

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.12 OF 2009

Shri Devidas Ganpati Shirodkar,
(since deceased) through legal
representatives)

(a) Rajesh Devidas Shirodkar,
(b) Smt. Bharati Rajesh Shirodkar,
(c) Shri. Rasik Naik,
(d) Smt. Rajeshri R. Naik,
(e) Ms. Saluja Shirodkar
(f) Ms. Sangeeta Shirodkar,
All residing at House No. 788,
Mandopa, Navelim, Salcete Goa.

2. Smt. Vrinda Devidas Shirodkar,
Resident of Mandopa, Navelim,
Salcete, Goa.

..... Appellants.

Versus

1. Shri Rosario Salvador Liberado
Carneiro, Mayor, landlord,
Resident of Mandopa, Navelim,
Salcete Goa.

2. Chagas M. Manuel Carneiro,
major, r/o. House No. 606,
Mandopa, Navelim, Salcete, Goa.

3. Comunidade of Margao,
Through its Attorney,
Old Market, Margao, Salcete, Goa.

.... Respondents.

WITH

SECOND APPEAL NO.13/2009

Shri Devidas Ganpati Shirodkar,
(since deceased) through legal
representatives)

(a) Rajesh Devidas Shirodkar,
(b) Smt. Bharati Rajesh Shirodkar,
(c) Smt. Rasik Naik,
(d) Smt. Rajeshri R. Naik,
(e) Ms. Saluja Shirodkar
(f) Ms. Sangeeta Shirodkar,
All residing at House No. 788,
Mandopa, Navelim, Salcete Goa.

2. Smt. Vrinda Devidas Shirodkar,
Resident of Mandopa, Navelim,
Salcete, Goa.

..... Appellants.

Versus

Shri Rosario Salvador Liberado
Carneiro, Mayor, landlord,
Resident of Mandopa, Navelim,
Salcete Goa.

.... Respondents.

Smt. A.A. Agni, Senior Advocate with Ms. Afrin H.
Khanm and Mr. Junaid Shaikh, Advocates for the
Appellants.

Mr. Parag Rao with Ms. Sowmya Drago and Mr. Akhil
Parrikar, Advocates for the Respondents.

CORAM: VALMIKI SA MENEZES, J.

DATED: 8th November 2023

ORAL JUDGMENT :

1. Both these appeals were admitted on the following questions of law :

a) Whether the first Appellate Court has erred that the property surveyed under survey No.25/10 situated at Aquem village does not form part of the property depicted in Comunidade plan No.696 at Exhibit 49 by misconstruing the said plan on the face of the evidence that the land shown in the plan also includes other survey numbers?

2. Second Appeal No.12/2009 arises from Judgment and Decree dated 13/11/2008 passed in Regular Civil Appeal No.20/2001 by the District Court, South Goa setting aside Judgment and Decree dated 30/12/2002 passed by the Civil Judge, Jr. Division at Margao in Regular Civil Suit No.175/88/F in which the Respondent, in this Appeal, is the original Plaintiff. In Regular Civil Suit No.175/88/F, the Plaintiff sought a decree directing the Survey Authorities to modify the survey records of land under Survey No.25/10, to delete the name of the defendant No.1-Comunidade of Margao therefrom and to replace it with the name of the Plaintiff, Rosario Salvador Carneiro and that of the Defendant No.3, Mrs. Maria Joaquina Carneiro; a further relief was sought therein to delete the name of the Defendant No.2/Appellant here Devidas Shirodkar from survey Records of Survey No.25/10 and to delete the name of Joao Benedito Carneiro from the

records of Survey No.29/5 of Village Navelim and substitute it with the name of the Plaintiff and Defendant No.3.

