

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 60 OF 2008**

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

M/S DIKSHA HOLDINGS LIMITED,

A Company incorporated under the

Companies Act, with its registered

Office at 411, World Trade Towers,

Barakhamba Avenue,

Connaught Palace, New Dlihi.

..... Respondent.

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

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Korgaonkar,
Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 27th March, /18th April 2015.

ORAL JUDGMENT :-

Heard Shri Sudesh Usgaonkar, learned Counsel appearing
for the appellant and Shri J. E. Coelho Pereira, learned Senior Counsel

appearing for the respondent.

2. The above appeal came to be admitted by an order dated 24th June, 2009, on the following substantial questions of law :

(1) Whether the Appellate Court misconstrued the document of description of property registered under No.4181 to hold that the suit property is situated therein ?

(2) Whether the Appellate Court was right in holding that the property surveyed under No.191/0 (suit property) is a part of the property described in the Land Registration Office under No.4181 when the northern, southern and western boundaries of both the properties were same and the respondent did not disclose under which survey numbers the remaining property Galgibaga was surveyed ?

3. Shri Sudesh Usgaonkar, learned Counsel appearing for the appellant, in support of the above appeal, has pointed out that the appellants have filed the suit for injunction simpliciter on account of alleged interference by the respondent with the suit property bearing Survey No.191/0 of Village Poinguinim. The learned Counsel further submits that it is the case of the respondent that they had purchased the

property from the family of Wadiyars pursuant to a Deed of Sale dated 22/12/1994. The learned Counsel has, thereafter, taken me through the said sale deed to point out that the property claimed by the respondent is part of the property registered in the Land Registration Office under No.4181 and forming part of Survey No.191/0. The learned Counsel further points out that the respondent has not disclosed the matriz number of the specific portion purchased by them as, according to him, the property inscribed in the name of the appellant is one under Matriz No. 982. The learned Counsel further points out that the Matriz number in respect of the property belonging to the predecessor-in-title of the appellant was 981. The learned Counsel has, thereafter, taken me through the Land Registration documents to point out that the property inscribed under No.982 does not form part of the property registered in the Land Registration Office under No.4181. The learned Counsel has, thereafter, pointed out that the appellants were in possession of the disputed property and, as such, the Lower Appellate Court has erroneously allowed the appeal filed by the respondent. The learned Counsel further submits that the predecessors-in-title of the respondent were not in possession of the disputed property and according to him, the boundaries, as disclosed in the Matriz document

of the property of the appellants, correspond to the boundaries in respect of the portion of the property purchased by the respondent pursuant to the sale deed. The learned Counsel has, thereafter, taken me through the boundaries as shown in the sale deed executed in favour of the respondent to point out that the boundaries in fact suggest that the Arabian Sea is on the southern side and the river towards the north, west and south and towards eastern side the property of "Devasthan Betal". The learned Counsel further points out that it is the case of the appellant that for the purpose of performing the religious functions of the temple, the appellants permitted the devotees of the said Devasthan to carry out their activities. The learned Counsel further submits that it is not in dispute that on the top of the hill, there is a religious monument, which was being used by the Devasthan for the religious functions and that the fruits of the trees were being offered for performing such religious functions. The learned Counsel further points out that as the predecessors-in-title of the respondent, namely the Wadiyar family were not in possession of the property in dispute, the question of dismissing the suit filed by the appellant is totally misplaced. The learned Counsel further submits that survey records in respect of the property in dispute though were standing in

the name of the predecessor-in-title of the respondent, nevertheless, way back in 1994 there were proceedings initiated by the appellant for rectification of the said survey records in terms of Section 14 of the Goa Land Revenue Code. The learned Counsel further submits that though objections were rejected, nevertheless, the appellants have carried the dispute before the Civil Court and that such a suit was pending before the learned District Judge. The learned Counsel has further pointed out that as the respondent has purchased a part of the property in dispute, the appellants had filed an application for impleadment of the respondent which was objected to and, ultimately, such an application came to be rejected. The learned Counsel further submits that in any event, the predecessors-in-title of the respondent are parties to the said suit, along with the Government as, according to him, a part of the property was acquired by the Government. The learned Counsel has, thereafter, taken me through the Judgment of the Lower Appellate Court to point out that the findings arrived at by the learned Judge are on the basis of misconstruction of the documents, specially the document of Land Registration, as well as the Matriz record and, consequently, the Judgment of the learned Lower Appellate Court cannot be sustained. The learned Counsel has, thereafter, taken

