

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 6 OF 2009
WITH
SECOND APPEAL NO. 7 OF 2009

1. Smt. Mirabai Madhav Kossambe, (deceased)
2. Shri Balaji V. Kossambe,
3. Shri Kusum B. Kossambe, (deceased)
- 3(a) Mrs Sangeeta Santosh Naik Karmali,
- 3(b) Mr Santosh J. Naik Karmali,
- Both r/o H.No.803, near Industrial Estate,
Vodlemoll, Cacora-Curchorim, Goa
Pin Code :- 403 706
4. Shri Vijay Madhav Kossambe,
5. Smt. Rupa V. Kossambe,
6. Shri Sagar Madhav Kossambe,
7. Miss Asha Madhav Kossambe,
- All residing at H.No.359,
Sancoale, Mormugao, Goa.
8. Smt. Meena Jayant Dhumatkar,
9. Shri Jayant alias Madhav Dhumatkar,
- Both residing at Comba,
Margao Goa.
- 10.Smt. Madhuri V. Kossambe,
- 11.Shri Vishnu V. Kossambe,
- 12.Smt. Manda V. Kossambe,
- 13.Shri Mahendra V. Kossambe,
- 14.Smt. Surendra V. Kossambe,
- All residing at Sancoale,
Mormugao Goa.
- 15.Shri Shamrao B. Kunkolienkar &
his wife
- 16.Smt. Shalini S. Kunkolienkar,
- Both residing at Gavli Galli,
Ganpati Peth, Sangli.

17. Shri Ashok Uttamrao Kunkolienkar
& his wife

18. Smt. Ashwini Ashok Kunkolienkar
Both residing at C/o Shri Dhonduram Kore,
Shri Krishna Colony, Near Sambhaji
Nagar Bus Stand, Kolhapur.

19. Smt. Anandibai U. Kunkolienkar
Residing at 345-D, Kankawesh, Kolhapur,

20. Shri Vishwanath R. Sambari

21. Smt. Lalita V. Sambari
Both residing at Comba,
Margao.

22. Shri Mangirish M. Laad,

23. Smt. Ranjana Mangirish Laad,
Both legal heirs of Maharudra B. Laad,
C/o Shri Prabhakar Kenkre,
House No.455,

Opp. Computer House,
Vidhyanagar, Margao Goa.

24. Smt. Leelabai M. Laad,
Residing at Nagorcem,
Canacona Goa.

(Deleted as per order dated
13.01.09).

... Appellants

Versus

1. Smt. Laxmi Narayan Naik (Deceased)

2. Shri Raya Narayan Naik

3. Smt. Rajeshri Raya Naik

4. Shri Ashok Narayan Naik (Deceased)

4a) Mr Amrish Anil Naik,

4b) Mrs Pritam Amrish Naik,

Both resident of Simpall,
Sancoale, P.O. Cortalim, Goa.

5. Smt. Shobhadevi Ashok Naik

6. Shri Kalidas Narayan Naik

7. Smt. Kanchani Kalidas Naik

8. Shri Ramakant Narayan Naik

8a) Sunita Ramakant Naik

(wife of Respondent No.8)
(Legal heir of Respondent No.8).
All residing at Sancoale,
Mormugao, Goa.
9. Shri Giriraj Rama Naik
10.Smt. Rakhi G. Naik
11.Smt. Rati R. Naik
All residing at Villant,
Cortalim Goa.
12.Shri Ramakant Shivram Naik
13.Smt. Shakuntala Ramakant Naik
Both residing at Fondchem Bhat,
Savoi Verem, Ponda Goa.
14.Shri Shekhar Ramakant Naik,
Residing at H.No.241, Ponochebhat
Volvoi, P.O. Savoi-Verem, Ponda Goa.
15.Shri Devendra Kantak Naik
16.Smt. Dipti Devendra Naik
Both residing at H.No.81/C, Moula,
Batim Goa, Velha Goa.
17.Shri Sonu Ramnath Naik
18.Smt. Shraddha Sonu Naik
Both residing at H.No.656,
Karebhat, Vidhyanager,
Margao Goa.
19.Shri Raghuvir Pandurang Shirodkar
20.Smt. Jostna Raghuvir Shirodkar
Both residing at Lau-Kush Apartment,
Devulvadda, Marcela Goa.
21.Shri Anand Vasudev Naik
22.Smt. Anisha Anand Naik
Both residing at H.No.69,
Mauzavadda, Kundaim, Ponda Goa.
23.Smt. Suparna alias Teja S. Naik,
24.Shri Subhash P. Naik,
Both residing at Betim
Bardez Goa.
25.Smt. Vimilabai R. Naik

26.Shri Mukund R. Naik

27.Smt. Savitri M. Naik

All residing at Kas Qeula

Ponda Goa.

The deceased Respondent No.27 has left
behind the following legal representative: -

(a) Gajanan Mukund Naik

Resident of Kasswada Talaulim,

Ponda Goa.

28.Shri Jaiwant R. Naik and his wife

29.Smt. Nilima Jayant Naik

30.Shri Shashikant R. Naik

All residing near Narayan Temple,

Savoi-Verem, Ponda Goa.

The deceased Respondent No.30 has left
behind the following two daughters as the legal
representatives:

(a) Nima alias Nirmala Shashikant Naik,

(b) Gautami Shashikant Naik,

(c) Navneeta Shashikant Naik,

Both r/o H.No.559, Kulanwada,

Savoiverem, Ponda Goa.

31.Shri Shrikant P. Kossambe

(a) Uday Shrikant Kossambe (son), unmarried,

H.No.358, Sindolim, Sancoale,

P.O. Cortalim Goa 403 710

(b) Priti Kuldeep Kamat (daughter)

(c) Kuldeep Ashok Kamat (son-in-law)

Both residing at H.No.243,

Gathanwada, Near Ozari Panchayat,

Pernem Goa 403 513.

32.Smt. Vassanti S. Kossambe

Both residing at Xiondolem,

Sancoale Goa.