3. Second Appeal No.13/2009 arises from Judgment and Decree dated 13/11/2008 passed in Regular Civil Appeal No. 103/2005 by the District Court, South Goa setting aside Judgment and Decree dated 16/7/2005 passed by the Civil Judge, Sr. Division at Margao in Special Civil Suit No.96/89/A in which the Appellants Devidas Shirodkar and Vrinda Shirodkar in this Appeal are the original Plaintiffs and the sole Respondent Rosario Carneiro is the Defendant; the Plaintiffs in Special Civil Suit No.96/89/A claimed to have a declaration from the Mamlatdar of Salcete, declaring them to be the deemed tenants of the suit paddy field under Survey No.25/10, on the basis of which they sought a decree of permanent injunction against the Respondent from interfering with the suit property.

4. In Regular Civil Suit No.175/1988/F, Plaintiff Rosario Carneiro sought a deletion of the name of Comunidade of Margao and of Rajesh Shirodkar (Appellants) from the survey record of land under Survey No.25/10 on a claim that he was the owner of a property known as “Mandopa” situated at Navelim, which property was registered in the land registration office under description No.17126 at page 19 of book B 44, which property, according to the plaint consisted of paddy field, vegetable garden, morod land and bharad type of land cultivated with mango trees, cashew trees, and coconut trees. It was further the claim in the suit that there was also a paddy

field existing therein which was exclusively cultivated by the said Rosario. The plaintiff claims that the property described under No.17126 was partly surveyed under Survey No.125/10 of Village Aquem and partly surveyed under Nos.29/5 and 29/6 of Village Navelim, and that the names of the Defendants in the suit were wrongly entered into the survey records, the Plaintiff Rosario Carneiro being its owner along with Defendants No.3 and 4 by virtue of their possession over the same for more than 50 years.

5. In the written statement of the Appellant herein/Defendant No.2 in Regular Civil Suit No.175/1988/F, a defence was taken that land under survey No.25/10 is owned by the Comunidade of Margao, being a paddy field known as “segundo lote portaxet” No.694 registered in the LivroTombo of the said Comunidade under No.699A; that the Appellant had been paying rent to the Comunidade of Margao and was in possession of the property under Survey No.25/10 since 1962, as its agricultural tenant. A further defence was taken that the Appellant was declared in Tenancy Case No.57/67 to be a deemed tenant under the Agricultural Tenancy Act, with respect to land under Survey No.25/10.

6. Regular Civil Suit No.175/1988/F was tried and partly decreed on 30/12/2000 in favour of the Plaintiff Rosario Carneiro by granting prayer clauses (c) and (d) being a decree for deletion of the name of Joao Carneiro from Survey No.29/5 and substituting it by the name of Rosario Carneiro, the Plaintiff and Maria Joaquina Carneiro,

Defendant No.3 and to delete the name of Rosario Salvador Liberado Carneiro from Survey No.29/5 and add the name of Rosario Salvador Carneiro, the Plaintiff with the name of Defendant No.3 Maria Carneiro in its place.

The claim of the Plaintiff Rosario Carneiro, in so far as seeking a declaration of the ownership over the land under Survey No.25/10 was concerned, was rejected in this suit. Whilst rejecting the claim of the Plaintiff Rosario over land under Survey No.25/10, the Trial Court had arrived at a finding that the Plaintiff Rosario had failed to establish that survey No.25/10 forms part of the land claimed by the Plaintiff, and further that the entry in the survey records of the name of the Defendant No.1 Comunidade of Margao and of Defendant No.2 Devidas (as tenant) was a correct entry.

7. Special Civil Suit No.96/89/A was filed by Appellant/ Devidas Shirodkar and his wife Vrinda against Rosario Carneiro/Respondent herein for a decree of permanent injunction against Rosario from interfering with the Plaintiff's possession of land under Survey No.25/10 on the same defence/title raised by Devidas in Regular Civil Suit No.175/1988 i.e. that he had been declared as a "deemed tenant" by the Court of the Mamlatdar of Salcete in Tenancy Case No.57/67 with respect to that survey holding, which corresponded to a paddy field known as "segundo lanco of portaxetta number 694" which was registered in the Tombo of the

Comunidade under No.699A and belonged to the Comunidade of Margao.

