

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 51 OF 2015

1. Shri Rohidas Gangaram Sawant,
son of late Gangaram Sawant,
Age about 71 years,
married, retired, and his wife.
 2. Mrs. Surat Rohidas Sawant,
Wife of Rohidas G. Sawant,
age about 61 years, married,
housewife, Both Indian National,
Residing at House No.152/9,
Durgabhat, Ponda-Goa.
- Appellants

V/s

1. Shri Chandrakant Purshottam Shet Parkar,
S/o. Purshottam Shet Parkar,
age about 87 years,
married, business and his wife,
2. Mrs. Malini Chandrakant Parkar,
wife of Chandrakant Parkar,
age about 77 years, married, housewife.
3. Shri Subhash alias Damodar
Purshottam Shet Parkar,
S/o. Purshottam Shet Parkar,
age about 62 years, married,
business and his wife.
4. Mrs. Surekha Subhash Shet Parkar,
wife of Subhash Shet Parkar,
age about 56 years, married, housewife.
5. Shri Suresh Purshottam Shet Parkar,
S/o. Purshottam Shet Parkar,
age about 60 years, married,
business and his wife.

6. Mrs. Lata Suresh Shet Parkar,
W/o. Suresh Shet Parkar,
age about 54 years, married, housewife,
all residing at house No.151/9,
Durgabhat, Ponda-Goa.
7. Smt. Jannet Gomes,
W/o. Late Angelo Gomes,
age about 47 years, landlady,
r/o. Khandkant, Verna, Salcete-Goa.Respondents

Shri S. D. Padiyar, Advocate for the Appellants.

CORAM: C. V. BHADANG, J.
DATE: 27TH AUGUST, 2015.

ORAL ORDER:

Heard Mr. Padiyar, the learned counsel for the appellants.

2. By this appeal, the original plaintiffs challenge the concurrent findings of dismissal of their suit.

3. The brief facts are that the appellants had filed Regular Civil Suit No.15/2014 seeking declaration that they are exclusively entitled to the suit plot, as shown in the sketch and the defendants have no right to the same. The appellants also sought mandatory injunction directing the respondents/defendants to demolish the compound wall constructed in the

suit plot and for permanent injunction restraining the respondents or anybody on their behalf, from interfering or trespassing in the suit plot.

4. Undisputedly the respondent no.7 was the owner of the suit plot. The respondent no.7 was ex parte before the Courts below. Thus, the only contesting respondents are respondents no.1 to 6, who were the defendants no.1 to 6. It appears that the claim of the appellants to the suit plot is primarily based on the agreement for sale which is dated 8/4/1987, by which the appellants had agreed to purchase an area admeasuring 50 square metres (approximately) from the vendors.

5. The Trial Court framed the following issues:

- 1 Whether the plaintiff proves that the plaintiffs purchased an area of 250 square metre from Shri John Gomes vide Agreement for sale dated 8.4.87 for a sum of Rs 3,000/- and that the area of 50 square metres which is mentioned in the agreement for sale is only a typographical mistake?
- 2 Whether the plaintiffs prove that the defendants nos 1 to 6 fraudulently carried out the demarcation work?
- 3 Whether the plaintiffs prove that defendants nos. 1 to 6 forcibly trespassed in the property belonging to the plaintiffs?
- 4 Whether the plaintiffs prove that the relief claimed by prayer

clause(a) is without limitation?

- 5 Whether the defendants no.1 to 6 prove that the agreement for sale dated 3.4.87 was for an area of 50 square metres only? .
- 6 What relief? What order?

6. It appears that although the area mentioned in the agreement is only 50 sq.metres. the appellants claim that they have purchased an area of 250 sq.mtres from John Gomes vide the agreement for sale dated 8/4/1987 for a sum of Rs.3000/- and that the area of 50 sq.mtrs as mentioned in the agreement for sale is a typographical mistake. The contesting respondents no. 1 to 6 inter alia set up a defence that the agreement for sale was only for an area of 50 sq.metres. The learned Trial Court answered the issue no.1 in the negative, while the issue no.5 in the affirmative.

