. 12537 at page 178 of Book B-32 new, enrolled in the Taluka Revenue Office under Matriz No. 577 of 2nd cir. of Calangute, but surveyed in the Revenue Survey of Record of Rights under Survey No. 362/10 (part) and bounded on the North, East and South by remaining part of the said property and on the West by road.”

21. Thus, the sale deed shows that a plot of land admeasuring 390 square metres out of Survey No. 362/10 (part) is sold to Respondent No. 2-Ms. Maria Pinto and Mr. Francis Pereira. The entire sale deed nowhere discloses any structure or house existing in the said area of 390 square metres and more particularly, the mundkarial house bearing No. E-4/133.

22. Subsequent to the sale deed of 1996, a Deed of Family Partition was entered between Mrs. Maria Pinto and her husband i.e. Respondent Nos. 2 and 3 with Mr. Francis Pereira and Mrs. Fatima Pereira. As per the pleadings of the Petitioners, said Francis Pereira is one of the sons of late Roque Pereira and Mrs.

Maria D'Souza e Pereira and he was married to Fatima Pereira. The Deed of Family Partition was executed on 06.07.2006 between Respondent Nos. 2 and 3 on one hand, and Mr. Francis Pereira and his wife-Ms. Fatima Pereira on the other hand. By this Deed of Partition, both the co-owners of the plot of 390 square metres agreed to divide among themselves the said property. Accordingly, an area of 281 square metres was allotted in the name of Respondent Nos. 2 and 3 whereas the remaining portion of 109 square metres was allotted to Mr. Francis Pereira and his wife Mrs. Fatima Pereira. After the said partition, sub-division was carried out in the survey entries and the area of 281 square metres allotted to Respondent Nos. 2 and 3 was given separate survey number i.e. 362/10-B. Similarly, the dwelling house existing therein was allotted House No. E-4/133-C.

23. Mr. Gosavi, learned Counsel appearing for the Petitioners would submit that the house existing in the said survey holding, now allotted in favour of Respondent nos. 2 and 3, is the original mundkarial house and only because a partition was carried out, a separate number to the house was allotted. The above submission is difficult to accept for the simple reason that the document placed on record and issued by the Village Panchayat dated 25.01.2007 would go to show that Respondent No. 1 applied for an

occupancy certificate wherein she was granted permission to occupy the construction of residential house in Survey No. 362/10 (part) of Calangute, which was completed by her vide permission dated 15.11.1996. The occupancy certificate was issued vide resolution dated 12.01.2007. The house constructed therein by Ms. Maria Pinto was allotted number E-4/133 C.

24. It thus shows that Ms. Maria Pinto constructed a residential house in the plot purchased by her and completed such construction as per the permission granted to her by the Village Panchayat dated 15.11.1996. At this stage, it is necessary to note that the sale deed by which Respondent nos. 2 and 3 along with Mr. Francis Pereira purchased an area of 390 square metres is dated 29.08.1996. It therefore shows that after purchasing the said plot, Respondent Nos. 2 and 3 applied for a construction license which was granted in November 1996 and finally they applied for an occupancy certificate in the year 2007 wherein a separate House No. E-4/133 C was allotted.

25. The survey records show that Roquim Pereira was shown as a Mundkar of the structure which was registered as C-4-133. Form No. I and XIV also show the other structures in the said property and basically in the other rights column in favour of other

Mundkars. Thus, the structure shown in the name of Roque Pereira of which the Petitioners are claiming mundkarial right is *prima facie* a different structure whereas the house of Respondent Nos. 2 and 3 is apparently a separate structure constructed after 1996 by allotting a separate number E-4/133-C. I have already observed that the sale deed dated 29.08.1996, by which, Mrs. Maria Pinto and Mr. Francis Pereira purchased an area of 390 square metres is clearly silent with regard to any structure existing therein. The Petitioners, admit that the said plot of 390 square metres was partitioned on 06.07.2006 and an area of 280 square metres was allotted in favour of Respondent Nos. 2 and 3.

