

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 43 OF 2006

1. Mrs. Carmelina Coelho alias,
Carmina Coelho (expired)
Through their legal representatives :

1(a) Mr. Joseph Fernandes and his wife;

(b) Antoneettee Fernandes,
wife of Joseph Fernandes,
major of age,

Both residents of Borchem Bhat,
Caranzalem Goa.

2. Mr. Pedro Fernandes (Deceased) Appellants

V e r s u s

1. Mr. Domingos Joao Coelho,
son of Joao Coelho
married, major of age,
2. Mrs. Maria Cecilia De Rosario Coelho,
Wife of Domingos
Joao Coelho, major of age,

Both residents of Borchem Bhat,
Caranzalem, Goa.
3. Mrs. Filomena Coelho Lemos,
married, major of age,
(Since deceased Represented through LRs)
Respondent nos. 4(a) and 4(b))
4. Mr. Minguel Lemos,
major of age, married,
(Expired)
Represented by his L.R.s
4(a) Angelo Lemos, son

4(b) Peter Lemos, son,

all residing near Post Office,
Kerant, Caranzalem, Goa.

..... Respondents

Mr. Sudin Ugaonkar and Ms. Vinita Palyekar, Advocate for the Appellants.

Mr. A. D. Bhohe with Mr. Rui Gomes Pereira, Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 27th March, 2015.

ORAL JUDGMENT

Heard Shri Sudin Usgaonkar, learned Counsel appearing for the Appellants and Shri A. D. Bhohe, learned Counsel appearing for the Respondents.

2. The above Appeal was admitted on the following substantial question of law :

(a) Whether the Respondent having admitted the case relating to the first property and not proved his defence, the Appellate Court committed illegality in reversing the decree of the declaration and injunction for the said first property ?

(b) Whether the Appellate Court committed illegality in declining declaration and injunction for the second property, although the structures constructed by the Respondents being in the suit property legally owned by the Appellants, would be owned by the Appellants as per the definition of the immovable property in Section 2(26) of General Clauses Act read with the definition of Clause (b) 'attached to the earth' of transfer of Property Act ?

3. The matter was heard for sometime on the last occasion and the parties had sought to explore the possibilities of settlement. When the matter was taken up today, learned Counsel appearing for the respective parties have pointed out that the dispute between the parties have been amicably settled and that all the parties have signed the Consent Terms. The Appellant no. 1 and the son by name Shri John Coelho of Respondent nos. 1 and 2 are present in Court. Both the parties have pointed out that they have amicably settled the dispute and that they have accordingly signed the Consent Terms. It is also pointed out that as the Respondent nos. 1 and 2 are aged, they were unable to be present in Court personally and, as such, they deputed their said son Shri John Coelho to confirm the Consent Terms. The Consent Terms are also signed by the Advocates appearing for the Appellants and the Respondents. Both the Counsel have also identified the signatures of the respective parties.

4. Taking note of the dispute between the parties, I find that the Consent Terms can be accepted and the above Appeal can be disposed of. The Consent Terms along with annexures are taken on record and marked 'X' for identification collectively. The substantial questions of law are answered accordingly.

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

ORDER

(1) The Appeal is partly allowed.

(2) The impugned Judgments passed by the learned Trial Court dated 31.10.1995 in Regular Civil Suit no. 219/1987/D and the Judgment passed by the Lower Appellate Court dated 11.10.2005 in Regular Civil Appeal no. 6 of 1996, are quashed and set aside.

(3) The suit filed by the Appellants bearing Regular Civil Suit no. 219/87/D stands decreed in terms of the Consent Terms marked 'X' for identification.

(4) Decree to be drawn accordingly.

(5) The above Appeal stands disposed of accordingly with no Orders as to costs.

F .M. REIS, J.

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