me through the contradictions in the findings of the learned Lower Appellate Court to point out that the learned Judge has erred in appreciating the evidence on record and misread the pleadings, as well as the deposition of the parties, to erroneously come to the conclusion that the appellants have failed to establish that they were owners in possession of the property in dispute. The learned Counsel further submits that the respondents were not in possession of the disputed property and, as such, the learned Lower Appellate Court erroneously allowed the appeal filed by the respondent. The learned Counsel has, thereafter, taken me through the sale deed dated 22/12/1994 exhibit-36 to point out that on one side is the remaining portion of the Vendors which has not even been identified by the respondent. The learned Counsel has, thereafter, taken me through the substantial questions of law framed by this Court to point out that as the property claimed by the appellants is not the subject-matter of the property as described in the Land Registration Office, the inferences and the presumptions drawn by the learned Lower Appellate Court are totally erroneous and, as such, according to him, the substantial questions of law should be answered in favour of the appellants herein. The learned Counsel, therefore, submits that the appeal be allowed and the

impugned judgment be quashed and set aside.

4. On the other hand, Shri J.E. Coelho Pereira, learned Senior Counsel appearing for the respondents has supported the judgment of the Lower Appellate Court. The learned Senior Counsel has taken me through the findings of the learned Lower Appellate Court to point out that the learned Judge has minutely examined the evidence on record to come to the conclusion that the appellants have failed to establish that they have any right or title to the property. The learned Senior Counsel further submits that the land registration document, as well as the other documents produced by the respondents conclusively establish that the disputed property is part and parcel of the property of the respondent. The learned Senior Counsel further submits that the appellants have no *locus standi* to file the suit as, according to him, it is the case of the appellants that they had given the property to the Devasthan which is not a party to the suit. The learned Senior Counsel further submits that the learned Lower Appellate Court has, on the basis of the evidence on record, come to the conclusion that the appellants have failed to establish their title to the property in dispute and, as such, this Court in a Second Appeal

cannot reappreciate the said evidence to come to a contrary conclusion of fact. The learned Senior Counsel further submits that it is well settled that matríz records do not create any title and the only claim of the appellant is based on matríz records which cannot confer any title in favour of the appellants herein. The learned Senior Counsel further submits that the Lower Appellate Court has also taken note of the fact that there is no “tombo” produced by the appellants to establish that the disputed property forms part of the property belonging to the appellants. The learned Senior Counsel further submits that the inconsistency in the evidence of PW.1 itself shows that the claim of the appellants is totally fictitious and cannot be sustained. The learned Senior Counsel further submits that the Lower Appellate Court has rightly examined the issue of title in the present dispute as, according to him, the appellants, in their pleadings have invited such findings and, as such, the question of now contending that the Lower Appellate Court could not go into the issue of title, is totally farfetched. The learned Senior Counsel submits that as the appellants have invited the findings on title, such findings have become final and, as such, according to him no interference is called for in the impugned judgment. The learned Senior Counsel further submits that the

respondents were always in possession of the disputed property since the time of its purchase and prior to that, the possession was with the predecessors-in-title of the respondents. The learned Senior Counsel further submits that there is a Government building put up in a portion of the property described in the Land Registration Office under No.4181 which is adjoining the property purchased by the respondents, which clearly establishes that the disputed property belonged to the predecessors-in-title of the respondents. The learned Senior Counsel further submits that the question of interference in the impugned Judgment is not at all justifiable as, according to him, the substantial questions of law framed by this Court do not arise at all. The learned Senior Counsel further submits that as the Lower Appellate Court has minutely gone into the evidence on record to come to the conclusion that the appellants have failed to establish their title in respect of the property in dispute, such findings on appreciation of the evidence on record cannot be reappreciated by this Court under Section 100 of the C.P.C. Shri Coelho Pereira, learned Senior Counsel appearing for the respondent, in support of his submissions has relied upon judgments of the Apex Court reported in (1994) 2 SCC 14 in the case of *Sulochana Amma vs. Narayanan Nair*, and in (2005) 6 SCC 202 in

the case of *Annaimuthu Thevar (Dead) by LRs. vs. Alagammal and others*. The learned Senior Counsel, as such, submits that the appeal be dismissed.

