

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 40 OF 2009**

COMUNIDADE OF POINGUINIM

represented through its

Special Attorney Shri Vassudev

Vyankatesh Fal Dessai, of major age,

landlord and residing at H.No.837,

Poinguinim, Taluka Canacona, Goa.

..... Appellant.

V/s

1. SMT. PADMAVATI RAJE

(since deceased)

1a. SADASSIVA RAJENDRA BASAVLING

VADIAR RAJE,

(since deceased)

through their legal representatives :

i) SMT. UMADEVI RAJE VODIAR

ii) [SHRI PRASANNAKUMAR RAJE
VODIAR] deceased

iii) SMT. VASUNDHARA RAJE

Residents of Shree Saunstan Sondhaskar

Near Shree Nagueshi Temple,

Bandivada, Ponda, Goa.

iv) SHRI NAGUESHKUMAR RAJE

VODIAR, Shiv Tirth Palace

Nagueshi (Bandivada),

Bandoda, Ponda, Goa 403 405.

v) SMT. ANAGHA RAJE MAGNURI

vi) SHRI AJAY MAGNURI,

Residents of Shree Saunstan

Sondhaskar, Near Shree Nagueshi

Temple, Bandivada, Ponda, Goa.

2. SMT. UMA DEVI RAJE VODIAR
Resident of Bandora, Ponda, Goa.
3. GOVERNOR OF GOA
through the Chief Secretary,
Secretariat, Porvorim, Goa.
4. THE DIRECTOR OF LAND SURVEY,
Panaji, Goa.
5. THE COLLECTOR OF CUSTOMS AND
CENTRAL EXCISE, Panaji, Goa. Respondents.

Shri Sudesh M. S. Usgaonkar, Advocate for the appellants.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Korgaonkar,
Advocate for the respondents No.1 and 2.

CORAM :- F.M. REIS, J.

Date : - 18th April, 2015.

ORAL JUDGMENT :-

Heard Shri Sudesh Usgaonkar, learned Counsel appearing
for the appellants and Shri J.E. Coelho Pereira, learned Senior
Counsel appearing for the respondents No.1 and 2.

2. The above appeal challenges the Judgment dated 31st

October, 2008, passed by the learned District Judge-4, South Goa, Margao whereby Civil Suit No.276/2004 came to be dismissed being barred by the principles of *res judicata*.

3. Briefly, the facts of the case are that the appellants who are the original plaintiffs, filed the suit for declaration of ownership and permanent injunction against the respondents/original defendants in respect of a property denominated as “Dugo” alias “Talpona”, enrolled in the matríz records under No. 982 which is distinct from the property enrolled under Matríz No.981 in the name of the original defendant No.1. It is further their case that the said property “Dugo” is surveyed under No.191/0 and the property “Talpona” is surveyed under No.190/0.

The suit was contested by the original defendant No.1 claiming that the property surveyed under No.191/0 forms part of the property “Galgibaga” and that the said property has been in possession and enjoyment of the original defendants No.1 and 2 and their ancestors for over 200 years. The original defendant No.1 filed an application for amendment of the written statement, *inter alia*, to incorporate the subsequent events to the effect that after the the suit

was filed in the year 1997, the appellants instituted another Civil Suit against M/s. Diksha Holding Ltd., for perpetual injunction and that suit was dismissed and an appeal filed before the District Court, Margao, also came to be dismissed. The said application for amendment was opposed by the appellants.

The learned Trial Judge, framed an additional issue, based on the application for amendment as to whether the suit is barred by the principles of *res judicata*. By the impugned Judgment dated 31st October, 2008, the learned Trial Judge dismissed the suit by holding that the parties in both the cases are the same, and that the suit is barred by the principles of *res judicata*.

Being aggrieved, the appellants herein preferred the above appeal.

4. By a separate Judgment passed today, the Second Appeal No. 60/2008 preferred by the appellants, challenging the Judgment and Order passed in the suit filed by the appellants against M/s. Diksha Holding Ltd., has been disposed of. In view of the findings in the said Judgment, the suit filed by the appellants against M/s. Diksha Holding Ltd., was dismissed, *inter alia*, holding that the finding with

regard to the title of the suit property is kept open. It is also to be noted that when the impugned Judgment came to be passed, the suit filed against M/s. Diksha Holding Ltd., had not attained finality as the Second Appeal was preferred before this Court. In such circumstances, the learned Trial Judge was not justified to come to the conclusion that the suit was barred by the principles of *res judicata*, as the findings therein had not attained finality and some of the parties were also not the same in both the proceedings. In any event, considering the view taken by me while disposing of Second Appeal No.60/2008, the learned Trial Judge was not justified to dismiss the suit on the ground that the suit was barred by the principles of *res judicata*.

5. In view of the above, I pass the following :

O R D E R

- (I) The impugned Judgment dated 31st October, 2008, passed by the learned District Judge-4, Margao is quashed and set aside.
- (II) Civil Suit No.276/2004 is restored to the file of the learned District Judge, Margao.
- (III) The learned District Judge, Margao is directed to dispose

of the suit, after hearing the parties, in accordance with law.

(IV) The parties are directed to appear before the learned District Judge, Margao on 21st September, 2015 at 10.00 a.m.

F.M. REIS, J.

ssm.