

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 73 OF 2012

Comunidade de Sancoale,
through its attorney,
with office at Sancoale,
P.O.Cortalim, Goa.

..... Appellant
Original Plaintiff

V e r s u s

1. Zuari Industries Limited Company
A Company incorporated under the
Companies Act, 1956, and having
its registered Office at
Jai Kissan Bhavan, Zuarinagar, Goa,
through its Company Secretary.
2. M/s. Zuari Indian Oil Tanking Co. Ltd.,
A Company incorporated under the
Companies Act, 1956 and having
its registered office at
Jai Kissan Bhavan, Zuarinagar, Goa,
through its Company Secretary.
3. Birla Institute of Technology & Science,
A company incorporated under the
Companies Act, 1956, and having
its registered office at Pilani and
Branch office at Zuarinagar, Sancoale,
Goa.
4. Smt. Maria Mafalda Da Costa e Sa,
Major, wife of late Francisco de Sa,
resident of Zorint, Sancoale, Goa.
5. Smt. Eufemia Salvacao De Sa Gama,
aged about 43 years, resident of
Zorint, Sancoale, Goa.
6. Shri Custodio Gama,
aged about 47 years, resident of
Zorint, Sancoale, Goa.
7. Shri Pedro Baltazar De Sa,
Major, son of late Francisco de Sa,
Resident of Zorint, Sancoale, Goa.

8. Smt. Antonia Pereira e de Sa,
Major, daughter of Joao Manuel
Pereira, resident of Zorint,
Sancoale, Goa.
9. Smt. Rosa Maria Angelica De Sa,
Major, daughter of late
Martin De Sa, resident of Zorint,
Sancoale, Goa.
10. Shri Paulo Mascarenhas,
major, son of late
Aleixo Mascarenhas, resident of
Zorint, Sancoale, goa.
11. Smt. Conceicao De Sa e Fernandes,
Major, daughter of late
Martin De Sa, residing at Quelossim,
Cortalim, Goa; and her husband
12. Shri Sebastiao Fernandes,
Major, son of late Paulo Fernandes,
residing at Quelossim,
Cortalim, Goa.
13. Shri Joao Piedade De Sa,
major, son of late Martin De Sa,
resident of Zorint, Sancoale, Goa.
14. Smt. Cecilia Sebastiana Gama E De Sa,
major of age, daughter of
Manuel Gama, resident of
Zorint, Sancoale, Goa.
15. Shri Luis De Sa,
major, son of late Martin De Sa,
resident of Zorint, Sancoale, Goa.
16. Smt. Maria Cleto Gama e De Sa,
major, daughter of Joaquim Inacio
Game, resident of Zorint,
Sancoale, Goa.
17. The Administrator of Comunidades,
South Zone with Office at Margao,
Salcete, Goa.

..... Respondents
(Original Defendants)

Mr. H. D. Naik, Advocate for the Appellant.

Mr. D. Pangam, Advocate for the Respondent nos. 1 to 3.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **29th June, 2015**

JUDGMENT *(Per F. M. Reis, J.)*

Heard Shri H. D. Naik, learned Counsel appearing for the Appellant and Shri Pangam, learned Counsel appearing for the Respondent nos. 1 to 3.

2. The above Appeal challenges the Judgment and Decree dated 12.10.2011, whereby the suit filed by the Appellant came to be dismissed. It is the case of the Appellant that they owned the suit properties and that by letter dated 10.10.1968, a company by name of Birla Gwalior Pvt. Ltd., applied to the Lt. Governor of Goa, Daman & Diu, for taking up on permanent lease basis or on purchase basis an area of about 500 hectares for locating a fertilizer project. Such request was granted at an extra ordinary meeting on 10.11.1968 which resolved to grant a perpetual lease/Aforamento of the plots of the Appellants having approximately an area of 500 hectares. Such decision was conveyed to the Respondent no. 17 and the Respondent no. 17 recommended that the request of the company should be granted. The file was there submitted to the Governor for approval and by letter dated 07.01.1969, the office of the Collector and DCA informed the Respondent no. 17 that the proposal was accepted. Accordingly, the grant was executed on 01.02.1969 and on 31.03.1971, a Conveyance Deed was

executed between the Appellant and the Zuari Agro Chemicals Ltd. It is further their case that the Respondent no. 1 executed a Lease Agreement dated 18.10.2000 and 27.09.2001 with the Respondent nos. 2 and 3 respectively and a Deed of Exchange dated 22.04.1999 with the Respondent nos. 4 to 16. It is further the case of the Appellant that Clauses 1, 2 and 5 of the Grant dated 01.02.1969, gives an option of purchasing the land on remission of annual rent for the purpose of acquiring ownership and the transfer affected by the original Grantor was contrary to the conditions agreed upon by the Appellant in the Resolution at its extra ordinary meeting held on 10.11.1968 and that they were not binding on the Appellant. It is further their case that the Appellant could not sell and had never decided to sell its properties in view of an express prohibition to sell its properties and, therefore, the Deed of Conveyance dated 31.03.1971, is non existent and void ab-initio. Alleging that the Respondent no. 1 had no right or authority to sub-let the disputed property or to enter into the Deed of Exchange nor could collect any rent from the Respondent nos. 2 and 3 and claiming that it had determined the lease of the Appellant by forfeiture by notice dated 26.11.2001, the Appellants filed the suit, inter alia, claiming that the status with the Respondent no. 1 in respect of the the disputed properties up to the date of forfeiture i.e. 27.12.2001 i.e. till the forfeiture of the lease, is that of a lessee and that the Lease granted in favour of the Respondent no. 1 by Lease Deed dated 01.02.1969, has been determined by forfeiture and the Lease dated 18.10.2000 and 27.09.2001 between the Respondent nos. 1 and 2 and Respondent nos. 1 and 3 respectively and the Deed of Exchange between the Respondent no. 1 and the Respondent nos. 4 to 16 are null and void and without any legal effects and not binding on the Appellant. Further relief was sought to quit and vacate the suit properties and hand over

vacant and peaceful possession of the same to the Appellants.