5. Upon hearing the learned Counsel appearing for the parties, it is not disputed that both the Courts below, upon appreciating the evidence on record, have come to the conclusion that the appellants have failed to establish their possession in respect of the disputed property. In fact, the Lower Appellate Court while examining the aspect of possession has noted the evidence produced by the appellant and the depositions of PW.1, PW.2 and PW.3. At para 19 of the impugned Judgment, the learned Lower Appellate Court has taken note of the admission on the part of some of the witnesses to disapprove the case of the appellants that they were in possession of the disputed property as on the date of the filing of the suit. As has been pointed out herein above, the suit filed the appellant was for injunction simpliciter and the aspect of possession is material to find out whether the appellants are entitled to a permanent injunction as prayed. Having failed to establish their possession and taking note of the concurrent findings of the Courts below that the appellants have

failed to establish their possession over the disputed property, I find that the question of interfering with the concurrent findings of the Courts below with regard to possession would not arise at all. Examining the aspect of possession would be in the realm of appreciating the evidence on record which this Court cannot exercise in terms of Section 100 of the Court of Civil Procedure, unless there is any misreading of evidence pointed out by the appellant which would lead to perversity in such findings. In fact, Shri Usgaonkar, learned Counsel appearing for the appellant has submitted that though the appellants were not in actual possession of the disputed property, nevertheless, according to him, the appellants had entrusted the property to the temple “Betal Devastan” for conducting religious festivities. As this aspect has not been accepted, nor there is evidence brought on record to establish that the appellants were in actual possession of the disputed property as on the date of the filing of the suit, the Courts below were justified to refuse the relief to the appellant of permanent injunction.

6. As already pointed out herein above, this aspect is material as the suit filed by the appellant was for injunction simpliciter. To that

extent, the findings of the Courts below do not call for any interference of this Court in the present appeal. In such circumstances, the Courts below were justified to dismiss the suit, as also the appeal filed by the appellant.

7. Now, what has to be examined is whether the learned Lower Appellate Court was justified to record a finding on title of the appellants herein, Mr. Coelho Pereira, learned Senior Counsel appearing for the respondent has pointed out that the Lower Appellate Court is justified to proceed to examine the title of the appellants, as according to him, there was a specific issue raised with that regard. The learned Counsel for the appellant has pointed out that the appellants, in fact had advanced their submissions in support of their claim that the appellants were owners in possession of the disputed property. On the other hand, Shri Usgaonkar, learned Counsel appearing for the respondent has submitted that the Lower Appellate Court was not justified to examine the title of the appellants, as according to him, though it is the case of the appellants that they were owners in possession of the disputed property, nevertheless, it was an admitted position that the dispute with regard to title was under

adjudication in a substantive suit filed by the appellants against the predecessor in title of the respondent and was pending before the learned District Judge, in view of the claim putforward by the Government over the property in dispute. The learned Counsel further submits that such a dispute with regard to the claim of title of the appellants was in fact pending before the Revenue Authorities in terms of the provisions of Section 14 of the Land Revenue Code wherein the claim putforward by the appellant, was rejected. But, however, the learned Counsel points out that in terms of Section 14 of the Land Revenue Code, the appellant had challenged the said decision by filing a suit which was pending adjudication before the learned District Judge.

8. In this connection, the observations of the Apex Court in the judgment reported in 2007 (14) SCC 200 in the case of ***Ramji Rai and another vs. Jagdish Mallah (Dead) through LRs. and another***, would be relevant, wherein the Apex Court has observed at paras (10) and (11) thus :