33.Smt. Kunda Gajanan Keni

34.Shri Amit Gajanan Keni

Both residing at Cortalim Goa.

35.Smt. Shoban R. Bhat and her husband

36. Shri Ramnath R. Bhat
Both residing at Rivona Goa.
37. Smt. Suhasini A. Salelkar
38. Shri Anant V. Salelkar
Both residing near Lake
Vaddem, Vasco da Gama Goa.
39. Smt. Sulaksha P. Hede,
and her husband
40. Raju M. Hede,
Both residing at Ambika
Aquem, Alto, Margao Goa.
41. Kum. Rekha P. Kossambe
42. Kum. Sunita P. Kossambe
43. Kum. Nirmala P. Kossambe
All residing at Xindolem,
Sancoale Goa.

.....Respondents

Mr D. Lawande, Mr Parikshit Sawant and Mr Jay Mathew, Advocates for the Appellants.

Mr V. P. Thali, Mr Rasik Borkar and Mr Rajdeep Prabhugaonkar, Advocates for Respondent Nos. 31 to 43.

CORAM: M. S. SONAK, J.

Reserved on : 25th APRIL 2024

Pronounced on: 29th APRIL 2024

JUDGMENT

1. Heard Mr D. Lawande who appears along with Mr Parikshit Sawant for the Appellants and Mr V. P. Thali for Respondent Nos. 31 to 43. Ms S. Kenny states that she used to appear earlier for Respondent Nos. 1 to 22 but has now withdrawn her appearance after giving due notice to the Respondents.

2. The learned counsel for the parties agree that a common judgment and order can dispose of these Second Appeals. Even otherwise, both these Second Appeals are directed against the common judgment and decree dated 31.07.2008 made by the District Judge-3, Margao Goa, allowing the Regular Civil Appeal No. 60/2007 and dismissing Regular Civil Appeal No.65/2007. Regular Civil Appeal Nos.60/2007 and 65/2007 were directed against the judgment and decree dated 24.08.2007 made by the Civil Judge Senior Division at Vasco in Special Civil Suit No.134/78/A. Accordingly, for all these reasons, it is only appropriate that a common judgment and order dispose of these two appeals.

3. Both these appeals had been dismissed by the learned Single Judge (R. M. Savant, J) vide judgment and order dated 16.12.2009 on the ground that there was no error in the finding of the fact recorded by the First Appellate Court about Special Civil Suit No.134/78/A being barred by limitation. The First Appellate Court had reasoned that the Appellants/plaintiffs had knowledge of Mamlatdar's order dated 03.02.1972, which was sought to be nullified on or about 17.06.1974. Therefore, the suit, which was instituted on 26.08.1978, was barred by law of limitation. This Court's order dated 16.12.2009 upheld this finding and agreed with the First Appellate Court that the Appellants/plaintiffs' suit was barred by limitation. However, the Appellants' contention based on Section 14 of the Limitation Act was not even addressed.

4. The Appellants/plaintiffs appealed to the Hon'ble Supreme Court vide Civil Appeal Nos. 8455 and 8456 of 2014. By judgment and order dated 02.09.2014, both these appeals were allowed, and this Court's judgment and order dated 16.12.2009, dismissing these two Second Appeals, was set aside. This Court remanded the matter to decide the two appeals afresh by considering the Appellants/plaintiffs' plea based on Section 14 of the Limitation Act, 1963.

5. The operative portion of the Hon'ble Supreme Court's order in Civil Appeals Nos. 8455 and 8456 of 2014 are transcribed below for the convenience of reference.

“Having considered the submissions advanced on behalf of the parties and noticing the discussions of the learned trial Court in Para 48 of its judgment on Additional Issue No.4, we are of the view that the High Court ought to have considered the entitlement, if any, of the plaintiffs to the benefit under Section 14 of the Limitation Act, 1963 before holding the suit filed by them to be barred by limitation. We do not find any discussion whatsoever on the facts noticed by us hereinabove in the light of the provisions of Section 14 of the Limitation Act. In the absence of such consideration, the ultimate conclusion of the High Court that the suit of the plaintiffs was barred by limitation is not acceptable. We, therefore, do not consider it necessary to go into any of the other issues that have been raised before us by the learned counsel for the respondents including the issue with regard to the maintainability of the suit

in view of the provisions of the Tenancy Act. This is for the High Court to consider if the issue of limitation is to be decided in favour of the appellants/ plaintiffs.

We, therefore, set aside the order of the High Court dated 16th December, 2009 and request the High Court to decide the issue of limitation in the light of what has been held by us above. We make it clear that we have not expressed any opinion whatsoever with regard to the entitlement of the appellants – plaintiffs to the benefit of the provisions of Section 14 of the Limitation Act, 1963 and the said issue would naturally be decided by the High Court on its own merits. Consequently and in the light of the aforesaid discussion, these appeals are allowed to the extent indicated above.

*.....,J.
(RANJAN GOGOI)
.....,J.
(R.K. AGRAWAL)*

*NEW DELHI
SEPTEMBER 02, 2014”*

6. After remand, another learned Single Judge of this Court (R. M. Borde, J.), by his order dated 27.11.2014, admitted these two Second Appeals on the following substantial questions of law:-

(1) Whether the plaintiffs are entitled to claim benefit under Section 14 of the Limitation Act, 1963 for the purposes of bringing the suit within the prescribed period of limitation i.e. while computing the period of limitation for the suit, the time during which the plaintiffs have been

prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendants is liable to be excluded where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it ?

(2) Whether the objection of maintainability of the suit in view of the provisions of Tenancy Act is sustainable ?