7. The First Appellate Court framed the following points:

- (1) Whether the plaintiffs have proved that they have purchased an area of 250 sq.mts by virtue of the agreement dated 8th April 1987?
- (2) Whether the plaintiffs have proved that the defendants have illegally carried out constructions in the property of the plaintiffs?
- (3) Whether the impugned judgment and decree passed by the Ld. Trial Judge is arbitrary and perverse and is required to be quashed and set aside?

8. The First Appellate Court answered all the points in the negative and dismissed the appeal. That is how the appellants are before this Court.

9. I have heard Shri Padiyar, the learned counsel appearing for the appellants. With the assistance of the learned counsel, I have perused the impugned judgments of the Courts below.

10. On hearing the learned counsel for the appellants and perusal of the record, it appears that there is a concurrent finding of fact recorded by the Courts below that the appellants have failed to prove that they had purchased an area admeasuring 250 sq.mtrs and the 50 sq.mtrs. as mentioned in the agreement of sale was by way of typographical mistake.

11. It further appears that earlier the appellants had filed Regular Civil Suit No.168/90 claiming an access in which initially the appellants pleaded that they had purchased an area admeasuring 50 sq.mtrs under the agreement. The appellants had sought an amendment to the effect that they had purchased an area of 150 sq.mtrs and that 50 sq.mtrs as mentioned was by way of a typographical area. That application for amendment was rejected. The suit also came to be dismissed on 13/6/2003. That judgment has attained finality. Thereafter, the respondents no.1 to 6 filed Regular Civil Suit no.64/91/C for

demarcation, in which the present appellants were defendants no1 and 2. In that suit the Trial Court had framed the issues out of which issues no. 3 and 4 which are relevant for the purpose read as under:

- 3) Whether the defendants no.1 and 2 prove that they are in adverse possession of the land exclusively on the eastern side of the plot of defendant no.3?
- 4) Whether the defendants no.1 and 2 prove that the owner of the property had agreed to sell an area of 200 sq.mtrs to them?

12. It appears that apart from a claim on the basis of the agreement (at this stage to an area of 150 sq.mtrs), there was also a claim for adverse possession. The Trial Court had answered both the issues no.3 and 4 in R.C.S No.64/91 in the negative.

13. It is thus apparent that although the agreement is only for an area admeasuring 50 sq.mtrs, the appellants have been claiming right to different areas, namely, 150 sq.mtrs and now 250 sq.mtrs of land out of the said plot. In these circumstances, the concurrent findings of facts recorded by the Trial Court can be interfered with.

14. Shri Padiyar, the learned counsel for the appellants submits that the burden as per issue no.4 could not have been cast upon the appellants in as

much as the respondents no.1 to 6 have raised a defence that the suit was barred by limitation. The submission cannot be accepted. Under Section 3 of the Limitation Act, the Court can look into the issue of limitation even when none of the parties raise such an issue. The appellants having approached the Court were bound to show that the suit was filed within limitation. The Trial Court has also answered the issue no.4 in the negative and that has been confirmed by the first Appellate Court.

15. Shri Padiyar, the learned counsel for the appellants also submitted that the substantial question of law as framed at para 4 (A) (f) in the Appeal memo that the finding recorded and the conclusion drawn in Regular Civil Suit no.168/1990/B and Regular Civil Suit No.64/1991/A cannot come in the way of the appellants in as much as the dispute involved in those suit was different than the one which is involved in the present suit would arise in the appeal. The submission is that the Regular Civil Suit No.168/90 was filed by the appellants for access while Regular Civil Suit no.64/91 was filed by the respondents no.1 to 6 for demarcation. The submission cannot be accepted for the reason that in earlier Regular Civil Suit no.64/91 a specific issue, as to the claim of adverse possession, as also to area was framed and has been answered against the appellants, which has attained finality.

16. It can thus be seen that the claim of the appellants as to the area agreed

to be purchased is inconsistent. The Courts below have concurrently found that the claim of the appellants that they have agreed to purchase an area in excess of 50 sq.metres and the area mentioned in the agreement for sale is a typographical mistake cannot be accepted. In the result no interference is called for in the concurrent finding of dismissal of the suit. The appeal does not raise any substantial question of law and is hereby dismissed.

C. V. BHADANG, J.

aP/-