“ **10.** On the finding of facts, we do not wish to interfere. There is no reason to reverse the concurring findings. However, suffice it to state that the lower

appellate court should have dismissed the suit filed by the appellants only on the ground that the appellants had failed to prove that they were in possession of the disputed lands. Under Section 38 of the Specific Relief Act, 1963 an injunction restraining disturbance of possession will not be granted in favour of the plaintiff who is not found to be in possession. In the case of a permanent injunction based on protection of possessory title in which the plaintiff alleges that he is in possession, and that his possession is being threatened by the defendant, the plaintiff is entitled to sue for mere injunction without adding a prayer for declaration of his rights. (See *Mulla's Indian Contract and Specific Relief Acts*, 12th Edn., p. 2815)

11. In *A.L.V.R. Ct. Veerappa Chettiar v. Arunachalam Chetti* AIR 1936 Mad 200, it has been held that mere fact that the question of title may have to be gone into in deciding whether an injunction can be given or not is not any justification for holding that the suit is for a declaration of title and for injunction. There can be a suit only for an injunction. The present suit is only for permanent injunction and, therefore, the lower appellate court should have, on the facts and circumstances of this case, confined itself to its dismissal only on the ground that the appellants have failed to show that they were in

possession. This has been done but the declaration that the appellants are not the owners, was not necessary.”

9. Taking note of the said observations of the Apex Court, I find that the Lower Appellate Court was not justified to examine the aspect of title, the manner in which such an aspect has been determined in a suit for injunction simpliciter. As a matter of fact, Shri Usgaonkar, learned Counsel appearing for the respondent has pointed out that the property description in the sale deed in favour of the respondent, includes all matríz numbers, except Matríz No.982, which does not belong to the respondent nor to the predecessor-in-title of the respondent. On going through the boundaries, as disclosed in the Land Registration Office and the boundaries as disclosed in the matríz number claimed by the appellant, I find that the property as claimed by the respondent would, in fact, correspond to some of the boundaries as shown in the matríz records. No doubt, matríz records do not confer any title on the person in whose favour such records stand. But, however, in the context of the other evidence on record, it is also permissible to examine the matríz records to decide the claim of ownership in respect of such property.

10. The learned Judge has also not examined where the property inscribed in the Matriz records under no. 982 is located as the Matriz numbers claimed by the Respondents are contiguous to such property inscribed in the Matriz Records. All these aspects which are material and have to be examined when the challenge is drawn to the ownership and title of the disputed property are matters which have to be examined in a suit for the relief of declaration of title.

11. Besides that, on perusal of the pleading of the parties and the claim put forward by the Appellant in the plaint, I find that it is the case of the Appellant that they are owners of the property known as “Dugo” alias “Talpona” situated in the Village of Poinguinim, more particularly shown in the plan attached to the plaint having an area of 64,031 square metres and designated as plot 'A' and surveyed in the Records of Rights under No. 191/0 (part). It is further their case that the said suit property is inscribed in the Taluka Revenue Office of Canacona under number 981(part) and 982. It is further their contention that the suit property is bounded towards the East by the property known as “Talpona Baga” of Rei de Sundem, on the North

and West by high seas and on the South by the property of Talpona Baga of Rei de Sundem and high seas and that it is a riverine property bounded on the northern side by river Jetty of Talpona river. It is also their case that in the suit property there exists a temple of Lord Dugeswar.

12. On going through the written statements filed by the Respondents, it is the case of the Respondents that the suit is not maintainable in view of the pendency of Special Civil Suit No. 243/1997 filed by the Appellant against the predecessor-in-title of the defendants, Government of Goa, the Director of Land Survey and the Collector of Customs and Central Excise in the Court of the Addl. Civil Judge, Senior Division, at Margao. It is further their case that there exists a plot of land identified under survey No. 191/0 of Village Poinguinim having an area of about 68,500 square metres forming part of the property "Galgibaga" described in the Land Registration Office of Quepem, under No. 4181 at page 196 overleaf of book B. No. 13 situated at Talpona. It is further their case that the said plot of land is bounded towards the East by the property of the vendors of the Respondents surveyed under No. 190/1, West by the Arabian Sea,