7. Mr Lawande, learned counsel for the Appellants, submitted that by judgment and decree dated 24.06.1970 in Civil Suit No.10/1968, the Appellants/plaintiffs had been declared as joint owners of the suit property along with defendant No.1, i.e. Purushottam V. Kossambe (since deceased through his legal representatives). Therefore, the Appellants/plaintiffs on 08.07.1976 filed C.M.A. No.6/1976 for recovery/restoration of the suit property from the first defendant. By order dated 07.08.1976, the executing Court directed the first defendant to hand over the possession of the suit property to the Appellants/plaintiffs, for which he was appointed Court receiver. Since there was some issue about handing over possession, the Appellants/plaintiffs filed another C.M.A. No.9/1976 for recovery/restoration of possession on 24.09.1976. On 20.12.1976, the first defendant applied to the executing Court for providing the service of bailiff to enable the handing over of possession of the suit property to the Appellants/plaintiffs, hinting that the second defendant was obstructing the

handing over. Accordingly, notice was issued to the second defendant, who filed a reply on 11.04.1977, producing a copy of Mamlatdar's order dated 03.02.1972. In terms of this order, the second defendant obtained an order to restore possession of the suit property against the first defendant.

8. Mr Lawande submits that the executing Court dismissed C.M.A. No.9/1976 on 01.02.1978 by observing that there were serious questions of law and fact that could not be adjudicated in execution proceedings but could conveniently be considered in a fresh suit after a full trial. Thus, Mr Lawande submits that the execution proceedings were disposed of with liberty to the Appellants/plaintiffs to institute a fresh suit.

9. Mr Lawande submits that on 24.04.1978, the Appellants/plaintiffs applied for leave to file a fresh suit because the first defendant had been appointed as the Court receiver. Such leave was granted on 19.06.1978, and Special Civil Suit No.134/1978/A was instituted on 26.08.1978 for recovery of possession and a declaration that the order dated 03.02.1972 made by the Mamlatdar was null and void and not binding on the Appellants/plaintiffs.

10. Mr Lawande submitted that even if it were accepted without prejudice that the Appellants/plaintiffs obtained knowledge of the Mamlatdar's order dated 03.02.1972 on or before 17.06.1974 in the mutation proceedings, still, the period of limitation to institute suit for recovery of possession and to declare the Mamlatdar's order dated

03.02.1972 a nullity would expire on 16.06.1977. Mr Lawande submits that for the period between 08.07.1976 and 19.06.1978, the Appellants/plaintiffs were before the executing Court diligently pursuing the issue of recovery of possession of the suit property. He submitted that during this time, the first defendant possessed the suit property as a Court receiver. Accordingly, in terms of the provisions of Section 14 of the Limitation Act, the period between 08.07.1976 and 19.06.1978, i.e. the period of almost two years, had to be excluded from the three-year limitation period set up as a bar in the suit by the defendants. He submitted that even though this plea was specifically raised before the First Appellate Court, the same was not even considered by the First Appellate Court. He relied on *M. P. Steel Corporation Vs Commissioner of Central Excise*¹ to explain the scope of Section 14 of the Limitation Act, 1963 and, based upon the same, urged that the first substantial question of law be answered favouring the Appellants/plaintiffs.

11. Mr Lawande submitted that since it was the Appellants/plaintiffs' case that the Mamlatdar's order dated 03.02.1972 was null and void or nullity, a suit was very much maintainable to obtain a declaration of nullity or to set aside the Mamlatdar's order notwithstanding the provisions of Section 58(2) of the unamended Tenancy Act or Section 58B of the Amended Tenancy Act. He submitted that contrary view by the First Appellate Court conflicts with law as explained by the Hon'ble Supreme

¹ (2015) 7 SCC 58

Court in *Firm Seth Radha Kishan (deceased) represented by Hari Kishan and others Vs Administrator, Municipal Committee, Ludhiana*², *Dhulabhai Vs State of Madhya Pradesh and Another*³, *The Premier Automobiles Ltd. Vs Kamlekar Shantaram Wadke of Bombay and others*⁴ and *Shiv Kumar Chadha Vs Municipal Corporation of Delhi and others*⁵.

12. Mr Lawande submitted that the Appellants/plaintiffs were not impleaded as parties by the second defendant before the Mamlatdar. He submitted that only the first defendant was impleaded as a party to these proceedings. He submitted that the first defendant had instituted Civil Suit No.10/1968 against the Appellants/plaintiffs, in which the Civil Court had declared the Appellants/plaintiffs and the first defendant as joint owners of the suit property. Thus, the first defendant had full knowledge of the Appellants/plaintiffs' status as joint owners of the suit property, but the Mamlatdar suppressed this fact.

13. Mr Lawande submitted that even the second defendant was a witness on behalf of the first defendant in Civil Suit No.10/1968. His deposition is on record on page 560 of the paper book. In his deposition, the second defendant had deposed that the Appellants/plaintiffs and the first defendant were living together and enjoying the suit property together. Therefore, he

² 1963 SCC OnLine SC 138

³ (1968) 22 STC 416

⁴ (1976) 1 SCC 496

⁵ (1993) 3 SCC 161

deposed that the suit property was the family property of the Appellants/plaintiffs and the first defendant. Despite this deposition on oath, the second defendant chose not to implead the Appellants/plaintiffs as parties before the Mamlatdar. Mr Lawande submitted that the first and second defendants, by practising fraud on the Mamlatdar and in any case, without even impleading the Appellants/plaintiffs as parties to the proceedings before the Mamlatdar obtained an order dated 03.02.1972. He submitted that such an order, in complete breach of principles of natural justice and fair play, not to mention fraud, was null and void and constituted a nullity. Mr Lawande submitted that in such circumstances, a civil suit was very much maintainable for setting aside Mamlatdar's order dated 03.02.1972 as a nullity. He relied on the *State Bank of Patiala and others Vs S. K. Sharma*⁶ and *Ram Kumar Vs State of Uttar Pradesh and others*⁷ to support these contentions.

14. Based on the above contentions, Mr Lawande submitted that both the substantial questions of law deserve to be answered favouring the Appellants/plaintiffs. He submitted that the impugned judgment and decree made by the First Appellate Court may, therefore, be set aside and the trial Court's judgment and decree restored.

