

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.36 OF 2008**

- 1 Shri Nagu Gopinath Naik
major of age, agriculturist,
resident at H.No.1/A, Xic
Xelvona, Curchorem – Goa.
- 2 Shri Yeshwant Babusso
Dessai, since deceased,
through LR's
 - i Smt. Sharada Yeshwant
Dessai, w/o. Yeshwant
Babusso Dessai, housewife,
 - ii Shri Shailesh Yeshwant
Dessai, s/o. Shri Yeshwant B.
Dessai, service, and his wife.
 - iii Smt. Rakhi Shailesh Dessai,
w/o. Shri Shailesh Y. Dessai,
housewife.

All are major of age &
residing at H.No.5, XIC –
Xelbona, Curchorem-Goa.
 - iv Shri Yogesh Yeshwant Dessai,
s/o. Shri Yeshwant B. Dessai,
service, and his wife,
 - v. Smt. Gargee Yogesh Dessai,
w/o. Yogesh Y. Dessai,
housewife.

Both are major of age and
residing at Coastal Castle,
Aagalli, Fatorda-Goa.

- vi Shri Balesh Yeshwant Dessai,
s/o. Shri Yeshwant B. Dessai,
service, and his wife;
- vii Smt. Shubhada Balesh Dessai,
w/o. Shri Balesh Y. Dessai,
housewife.

Both major of age and
residing at C1 F2, Munj Vihar,
Gogol, Margao-Goa.

.... Appellants

V/s

Shri Madhu Gopinath Naik,
son of late Shri Gopinath
Naik, aged 52 years,
residing at H.No.1/C, Xic
Xelvona, Curchorem-Goa.

.... Respondent

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar,
Advocate for the Appellants.

Mr. C.A. Ferreira and Mr. Ashwin Costa, Advocate for the Respondent.

CORAM : F.M. REIS, J.

DATE : 28th AUGUST, 2015

ORAL JUDGMENT :

Heard Mr. Sudin Usgaonkar, learned Senior Counsel appearing for
the appellants and Mr. C.A. Ferreira, learned Counsel appearing for the
respondent.

2. The above appeal was admitted by an order dated 28/11/2008 on
the following substantial question of law:

(i) Whether the finding recorded by the Lower Appellate Court that the appellants have admitted the existence of an access, that is pathway leading from internal road on the western side of his house to the suit filed bearing Survey No.17, is perverse?

3. During the course of the hearing of the above appeal, both the learned Counsel have pointed out that in the meanwhile, the parties have amicably settled their dispute and have produced minutes of order duly signed by the learned Counsel appearing for the appellants and respondent. The appellant no.1 Mr. Nagu Gopinath Naik and Mr. ^{appellant no.2} Shailesh Dessai, legal representative of ~~respondent~~ who are present in Court have also signed the minutes of order and have duly accepted the contents thereof. The minutes of order are taken on record and marked 'X' for identification. Mr. C.A. Ferreira, learned Counsel appearing for the respondent states that minutes of order have been signed upon due instructions from the respondent.

4. Both the learned Counsel, as such, pointed out that the dispute in the above proceedings was with regard to an access to be provided to the respondent herein. The dispute with regard to the access is being settled on the basis of the minutes of order. The substantial question of law is answered accordingly.

Correction
carried out as
per order dtd.
15/07/16 in
MCA
No.564/16.

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

O R D E R

(i) The impugned judgment and decree passed by the learned trial Judge dated 31/03/2006 and the Lower Appellate Court dated 6/11/2007 are quashed and set aside.

(ii) The suit filed by the respondent stands decreed in terms of the minutes of order marked 'X' for identification.

(iii) The appeal stands disposed of accordingly with no order as to costs. Decree to be drawn accordingly.

F.M. REIS, J.

NH/-