North by the River and South by the Arabian Sea. It is further their case that out of the said area of 68,500 square metres, an area of 600 square metres is occupied by two structures of the Collectorate of Customs. It is also their contention that by Deed of Sale dated 22.12.1994, Smt. Padmavati Raje, S.S.R.B. V. Raja and his wife Smt. Umadevi Raje Wadiyar have sold to the Respondents an area of about 64,500 square metres of the said plot of land with an exclusion of an area of 4000 square metres. It is further their contention that the said plot of land surveyed under survey No. 191/0 of the said property “Galgibaga”, was in possession and enjoyment of the vendors of the Respondents and their ancestors for over 200 years peacefully, continuously and uninterruptedly and as of right as an integral part of the property “Galgibaga” described under No. 4181. It is further their case that as per the description in the Land Registration Office, the property “Galgibaga” is bounded by the property to the East belonging to the heirs of Babu Vitola top of the hill Magdal or Gurdecho Soddo of Temple of Betal and the property Dendebaga of temple of Partagal, West by the Sea and North and South by the navigable river. It is further their case that the property “Galgibaga” is one of the properties which the King of Sundem owned and possessed at Canacona as part of

his Kingdom. It is further their case that neither the property surveyed under No. 191/0 or 191/1 (part) is inscribed in the Matriz Records in the name of the Appellant and property recorded in the Matriz under No.982 does not correspond to the plot bearing survey no. 191/0 and 190/1(part).

13. On going through the said pleadings, I find that the boundaries of the said property described under Land Registration No. 4181 are not corresponding to all the boundaries as pleaded in the written statement being the one purchased by the Respondents. It is the contention of Shri J. E. Coelho Pereira, learned Senior Counsel, that the property described under No. 4181 is a very vast property and the property which has been purchased only forms a part thereof. This contention has not been examined by the Lower Appellate Court whilst drawing the conclusion about the ownership of the disputed property. As pointed out herein above, the Respondents themselves accept that the property inscribed under No. 982 does not form part of the property which has been purchased by them pursuant to the said Sale Deed. But, however, on perusal of the boundaries shown in the said Matriz documents, I find that some of the boundaries disclosed in

the Sale Deed would show some similarity. In such circumstances, the Lower Appellate Court was not at all justified to examine the ownership and title of the property when substantive suit for declaration of title was already pending for decision before the learned Civil Judge Senior Division. The boundaries as shown in the Land Registration Office have not been identified at loco to examine the survey number which would be included within the boundaries of the whole property as described in the Land Registration Officer under No. 4181. In such circumstances, I find that the learned Lower Appellate Court was not justified to examine the title of the Appellants when the suit filed by the Appellants was for injunction simplicitor and the Court had come to the conclusion that the Appellants have failed to establish that they were in possession of the disputed property. Admittedly, the Respondents have not filed any counter claim, nor have sought any relief with regard to their claim of title over the property in dispute. As pointed out herein above, the Respondents have also pleaded that the suit for title was pending decision before the learned Civil Judge, Senior Division, Ponda. Apart from that, it is not disputed that the Respondents were in fact served in the said suit filed by the Appellants before the learned District Court and, in such circumstances, when the

issue of title was under consideration before a Competent Court wherein the Predecessors in title of the Respondents were parties and such proceedings started much before the Respondents purchased the disputed property, the Lower Appellate Court was not justified to proceed to decide the title of the Appellants over the disputed property.

14. The Judgments relied upon by Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the Respondents, are not applicable to the facts of the present case. In the context of the findings arrived at by the Lower Appellate Court on title in a suit for injunction simplicitor, I find that the Judgment of the Apex Court in the case of ***Ramji Rai and anr. vs. Jagdish Mallah (Dead) through LRs. & anr.*** (supra), would not be applicable to the facts of the present case. In such circumstances, the Lower Appellate Court was not justified to examine the title of the parties and to that extent, the impugned Judgment cannot be sustained and deserves to be quashed and set aside. The Lower Appellate Court, as such, ought to have dismissed the the appeal on the ground that the Appellants have failed to show that they were in possession of the disputed property. The Lower Appellate Court, as such, was not justified to come to the conclusion

that the Appellants are not the owners of the disputed property, which was not at all necessary, as there was no relief of declaration and the issue of title was seriously in dispute between the parties. The substantial questions of law are answered accordingly.

15. To that extent, the impugned Judgment of the Lower Appellate Court deserves to be quashed and set aside and the issue of title between the parties is left open to be examined on its own merits, in accordance with law.

16. The appeal stands disposed of accordingly.

F.M. REIS, J.

ssm.