15. Respondent Nos. 1 to 22, whom Ms Kenny earlier represented, have not chosen to appear, though they have been duly served in the matter. This

⁶ (1996) 3 SCC 364

⁷ Civil Appeal No.4258 of 2022 decided by the Hon'ble SC on 28.09.2022

matter was remanded by the Hon'ble Supreme Court on 02.09.2014. On 14.09.2023, this Court ordered that these appeals be posted for final hearing on 07.12.2023 since they pertain to the year 2009. It was directed that these matters should remain on board until they are finally disposed of. On 19.04.2024, there was no appearance on behalf of either the Appellants or the Respondents and therefore, the matters were stood over to 25.04.2024. On 25.04.2024, Mr Lawande appeared for the Appellants and Mr Thali for some of the Respondents, i.e. legal representatives of the original first defendant in the Special Civil Suit No.134/1978/A.

16. Accordingly, this Court will have to proceed on the basis that the representatives of the second defendant in the suit adopt and stand by reasoning adopted by the First Appellate Court for holding that the Special Civil Suit No.134/1978/A was barred by limitation and in any case, was not maintainable given the provisions of Section 58(2) or 58B of the Goa Agricultural Tenancy Act. It was based on these two contentions that the First Appellate Court was persuaded to allow the appeal and set aside the trial Court's judgment and decree dated 24.08.2007, decreeing the Appellants/plaintiffs' suit and declaring the Mamlatdar's order dated 03.02.1972 as a nullity.

17. These second appeals arise out of Special Civil Suit No.134/1978/A instituted by the Appellants/plaintiffs against Respondents 1 to 22 (original defendant no. 2 or his representatives) and Respondents 31 to 43 (original

Defendant no 1 or his representatives). The suit was to, inter alia, declare Mamlatdar's order dated 03.02.1972 a nullity because it was made without impleading the Appellants/plaintiffs, fraudulently and by the two defendants colluding with each other. Therefore, to the extent possible, the parties are referred to by their description in the suit.

18. The trial Court decreed the Special Civil Suit No.134/1978/A, and the Mamlatdar's order dated 03.02.1972 was declared a nullity. But the First Appellate Court, by the impugned judgment and decree dated 31.07.2008, reversed the trial Court, holding that the suit was barred by limitation because the Appellants/plaintiffs knew about the Mamlatdar's order dated 03.02.1972 on or about 17.06.1974 and the suit was instituted only on 26.08.1978. The First Appellate Court also held that the civil court lacked jurisdiction to set aside Mamlatdar's orders under the Goa Agricultural Tenancy Act, given the provisions of Section 58(2). Still, surprisingly, despite such findings, the matter was remanded to the trial Court. Hence these second appeals on the above substantial questions of law.

19. The first substantial question of law coupled with the Hon'ble Supreme Court's remand order dated 02.09.2014, requires this Court to consider whether the Appellants/plaintiffs, in the present case, are entitled to the benefit of provisions of Section 14 of the Limitation Act, 1963.

20. Section 14 of the Limitation Act, 1963 reads as follows:

14. Exclusion of time of proceeding bona fide in Court without jurisdiction. — (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation. — For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

21. To determine whether the Appellants/plaintiffs are entitled to the benefit of Section 14 of the Limitation Act, reference becomes necessary to the chronology of dates and events, which are mainly a matter of record:

- (i) On 29.01.1968 - the first defendant instituted Civil Suit No.10/1968 (first suit) before the trial Court, claiming a declaration that he was the exclusive owner of the suit property and an injunction against the Appellants/plaintiffs from interfering with the suit property. The first defendant was appointed as a Court receiver in this suit vide order dated 09.05.1968 (the order is on pages 560-561 of the paper book);
- (ii) On 24.06.1970 – the trial Court dismissed Civil Suit No.10/1968, holding that the **Appellants/plaintiffs and the first defendant were the joint owners of the suit property** and, therefore, neither any declaration of exclusive ownership nor any injunction could be granted to the first defendant (this judgment and decree is at pages 497 – 506 of the paper book);
- (iii) On 27.11.1971 – the second defendant filed an application under the Goa Agricultural Tenancy Act, 1971, for recovery of possession of the suit property from the first defendant by claiming agricultural

tenancy of the suit property. **Significantly, the Appellants/plaintiffs were not impleaded as parties to these proceedings.** (This application made before the Mamlatdar is on pages 514-515 of the paper book);

- (iv) On 03.02.1972 – the Mamlatdar declared the second defendant as a tenant of the suit property and directed the first defendant to restore the possession of the suit property to the second defendant. (This Mamlatdar's order is on pages 525-528 of the paper book);
- (v) On 18.07.1972 – the first defendant appealed the judgment and decree dated 24.06.1970, made in Civil Suit No.10/1968. (This appeal memo is on pages 507-512 of the paper book);
- (vi) On 28.08.1972 – the First Appellate Court dismissed the first defendant's appeal against the judgment and decree dated 24.06.1970 in Civil Suit No.10/1968.
- (vii) On 05.02.1975 – this Court dismissed the Second Appeal against the First Appellate Court's judgment and decree dated 28.08.1972. (This judgment and order is on pages 493-495 of the paper book);

Note:

- (a) Thus, the finding in Civil Suit No.10/1968 about the Appellants/plaintiffs and the first defendant being joint owners of the suit property attains finality;
- (b) Neither in the First Appeal nor in the Second Appeal did the first defendant disclose the litigation with the second defendant and Mamlatdar's order dated 03.02.1972.
- (viii) On 08.07.1976, the Appellants/plaintiffs filed an application for recovery/restoration of the suit property from the first defendant who was holding on to the suit property as Court receiver (this application was numbered C.M.A. No.6/1976 and was filed before the Civil Court/executing Court, and is on pages 530-532 of the paper book);
- (ix) On 07.08.1976 – the Civil Court/executing Court disposed of the C.M.A. No.6/1976 by directing the first defendant to hand over the possession of the suit property to the Appellants/plaintiffs. (This order is on pages 532-533 of the paper book);
- (x) On 24.09.1976 – the Appellants/plaintiffs filed C.M.A. No.9/1976 before the Civil Court/executing Court because despite the order

dated 07.08.1976, the possession was not being restored to the Appellants/plaintiffs;