26. Respondent No. 1 filed a Special Civil Suit before the Civil Court at Mapusa bearing No. 3 of 2010 for specific performance, mandatory and permanent injunction against Respondent Nos. 2 and 3. It is their contention that Respondent Nos. 2 and 3 agreed to sell the said plot of 281 square metres along with the structure existing therein to Respondent No. 1. Even part payment was made, however, thereafter Respondent Nos. 2 and 3 failed to execute the agreement. Initially, Respondent Nos. 2 and 3 resisted the said suit by filing a written statement, however, a compromise decree was passed on 09.09.2010, thereby allowing the said suit and directing Respondent Nos. 2 and 3 to execute the sale deed.

27. Since in spite of drawing such decree on compromise terms, Respondent Nos. 2 and 3 failed to execute the sale deed in favour of Respondent No. 1 which resulted in filing execution proceedings in the year 2017. Only thereafter, the present Petitioners lodged their mundkarial claim over the house and the property belonging to Roque Pereira and his wife Maria Pereira on the ground of inheritance before the learned Mamlatdar, somewhere in September 2018. The Mamlatdar granted an injunction restraining present Respondent Nos. 2 and 3 from creating any third-party rights with regard to the dwelling house, vide order dated 20.09.2018. Only, thereafter, the Petitioners filed an objection before the learned Executing Court as Objectors praying that the execution be stayed since the issue regarding the Mundkarship is raised and the Mamlatdar is seized with the matter. The learned Executing Court vide its order dated 06.09.2023 (impugned herein), on a detailed analysis observed that such objections required to be rejected as the house number mentioned therein is different. The Petitioners are now challenging such an order in the present Petition.

28. Learned Counsel Mr. Ramaiya appearing for Respondent No. 1 strongly, contended that such objections are filed only to delay and derail the execution proceedings and it is an attempt in

collusion with the Judgment Debtors/Respondent Nos. 2 and 3. He would submit that though the compromise decree was passed in the year 2010 and till date, the sale deed has not been executed and the execution has been objected to from the year 2017 by filing such Application and now the Petitioners joined hands with the Judgment Debtors to further delay the proceedings.

29. Mr. Gosavi, learned Counsel for the Petitioners would submit that once the claim is raised regarding the mundkarship and the matter is seized with the concerned Mamlatdar, the Civil Court is bound to stay the proceedings and therefore, the learned Executing Court was duty bound to consider the prayers of the Petitioners by allowing such objections.

30. Section 32 of the Goa Mundkars (Protection From Eviction) Act, 1975 (Mundkar Act, for short) reads thus:

“32. Suits involving issues required to be decided under this Act.- (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.

(2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and

decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof.”

31. A perusal of the above provision would go to show that the suits involving issues which are to be decided under the Mundkar Act are required to be stayed by referring such issues to the Mamlatdar or Collector as the case may be for determination. Thus, it is for the party who is claiming the benefit of Section 32 to show that the suit or any further proceedings including execution involving any issue which is required to be settled, decided or dealt with by the Mamlatdar under the said Act.

32. The proceedings filed by the Petitioners at the initial stage (unamended) would go to show that the claim is raised with regard to a structure bearing No. E-4/133. It is no doubt true and as pointed out by Mr. Gosavi that subsequently, the Application filed before the Mamlatdar was amended thereby adding House No. E-4/133-C. However, as discussed earlier, the document produced by Village Panchayat dated 25.01.2007 would go to show that House No. E-4/133-C was constructed by Respondent No. 1 on the basis of a license issued on 15.11.1996 and an occupancy

certificate dated 25.01.2007 was issued. Thus, it appears that the structure which is in occupation of Respondent No. 2 is distinct and separate, having a separate House No. E-4/133-C from the earlier mundkarial house shown in the name of Roquim Pereira in the survey records bearing No. C-4/133.