3. Respondent nos. 1 and 4 to 16 filed their written statements raising preliminary objections that the suit is liable to be dismissed as permission as required under Article 9 of the Code of Communitade is not supported. It is further their case that it is open to the Grantor of the land under Article 6 read with Article 238 and 241 of the Code of Communitade, to dispose the land which is actually done by the Deed of Conveyance dated 31.03.1971 though there is no need for execution of any deed as after redemption of 20 years foro, the grantee becomes absolute owner. It is further their case that the Deed of Conveyance does not militate against the title by grant of Aforamento and the Respondent no. 1 submitted that the Appellant is not entitled for any reliefs.

4. Respondent nos. 2 and 3 adopted the written statements of the Respondent no. 1.

5. The learned Trial Judge framed issues based on the pleadings and, by the impugned Judgment, dismissed the suit filed by the Appellants. No evidence was recorded by the Appellants and, as such, the learned Judge came to the conclusion that there was no evidence produced by the Appellants to conclude that Clauses 1, 2 and 5 of the Lease Agreement were contrary to the conditions agreed upon by the Appellants in its Extra Ordinary Meeting held on 10.11.1968. The learned Judge took note of the provisions of the Code of Comunidades and found that by virtue of Article 30 of the Code, there is a general power vested in the Communitade to transfer its land by sale, lease or exchange with the sanction.

The learned Judge further found that the case of the Appellants is that there was an express prohibition on the Comunidade to sell its properties and, as such, the Deed of Conveyance is non-existent and void ab-initio, which cannot be upheld. The learned Judge further noted the provisions of the Code and found that upon the remission of the foro of 20 years, the leased property would cease to be the property of the Comunidade. The learned Judge also noted that the documents produced on record further establish that on 31.03.1971, an amount of Rs.10,32,000/- was credited to the treasury of the Appellant and entered in their cash book under item no.11 page 3 which is an amount equivalent to 20 years lease rent of the said property and also obtained the certificate of the said payment of remission of annual rent which is duly endorsed by the Administrator of Comunidade. The learned Judge has as such found that the claim of the Appellants cannot be accepted.

6. During the course of the hearing of the above Appeal, learned Counsel appearing for the Appellant has also pointed out that the subject matter of the above suit filed by the Appellant is also a subject matter of the proceedings in **Second Appeal no. 118 of 2003** filed by **Smt. Basilia M. Gomes & Ors. vs. M/s. Zuari Agro Chemicals Ltd.**, against the Respondent no. 1 and the Appellants herein. It is also pointed out that in the said suit, the Courts have come to the conclusion that the Appellants had granted the disputed property in favour of the Respondent no. 1. As such, the question of examining the claim of the Appellants that the documents executed by the Respondent no. 1 are contrary to the provisions of Comunidade are not at all necessary.

7. In fact, this Court in the said Judgment in the case of **Smt. Basilia M. Gomes & Ors. vs. M/s. Zuari Agro Chemicals Ltd.**, (supra) has observed at Para 8 thus :

“8. I have duly considered the submissions of the learned Counsel. With their assistance, I have also gone through the records. To examine the contention of Shri A. F. Diniz, learned Counsel appearing for the Appellants, as to whether the Respondent no. 1 was an aggrieved person to challenge the Decree passed by the learned Trial Court, it would be appropriate to examine the effect in law upon a grant of an Aforamento by the Comunidade. The grant of an Aforamento is in terms of Article 324 of the Code of Comunidade. The contract of emphyteuta is of a permanent nature. In fact, Article 1673 of the Portuguese Civil Code, inter alia, provides that the emphyteuta has a right to enjoy the property and to dispose of as his own thing save the restrictions expressed in law. In the present case, the records reveal that an Aforamento was granted in favour of Respondent no. 1. The Respondent no. 2 has also confirmed the said grant of the Aforamento by also executing a Sale Deed in favour of the Respondent no. 1 herein. In such circumstances, the question of the Respondent no. 2 having any subsisting right in respect of the disputed property would not arise considering that their right in the disputed property was conveyed and transferred in favour of the Respondent no. 1. In such circumstances, the Respondent no. 1 who were parties to the suit filed by the Appellants before the learned Trial Court

which came to be decreed, were definitely affected with the Decree passed by the learned Trial Court and, as such, were '*aggrieved parties*'.

8. Taking note of the said observations and as the Appellants have not challenged the findings in the said Judgment nor disputed the claim of the Respondent no.1 over the disputed property in the said proceedings, we find that the question of examining such aspects in the present Appeal would not arise at all. Shri Naik, learned Counsel appearing for the Appellants, pointed out that the Appellants have not challenged the findings in the said proceedings and, as such, are binding on the Appellants. Taking note of the findings in the case of **Smt. Basilia M. Gomes & Ors. vs. M/s. Zuari Agro Chemicals Ltd.**, (supra) and as it is not disputed, that the subject matter of the said suit was also the subject matter of the present Appeal, we find that there is no infirmity in the findings of the learned Trial Judge whilst dismissing the suit filed by the Appellants. The findings recorded therein have been admittedly not challenged in the present Appeal.

9. For the aforesaid reasons, the above Appeal stands rejected.

K. L. WADANE, J.

F. M. REIS, J.

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