- (xi) On 20.12.1976 – the first defendant applied to the Civil Court/executing Court for service of bailiff to hand over the possession of the suit property to the Appellants/plaintiffs. In this application, for the first time, the first defendant stated that the second defendant was obstructing to handover of the possession of the suit property to the Appellants/plaintiffs. (This application is on pages 534-535 of the paper book);
- (xii) On 10.01.1977 – the Civil Court/executing Court issued notice to the second defendant upon considering the plea advanced by the first defendant. (This notice is on pages 558-559 of the paper book).
- (xiii) On 11.04.1977 – the second defendant replies to the Appellants/plaintiffs' C.M.A. No.9/1976 and produces a copy of the Mamlatdar order dated 03.02.1972 by which the Mamlatdar had directed the first defendant to restore the possession of the suit property to the second defendant. (This reply is on pages 546-550 of the paper book);
- (xiv) On 01.02.1978 – the Civil Court/executing Court disposes of the Appellants/plaintiffs' C.M.A. No.9/1976 by observing that there are serious questions of law and the fact involved which could not be

gone into in the execution proceedings. The Civil Court/executing Court opined that the resolution of such an issue would require a full trial, and therefore, such a question could be resolved by instituting a fresh suit. (This order is on pages 551-556 of the paper book);

- (xv) On 24.04.1978 – the Appellants/plaintiffs applied for leave to the Civil Court to institute a suit, inter alia, against the first defendant because the first defendant had continued as a Court receiver of the suit property. (This application is on page 557 of the paper book);
- (xvi) On 19.06.1978 – the Civil Court granted leave to institute suit inter alia against the first defendant, a Court receiver in respect of the suit property. (This order is also on page 557 of the paper book);
- (xvii) On 26.08.1978 – the Appellants/plaintiffs instituted Special Civil Suit No.134/1978/A inter alia against the first and second defendants seeking recovery of possession of the suit property and declaration that Mamlatdar's order dated 03.02.1972 was a nullity and not binding on the Appellants/plaintiffs.

22. The trial Court partly decreed the suit by its judgment and decree dated 24.08.2007. The operative portion of the trial Court's judgment and decree dated 24.08.2007 reads as follows: -

“ORDER

The suit stands partly decreed with costs. Consequently, it is declared that the order dated 3.2.1972 passed in MAG/CP/2/71 of the Court of Mamlatdar of Mormugao is declared as null and void and not binding on the plaintiffs.

Consequently, the LRs., of defendant no. 2 are ordered to deliver possession of the suit property under registration no. 15876, 31322 (new) 6157 (old) 19588 (new), 15877, 15878, 3385 (new), 3385 (new) and 15879 (new) of the Land Registration Office, Margao and bearing survey no. 46/1 (part) and 64/4, (part) to the plaintiffs and LRs., of defendant no. 1 respectively being co-owners of the suit property.

The LRs., of defendant no. 2, their agents, servants etc. are permanently restrained from interfering with the suit property bearing survey no. 46/1 (part), 47/1 (part), 64/4 (part), and 65/2 of Sancoale Village.

The LRs., of defendant no. 2 are also directed to pay a sum of Rs. 5000/- (Rupees Five Thousand Only) per annum to the plaintiffs and defendant no. 1 as mesne profit/rents from the date of filing of the suit till its recovery.

Decree to be drawn accordingly.”

23. The second defendant, or rather the legal representatives of the second defendant, instituted Regular Civil Appeal No.60/2007, and the Appellants/plaintiffs instituted Regular Civil Appeal No.65/2007 to challenge the trial Court's common judgment and decree dated 24.08.2007. By the impugned common judgment and decree dated 31.07.2008, the First Appellate Court allowed the Regular Civil Appeal No.60/2007, set aside the impugned decree and remanded the matter to the trial Court. The Regular Civil Appeal No.65/2007 was also disposed of as infructuous.

24. Though the First Appellate Court remanded the suit to the trial Court, it also recorded a finding that the Special Civil Suit No.134/1978/A was barred by limitation because the Appellants/plaintiffs had knowledge of Mamlatdar's order dated 03.02.1972 on or about 17.06.1974 when such order was made the basis for mutation proceedings in which notices were issued to the Appellants/plaintiffs. The First Appellate Court reasoned that the limitation would, therefore, commence from 17.06.1974, and the Special Civil Suit No.134/1978/A, which was admittedly instituted on 26.08.1978, was barred by limitation.

25. If the finding of the First Appellate Court about the Appellants/plaintiffs having knowledge of Mamlatdar's order dated 03.02.1972 on 17.06.1974 is accepted as correct, then the limitation period for setting aside the Mamlatdar's order would conclude on 16.06.1977. Mr

Lawande has, however, contended that the period between 08.07.1976, when the Appellants/plaintiffs applied to the Civil Court/executing Court for restoration of possession of the suit property and on 19.06.1978 or at least 01.02.1978 should be excluded under Section 14 of the Limitation Act because the Appellants/plaintiffs were bonafide pursuing the civil proceedings before the Civil Court/executing Court for the same relief. The Hon'ble Supreme Court, in its remand order, has also directed this Court to consider the applicability of Section 14 of the Limitation Act in the facts and circumstances of the present case.

26. From the chronology of dates and events referred to above, it is apparent that the Appellants/plaintiffs diligently pursued their rights to the suit property. By judgment and decree dated 24.06.1970 in Civil Suit No.10/1968, the Appellants/plaintiffs were adjudged joint owners of the suit property. On 08.07.1976, the Appellants/plaintiffs applied for restoration of the suit property to them based on the judgment and decree dated 24.06.1970 in Civil Suit No.10/1968. This was followed by yet another application for the same relief on 24.09.1976. The execution proceedings were disposed of by the Civil Court/executing Court on 01.02.1978 by holding that the complicated questions of law and fact can be adjudicated in the fresh suit. Since the first defendant was a Court receiver, the Appellants/plaintiffs immediately, i.e. on 24.04.1978, applied for leave to file suit, inter alia, against the Court receiver. Such leave was

granted on 19.06.1978, and Special Civil Suit No.134/1978/A was instituted on 26.08.1978.