8. In the written statement filed by the Defendant Rosario on 21/2/1990, he took up the very same defence that was set up as his title in his plaint in Regular Civil Suit No.175/1988, that he was in possession as owner and/or adverse possession of a property known as “Mandopa” registered under No.17126, property bounded on the north by that of Antonio Alvares and Comunidade of Margao, on the east by a private road and property of Caetano Silva, on the west by land of Comunidade of Margao and that of Joao Coutinho and south by land of Joaquim Rebello and that this property was presently surveyed under survey No.29/5(western part), 29/6 (eastern part) and 25/10 (northern part); that only a part of land under survey No.25/10 formed part of the larger property Mandopa.

9. Special Civil Suit No.96/89 was tried and by judgment and decree dated 16/7/2005 was decreed in favour of Devidas permanently restraining Defendant Rosario from interfering with the paddy field under Survey No.25/10. Whilst decreeing the suit, it was held that the Plaintiff Devidas had proved his title to the land under Lote 699-A as a deemed tenant, which area corresponded to land under Survey No.25/10.

10. At this juncture, note has to be taken of the fact that the Trial Courts in both these suits have failed to consolidate the trials and have common evidence led by the parties in these suits, or at least

considered the fact that since the year 1989 when Special Civil Suit No.96/1989 was filed, the real controversy between the contesting parties Rosario Carneiro and Devidas Shiroadkar was whether the land under Survey No.25/10 formed part of property known as “Mandopa” registered under No.17126 as claimed by Rosario or whether it formed part of paddy field known as “segundo lote portaxet” No.694 registered in the Livro Tombo of the said Comunidade under No.699A, belonging to the Comunidade of Margao, of which Devidas Shiroadkar was declared “deemed tenant” by order of the Mamlatdar dated 29/4/1967. In fact, what would be the most logical course to be followed by the Trial Courts in these two suits, was to consolidate their trials and to appoint a commissioner to consider the extent of both titles over land under Survey No.25/10, and to decide the suit on the basis of such expert evidence.

11. Instead of following the above course, which would have been a most logical manner to proceed with the suits, the Trial Court in Special Civil Suit No.96/1989, appointed a commissioner named Benedito Carvalho to identify only whether Lote No.699A, allegedly allotted to the Plaintiff Devidas, corresponded to land under Survey No.25/10, without considering the defence of the Defendant Rosario Carneiro who alleged that his land “Mandopa” registered under No.17126, formed part of land surveyed under survey No.29/5(western part), 29/6 (eastern part) and 25/10 (northern part). This commissioner opined, in isolation of the title of Rosario, that lote

No.699A corresponded to Survey No.25/10 (shown in pink) and an additional area around it forming part of area under survey No.27/6 and area under Survey No.25/9 (shown in green), as seen in his report/plan dated 8/4/2005 at Exhibit C/67 of the record of SCS No.96/1989.

12. The Appellate Court, proceeded to hear Regular Civil Appeal No.20/2001 filed by Rosario against decree, rejecting Regular Civil Suit No.175/1988 against Devidas and allowed this Appeal on 13/11/2008, decreeing prayer clauses (a) and (b) in the suit directing deletion of the name of Devidas and Comunidade of Margao from the survey record of Survey No.25/10; in this appeal, the Appellate Court holds that land under Survey No.25/10 forms part of the property “Mandopa” belonging to Rosario and not part of the property under Lote No.699A in possession of Devidas.

On the very same day, the very same District Court decided Regular Civil Appeal No.103/2005, filed by Rosario against the decree of permanent injunction in favour of Devidas in Special Civil Suit No.96/1989, and allowed the appeal declaring property under Survey No.25/10 to be part of property “Mandopa” belonging to Rosario Carneiro, when, in fact, Rosario Carneiro has not filed any counter claim for a declaration in that suit. Strangely in this appeal, the Appellate Court does not make any reference to the report of the aforesaid Court Commissioner nor does the Appellate Court discuss the evidence on record as to the location of specific boundaries of the

rival title documents, in relation to the Tombo plan of the Comunidade produced on record or in relation to the present survey plan.

