

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.95 OF 2014**

SHRI. SHRINIVAS VITHAL GAONKAR

AND 24 ORS.

...APPELLANTS

V/S

THE MAZANIA OF DEVALAYA OF

SHRI NAGESH OF BANDORA THROUGH

ITS ATTORNEY NAGESHI AND 38 ORS.

...RESPONDENTS

Shri Sagar Malkarnekar, Advocate for the Appellants.

CORAM : N.M. JAMDAR, J.

DATE : 4 FEBRUARY 2015

ORAL ORDER:

By this appeal, the appellants challenge judgment and decree passed by the Civil Judge, Junior Division, Ponda and the District Judge, North Goa, Panaji dismissing the suit and the appeal filed by the appellants.

2. The appellants filed a suit for declaration, permanent and mandatory injunction and consequential relief. It is the case of the appellants that they are the co-owners in possession of the property situated at village Bandora, Taluka Ponda, Goa. The appellants by filing the suit questioned a gift effected by great grand father of the appellants in the year 1878 in favour of

respondent no.1. According to the appellants, the Gift Deed executed in the year 1878 in favour of the respondent no.1 was not lawful and no rights would flow to respondent no.1 in respect of this Gift Deed. Both the Courts have negated the claim of the appellants on the ground that the claim is hit by principles of res judicata, and that the suit is not within limitation.

3. I have heard Mr. Sagar Malkarnekar, the learned Counsel for the appellants. The appellant no.1 in his deposition has admitted that it is fourth round of litigation between the parties in respect of the very same property. The suits were filed in the year 1970 and in the year 1985. The suits were filed by the brother of the appellants in respect of the very same property claiming same relief against the respondent no.1. That suits have been dismissed has been admitted by the appellant no.1. It appears that family of the appellants is filing successive suits in respect of the same cause of action. No fault can be found with the approach of the appellate Court in not entertaining the suit.

4. Further, what is sought to be questioned is the Gift Deed of the year 1878. It is the case of the appellants that they knew about the Gift Deed only in the year 2004. This case is not accepted by the Courts below. The Courts below have relied upon the admissions of the appellants which would suggest that the appellants knew about the Gift Deed since long and the factum of knowledge for first time in the year 2004 has not been satisfactorily proved. Therefore, the

conclusions reached by Courts below that suit is barred by limitation also cannot be faulted. No substantial question of law is involved. The appeal is dismissed.

N.M. JAMDAR, J.

NH/-