27. The above facts amply establish that the Appellants/plaintiffs had been prosecuting with due diligence another civil proceeding in the Court of the first instance against the first and second defendants. Such civil proceedings related to the same matter were prosecuted in good faith before the Civil Court/executing Court, which ultimately opined that it could not entertain it. Therefore, without any decision on merits, the civil court/executing court disposed of the civil proceedings instituted by the Appellants/plaintiffs, leaving it open for them to institute a fresh suit.

28. Thus, the Appellants/plaintiffs have satisfied all the ingredients prescribed in Section 14 of the Limitation Act. Accordingly, there is no good reason why the Appellants/plaintiffs should not be granted the benefit of Section 14 of the Limitation Act and the period between 08.07.1976 and 19.06.1978 excluded for computing the period of limitation to institute the Special Civil Suit No.134/1978/A.

29. Even if the period between 24.09.1976, i.e. the date on which the C.M.A. No.9/1976 was filed, and 01.02.1978, i.e. the date on which this C.M.A. was disposed of by the Civil Court/executing Court is excluded, Special Civil Suit No.134/1978/A is well within the prescribed period of limitation of three years. However, the facts and circumstances of the present case justify the exclusion of the period between 08.07.1976 and

19.06.1978 because this is the precise period during which the Appellants/plaintiffs were prosecuting with due diligence and in good faith the civil proceedings against the defendants relating to the same matter in issue.

30. In *M. P. Steel Corporation* (supra), after considering its earlier precedents, the Hon'ble Supreme Court has held that Section 14 of the Limitation Act should be liberally construed to advance the cause of justice. Even the expression “court” should be liberally construed to include quasi-judicial Tribunals within it. *This is for the very good reason that the principle of Section 14 is that whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalised for no fault of his own.*

31. The Hon'ble Supreme Court has also held that the expression “civil proceedings” referred to in Section 14 may be filed before other courts or authorities, which ultimately do not answer the case on merits but throw it out on some technical ground. The Court held that obviously the word “court” in Section 14 takes its colour from the preceding words “civil proceedings”. *The Court held that Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only*

in courts stricto sensu. This is made even clearer by the explicit language of Section 14, which states that a civil proceeding can even be a revision, which may be to a quasi-judicial tribunal under a particular statute.

32. The policy of Section 14 of the Limitation Act is to afford protection against the bar of limitation of a person honestly doing his best to get his case tried on the merits but failing through the Court being unable to give him such a trial. [See *Mathura Singh Vs Bhawani Singh (1900) ILR 22 All 248 (FB)*]. The section aims to protect a bona fide plaintiff from the consequences of the mistake of his advisors in prosecuting his claim. *The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding.*

33. Various Courts have held that what is necessary is the absence of negligence or inaction. *So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case.* (See *M. P. Steel Corporation (supra)*). In such a case, the litigant is given the right to exclude the time spent over the infructuous proceedings and it is not a matter for the Court's discretion. (See *Firm Bansi Dhar etc. Vs Firm Alopri Parshad, AIR 1963 Punj 556*).

This section provides for the extension of limitation. The period provided under this section is to be added to the period prescribed in the Article of the Schedule. [See *Bhagwan Swarup Vs Municipal Board, AIR 1970 All 652 (FB)*].

34. In the present case, the Appellants/plaintiffs had applied to the Civil Court/executing Court for the relief of restoration of the possession of the suit property based upon the Civil Court's decree dated 24.06.1970 in Civil Suit No.10/1968. In C.M.A. No.9/1976 instituted by the Appellants/plaintiffs, notice was issued to the second defendant because the first defendant claimed that the second defendant was obstructing him to restore the suit property to the Appellants/plaintiffs. Thus, the defendants were parties to C.M.A. No.9/1976 instituted before the Civil Court/executing Court. Ultimately, the Civil Court/executing Court disposed of the C.M.A. No.9/1976, not on merits but on a technical plea that the matter would require a full-fledged trial and, therefore, the institution of the fresh suit would be appropriate. The subject matter of C.M.A. No.9/1976 or earlier C.M.A. No.6/1976 was also the subject matter of the Special Civil Suit No.134/1978/A.

35. Thus, considering the provisions of Section 14 of the Limitation Act and the decision of the Hon'ble Supreme Court in *M. P. Steel Corporation* (supra), the Appellants/plaintiffs were certainly entitled to exclude the period spent by them before the Civil Court/executing Court for

computing the period of limitation to institute Special Civil Suit No.134/1978/A. Therefore, the first substantial question of law has to be answered favouring the Appellants/plaintiffs.

36. Regarding the second substantial question of law involved in the present Second Appeals, reference at the outset is necessary to the provisions of Section 58(2) of the Goa Agricultural Tenancy Act before its amendment. This provision reads as follows: -

“58(2) 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 this Act shall be questioned in any Civil or Criminal Court:”

37. Similarly, the reference is also made by way of abundant caution to the provisions of Section 58B of the Goa Agricultural Tenancy Act, as amended in 2017. Section 58B reads as follows:

“58B. Bar to jurisdiction of Courts. — 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, Administrative Tribunal or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.”

38. Thus, there is no significant difference between the provisions of Section 58(2) - unamended and Section 58B – after amendment. The provision states that save as provided under the Goa Agricultural Tenancy 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, Administrative Tribunal or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court.

39. Based on the above provision, the First Appellate Court held that the Civil Court would not have jurisdiction to set aside the Mamlatdar's order dated 03.02.1972, which was made under the provisions of the Goa Agricultural Tenancy Act, declaring the second defendant a tenant of the suit property and directing restoration of the suit property to him and, after him, his legal representatives. If the Appellants/plaintiffs were to challenge the Mamlatdar's order on merits, the First Appellate Court would be correct. But, the Appellants/plaintiffs' challenge was not on merits, as discussed hereafter.