13. After perusing the entire record of both these appeals, it becomes abundantly clear that both appeals had to be heard together and the evidence recorded in both suits were required to have been considered by the Appellate Court, together. This was so because the main issue between the parties was whether the land under Survey No.25/10 forms part of the property “Mandopa” claimed by Rosario as part of land under registration No.17126 [which extends over land under survey No.29/5(western part), 29/6 (eastern part) and 25/10 (northern part)] or whether it forms part of the paddy field known as “segundo lote portaxet” No.694 registered in the Livro Tombo originally owned by Comunidade under No.699A in possession of Devidas as deemed tenant under Mamlatdar’s order dated 29/4/1967. The Appellate Court seems to have made no efforts in this direction and instead of considering the evidence of both sets of parties together, in both suits, has proceeded in disposing of the two suits independently, without attempting to appoint a commissioner to locate the properties under two sets of titles. In my opinion, the two contesting claims should not have been decided without considering the entire evidence in both trials and without the aid of an expert surveyor, who would attempt in locating the properties claimed as title that the two sets of parties namely, Rosario Carneiro and Devidas

Shirodkar. In that view of the matter, I am of the opinion that the substantial question of law formulated by order dated 18/6/2010 has to be answered in the affirmative and both appeals bearing Second Appeals No.12/2009 and 13/2009 have to be partly allowed by setting aside both impugned Judgments and Decrees dated 30/12/2002 and remanding the matters back to the District Court for a fresh hearing and decision in Regular Civil Appeal No.20/2001 and Regular Civil Appeal No.103/2005.

14. Considering that the Civil Court in Special Civil Suit No.96/1989 had appointed a Commissioner who had attempted at locating the property under Lote No.699A, but not the property “Mandopa” claimed by Rosario as part of land under registration No.17126, it would be appropriate that on remand, the District Court shall appoint a commissioner, namely Mr. Alwin Crasto, having office at Margao, Goa to visit the site and submit his report as to whether the land under Survey No.25/10 forms part of the property “Mandopa” claimed by Rosario Carneiro as part of land under registration No.17126 [claimed to be extending over land under survey No.29/5(western part), 29/6 (eastern part) and 25/10 (northern part)] or whether it forms part of the property known as “segundo lote portaxet” No.694 registered in the livro tombo originally owned by the Comunidade under Tombo No.699A claimed to be in possession of Devidas Shirodkar. For that purpose, the commissioner shall examine Land Registration Description No.17126 (Exhibit

DW.1/B-colly) and extract from records of the Comunidade (Certificate at Exhibit PW.1/C-colly) for “segundo lote portaxet” No.694 registered in the Livro Tombo originally owned by the Comunidade (Exhibits C-47 and C-46), Tombo Plan for Tombo No.699A (Exhibit C-49), the present survey records in Form No.I & XIV, the survey plan of Survey Nos. 25/10, 29/5, 29/6 and all survey numbers of lands surrounding and appurtenant to these survey numbers.

The Appellate Court shall consider this commissioner’s report, objections thereon and cross examination of the Commissioner, if any, along with the evidence led by both sets of parties in Regular Civil Suit No.175/88/E, Special Civil Suit No. 96/1989, and additional evidence, if any, which the parties may now wish to adduce and decide both appeals together, formulating the point for determination as the one stated above.

15. Consequently, both these appeals are partly allowed. The impugned Judgments and Decrees dated 30/12/2002 of the District Court in Regular Civil Appeal No.20/2001 and Regular Civil Appeal No.103/2005 are quashed and set aside and the appeals are remanded back to the District Court for a fresh hearing and decision by following the directions as specified in paragraph 14 above. Decree to be drawn accordingly.

Parties to appear before the Principal District Judge, South Goa,
at Margao on 28th November 2023, at 10.00 a.m.

VALMIKI SA MENEZES, J.

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