33. The learned Executing Court discussed this aspect in detail in the impugned order and rightly so and therefore, the prayer of the Petitioners to stay the execution proceedings till the disposal of the mundkarial matter was rejected.

34. The provisions of Section 32 of the Mundkar Act would be attracted only if a case is made out that the proceedings before the Civil Court are in connection with the same mundkarial structure, for which, the matter is filed before the Mamlatdar. Otherwise, the provisions of Section 32 cannot be invoked. The matter in hand comes in the exception or otherwise as discussed above.

35. Besides, it is clear from the records that the Petitioners though claiming to be in possession of the mundkarial structure, never objected, firstly to the sale deed dated 29.08.1996, by which, Respondent Nos. 2 and 3 along with Mr. Francis Pereira purchased 390 square metres. Subsequently, when the Deed of

Family Partition was entered into on 06.07.2006, the same was also not challenged. Thereafter, the partition was carried out and a separate survey number as well as a separate house number was allotted to the portion of 281 square metres which came to be allotted in the favour of Respondent Nos. 2 and 3.

36. The suit was filed by Respondent No. 1 against Respondent Nos. 2 and 3 in the year 2010 and it was decreed by drawing consent terms. Thereafter, the execution was filed in the year 2017. Till September 2018 i.e. when the Executing Court tried to execute the decree, the Petitioners kept quiet. It is unbelievable that the Petitioners, though claiming to be in occupation of the mundkarial house, were totally unaware of all these developments including the sale which took place in the year 1996. The conduct of the Petitioners would clearly go to show that they along with the Judgment Debtors/Respondent Nos. 2 and 3 are now trying to obstruct the execution and probably in order to raise the claim of mundkarship, proceedings were filed before the Mamlatdar.

37. Reliance placed by Mr. Gosavi in the case of **Shantaram Babani Xete Curtorkar and Another Vs. Vishnu Babani Xete Curtorkar and Another, 1989 (2) Goa Law Times (167)** is of no help. As earlier discussed, it is clear from the record

that the plot and the house therein bearing No. C-4/133-C is separate and distinct from the mundkarial house i.e. recorded in the name of Mr. Roquim Pereira and therefore, the question of framing of any issue to that effect and staying the execution proceedings would not arise.

38. Mr. Ramaiya, learned Counsel for Respondent No. 1 placed reliance on the following decisions:-

(i) *Maruti Agarwadekar alias Agari Vs. Bikaro alias Bapi Narayan Shirodkar and Others, 2016 SCC OnLine Bom 5421,*

(ii) *Pramila Prabhakar Arlekar and Another Vs. Antonieta Adelina Temudo and Others, 2018 SCC OnLine Bom 6952,*

(iii) *Writ Petition No. 1683 of 2023 (F) decided by this Court on 10.08.2023 in the case of Roza @ Rosa Quadros Vs. Raymond Felix D'Souza.*

39. It is clear that such a proposition deals with specific pleadings which are required to be filed in a claim over mundkarship. Such decisions would be helpful to Respondent No. 1 with regard to the claim raised by the Petitioners before the learned Mamlatdar. In this matter, the contention raised is to stay the execution proceedings only because the mundkarial claim is

raised. Therefore, there is no need to discuss the above decisions for the purpose of deciding the present Petitions. Having said so, it is clear that the impugned order passed by the learned Executing Court is a well-reasoned and proper order which requires no interference.

40. Writ Petition No. 848 of 2024 (F) is challenging the order passed by the learned Executing Court thereby refusing to recall the order dated 15.02.2024 closing the evidence of the Objectors.

41. The orders passed by the learned Single Judge (Coram: Shri G. S. Kulkarni, J.) dated 15.11.2022 and the order passed on 30.11.2023 (Coram: Shri B. P. Deshpande, J.) as quoted above would clearly reveal that the Petitioners by filing such objections under Order XXI, Rule 97 of the Civil Procedure Code, 1908 were only delaying the inquiry.