40. The Appellants/plaintiffs, in this case, did not challenge Mamlatdar's order dated 03.02.1972 on merits. Their contention was that they were not even made parties to the proceedings in which Mamlatdar made an order dated 03.02.1972. Their contention was that defendant Nos. 1 and 2 colluded with each other, suppressed the factum of judgment and decree

dated 24.06.1970 in the Civil Suit No.10/1968 in which the Appellants/plaintiffs had been declared as joint owners along with the first defendant and based upon such vital suppression obtained order dated 03.02.1972 from the Mamlatdar. Accordingly, the Appellants/plaintiffs' contention was that the Mamlatdar's order dated 03.02.1972 was not made in conformity with the fundamental principles of judicial procedure and that the same was a product of collusion and fraud that was practised on the Mamlatdar.

41. Admittedly, the second defendant chose not to implead the Appellants/plaintiffs as parties to the proceedings before the Mamlatdar. This omission was far from bonafide. Mr Lawande referred to the deposition of Narayan R. Naik (defendant no.2) in Civil Suit No.10/1968, which was instituted by the first defendant against the Appellants/plaintiffs in relation to the dispute of ownership of the suit property.

42. Defendant No.2- Narayan Naik, in his cross-examination, stated as follows:-

*“Cross Examination: I don't know how much property the plaintiff and defendants are having at Sancoale. I also don't know which property belongs to the plaintiff and which belong to the family. The property consists of Mango trees, Cashew trees etc belongs to the family but to me it was given by plaintiff. **The plaintiff and defendants were living together and enjoying the***

family property together, so I can say the property was of the family i.e. plaintiff and defendants.”

43. Thus, the second defendant had deposed in the 1968 suit about the Appellants/plaintiffs and the first defendant living together and enjoying family property together. He has deposed that the suit property was the family property of the Appellants/plaintiffs and the first defendant. After such an admission, there was no justification for the second defendant to file proceedings before the Mamlatdar seeking a declaration of the tenancy and restoration of the property by impleading only the first defendant and excluding the Appellants/plaintiffs. This is not the case where the second defendant could claim that he was unaware of the ownership status of the Appellants/plaintiffs qua the suit property.

44. In any case, even the first defendant, who had suffered a decree in Civil Suit No.10/1968, was duty bound to disclose this fact to the Mamlatdar and insist upon the impleadment of the Appellants/plaintiffs in the proceedings instituted by the second defendant. For reasons best known, the first defendant suppressed the fact that the Appellants/plaintiffs were also joint owners of the suit property and allowed the Mamlatdar to pass the order dated 03.02.1972 declaring the second defendant as a tenant of the suit property.

45. The above circumstances more than amply establish that Mamlatdar's order dated 03.02.1972 was obtained by fraud practised on

him by the first and second defendants in the suit. In any case, Mamlatdar's order was without any notice to the Appellants/plaintiffs, who were adjudged joint owners of the suit property before the defendants obtained the order dated 03.02.1972, to the knowledge of both the defendants. Thus, there was a breach of natural justice, which is acknowledged as one of the fundamental principles of judicial procedure.

46. In *Dhulabhai* (supra), the Constitution Bench discussed the scope and import of clauses in the statute, excluding jurisdiction in the Civil Court. In this regard, the Constitution Bench held that such provisions do not exclude cases where the provisions of the particular Act have not been complied with, or *the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure*.

47. Admittedly, the order dated 03.02.1972 was made by the Mamlatdar in the proceedings to which the Appellants/plaintiffs were not even parties. A decree declaring that the Appellants are the joint owners of the suit property had attained finality. Thus, Mamlatdar's order dated 03.02.1972 was an order made without any notice to the Appellants/plaintiffs who were necessary parties. The Mamlatdar's order dated 03.02.1972 is thus an order made in breach of the principles of natural justice and fair play, which every judicial or quasi-judicial tribunal has to comply with essentially. Such an order cannot be said to be conforming with the fundamental principles of

judicial procedure. A civil suit was, therefore, not excluded, as explained in *Dhulabhai (Supra)*.

48. In *State Bank of Patiala and others (supra)*, the Hon'ble Supreme Court has explained that where an order is made without any opportunity, as opposed to an order being made without adequate opportunity or where a case relates to "no notice"/ "no hearing" and not merely "no fair hearing", such an order in the former case would undoubtedly be invalid (one may call it void or a nullity if one chooses to).

49. Thus, an order made without any notice can be styled as a null and void order or a nullity. A civil suit would always be maintainable to obtain a declaration that an order made without notice or in breach of the principles of natural justice and fair play is indeed a nullity. Such an order can hardly be regarded as the order made under the provisions of the Goa Agricultural Tenancy Act or at least an order made in conformity with the fundamental principles of judicial procedure.

50. In *Shiv Kumar Chadha (supra)*, the Hon'ble Supreme Court was dealing with clauses in a statute ousting the jurisdiction of the Civil Court. In that context, the Hon'ble Supreme Court observed that where "jurisdictional error" on the part of the Corporation is established, a suit would be maintainable. The Court held that *if the order made by the Corporation is a nullity in the eyes of law then a civil suit would be maintainable notwithstanding ouster clauses in the statute.*

51. In *Ram Kumar Vs State of UP* (supra), the Allahabad High Court allowed the writ petition filed by Respondent No.9 and set aside the Deputy Collector's order dated 18.11.2017 cancelling the fair price shop licence that had earlier been granted to Respondent No.9. On appeal, the Hon'ble Supreme Court found that the ninth Respondent had suppressed the fact that after cancellation of his licence, fair price shop had been allotted to some third party. The Hon'ble Supreme Court found that the ninth Respondent was very much aware of this allotment but suppressed this fact from the High Court. *In such circumstances, the Hon'ble Supreme Court, after referring to its decision in S. P. Chengalvaraya Naidu (Dead) by Lrs. Vs Jagannath (Dead) by Lrs and others*⁸ held that non-disclosure of the relevant and material documents with a view to obtaining an undue advantage would amount to fraud. It was held that the judgment or decree obtained by fraud would be treated as a nullity. The Hon'ble Supreme Court found that the ninth Respondent had suppressed a material fact and tried to mislead the High Court. Accordingly, the High Court's order favouring the ninth Respondent was set aside, and the ninth Respondent's writ petition was dismissed.

52. In *Husein Miya Dosumiya Vs Chandubhai Jethabhai and Another*⁹, the issue before the Division Bench of the Bombay High Court (Chagla, C. J. and Dixit, J) was whether the suit was maintainable to

⁸ (1994) 1 SCC 1

⁹ AIR 1954 Bombay 239

challenge the Mamlatdar's order under the Bombay Tenancy and Agricultural Lands Act, inter alia on the ground that it was ultra vires and a nullity. Section 85(2) of the Bombay Tenancy and Agricultural Lands Act provided that no order of Mamlatdar or any of the authority under the Tenancy Act shall be questioned in any civil or criminal Court.

53. The Division Bench of the Bombay High Court, after considering the provisions of Section 85(2), which are almost similar to the provisions of Section 58(2) of the Goa Agricultural Tenancy Act, held that the jurisdiction of the civil Court could be ousted only in respect of valid orders made by the Mamlatdar. When the Mamlatdar makes an order within the jurisdiction or, in other words, makes an order for the purposes of the Act or an order required by the Act, such an order cannot be questioned in a civil Court. *However, if Mamlatdar's order is not for the purposes of the Act or not required by the Act and the order is incompetent or ultra vires, then the order is a nullity, and it can be challenged in a civil Court.*

54. The Division Bench rejected the argument that since an appeal was provided against Mamlatdar's order, the Civil Court would lack jurisdiction to entertain the suit. The Court held that *the fact that a statute provides for a right of appeal against an order made by an authority set up under that statute does not make any difference to the position when the order made by the authority is ultra vires or nullity, then, there is no obligation upon a party against whom the order is made to prefer an appeal against such order.*

The appeals that are provided for under statute are strictly appeals against valid orders made by the Mamlatdar within the jurisdiction and are not ultra vires or nullities. The Court held that, on principle, it is erroneous to argue that merely because a statute provides for a right of appeal, the party against whom the order is made is bound to appeal, although the order made is a nullity. *If the order is a nullity, the party is entitled to ignore it, to treat it as waste paper, and to go to a civil Court for a declaration that the order is a nullity and no action should be taken against the party under that order which would prejudice his rights.*

55. In the present case, both the defendants suppressed the judgment and decree dated 24.06.1970 in Civil Suit No.10/1968 from the Mamlatdar. The first defendant was a party to this judgment and decree and the second defendant had deposed as a witness in the Civil Suit No.10/1968. The second defendant had admitted that the suit property was a family property of the Appellants/plaintiffs and the first defendant. Despite all this, the second defendant chose not to implead the Appellants/plaintiffs as parties before the Mamlatdar. Similarly, even the first defendant chose to suppress the decree dated 24.06.1970 by which the Appellants/plaintiffs were held to be joint owners of the suit property. Thus, following the law in the above decisions, Mamlatdar's order dated 03.02.1972 will have to be held as a nullity. A civil suit is always maintainable to obtain a declaration of nullity notwithstanding ouster clauses in the statute, as has been clearly held in the above-discussed decisions that bind this Court.

56. Accordingly, applying the above principles to the facts of this case will require answering even the second substantial question of law favouring the Appellants/plaintiffs.

57. Thus, both substantial questions of law will have to be answered favouring the Appellants/plaintiffs.

58. For the above reasons, the impugned judgment and decree dated 31.07.2008 made by the First Appellate Court will have to be set aside, and the trial Court's judgment and decree dated 24.08.2007 will have to be restored. It is ordered accordingly.

59. However, it is clarified that Mamlatdar's order dated 03.02.1972 is declared null or set aside mainly because it violated the principles of natural justice and fair play and/or otherwise was procured by fraud. This will, however, not preclude the second defendant from raising a tenancy claim before the Mamlatdar, this time by impleading all the joint owners of the suit property. Mr Lawande fairly agreed that such clarification can be issued because this Court has not examined the tenancy claim of the second defendant or his legal representatives on merits. In fact, the Civil Court and, for that matter, this Court sitting in Second Appeal cannot examine the tenancy claim on merits given the provisions of Section 58(2) or Section 58B of the Agricultural Tenancy Act. The Mamlatdar's order dated 03.02.1972 is set aside because this order was a nullity being a product of failure of natural justice and fraud.

60. For all the above reasons, Second Appeal No. 6 of 2009 is allowed. The judgment and decree dated 31.07.2008 in Regular Civil Appeal No.60/2007 are set aside, and the trial Court's judgment and decree dated 24.08.2007 in Special Civil Suit No.134/1978/A are hereby restored.

61. The Regular Civil Appeal No.65/2007 mainly concerned the quantum of mesne profit and demolition of a structure put up in the suit property by the second defendant. The trial Court has granted mesne profit at ₹5000/- per annum. The Appellants/plaintiffs claim mesne profit at the rate of ₹15,000/- per annum. The Appellants/plaintiffs have led no evidence to justify this increase. In any case, the quantum of mesne profit does not give rise to any substantial question of law. No such question was framed or urged to be framed. Therefore, no case is made out for grant of any enhanced mesne profit. By restoring the trial Court's judgment and decree dated 24.08.2007 in Special Civil Suit No.134/1978/A, the Second Appeal No. 7 of 2009 is disposed of.

62. The Second Appeal Nos. 6 of 2009 and 7 of 2009 are disposed of in the above terms. There shall be no order for costs.

M. S. SONAK, J.