42. Vide order dated 30.11.2023 as quoted above, this Court directed the Petitioners to comply with the orders passed on 15.11.2022 in First Appeal No. 1124 of 2021 (F) and the parties were directed to examine Petitioner No. 1 who claim to be bed-ridden on commission. The learned Executing Court was further directed to examine Petitioner No. 1 on commission by making

necessary arrangements in order to comply with the directions, however, Petitioner No. 1 failed to examine himself on commission.

43. The order passed by the learned Executing Court dated 15.02.2024 reveals that as per directions of this Court, the Petitioner was directed to examine himself on commission, however, the Petitioner sought time to lead evidence in the inquiry on 17.01.2024, 19.01.2024 and 24.01.2024. Similarly, the matter was taken up on 03.02.2024 when for the first time Advocate Y. Padloskar, was appointed as Court Commissioner to examine the Petitioners by giving last and final opportunity. The learned Executing Court made it clear that the evidence shall be complete on or before the next date of hearing. It further observed that inspite of the time given, the Objectors failed to file an affidavit in evidence in the inquiry. The learned Executing Court further observed that the Court Commissioner was directed to record evidence within 15 days and he was made aware that the matter is time-bound matter with directions. In spite of the above clear directions, Petitioner No. 1 failed to examine himself and accordingly, the Commissioner submitted his report. Thus, on 15.02.2024, the learned Executing Court closed the inquiry with regard to the objections.

44. The Petitioners thereafter filed an Application for recall of the order which was rejected vide impugned on 12.03.2024 by giving detailed reasons.

45. Learned Counsel for the Petitioners tried to submit that though the Commissioner was appointed, the Petitioners were supposed to provide the equipment such as PC/laptop, printer etc. which required some time. First of all, such an aspect cannot be looked into for the simple reason that the directions were given by this Court to examine the Objectors on commission on 30.11.2023. The order passed by the learned Trial Court dated 15.02.2024 would clearly reveal that even though the matter was taken up, no steps were taken by the Objectors/Petitioners and the matter was adjourned on 3 to 4 occasions. The Commissioner was appointed only on 03.02.2024. It was the duty of the Objectors/Petitioners to immediately apply for appointment of Commissioner. However, it seems that such an appointment was carried out after two months from the order of this Court. Thus, the directions given by this Court on 15.11.2022 and 30.11.2023 in First Appeal No. 1124 of 2021 (F) were completely kept in cold storage by the Petitioners. By the Order dated 15.11.2022, the Executing Court was directed to dispose of the said execution proceedings including the objections within a period of six months. Such an order was not

complied with and the directions given by this Court on 30.11.2023 were also not complied with. The conduct of the Petitioners is only to delay such objections and finally, the execution proceedings, which is apparent from the face of the record. The learned Trial Court observed in the impugned order dated 12.03.2024 that adjournments were sought on various occasions and even the Petitioners failed to cooperate with the Commissioner. The report of the Commissioner would go to show that the Petitioners failed to cooperate with him for the purpose of recording the evidence. The Commissioner intimated the specific dates to the learned Counsel for the parties and fixed the matter on 09.02.2024 at 11:30 a.m. and further, on 12.02.2024 at 5:30 p.m. and then on 13.02.2024 at 5:30 p.m. and further on 14.02.2024 at 5:30 p.m. The Commissioner's report shows that there was no cooperation from the parties and therefore, he was unable to record the evidence.

46. From the above observations and the findings recorded by the learned Executing Court, one thing is clear that the Petitioners who are the Objectors are not interested in leading evidence but are only interested in delaying the proceedings which are pending from the year 2017 itself. Accordingly, the party who is *prima facie* found to be delaying the matter needs no indulgence.

47. The impugned orders cannot be termed as perverse or illegal so as to interfere in the supervisory jurisdiction of this Court. Having said so, both Petitions deserve to be rejected and accordingly, stand rejected. Rule is discharged. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

ESHA SAINATH
VAIGANKAR

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