

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 92 OF 2014****SMT. CHANDRA HARISHCHANDRA****DHULAPKAR AND 5 ORS.****....APPELLANTS****Versus****SHRI. XAMBA NARAYAN SINAI****BUDKULE AND 3 ORS.****...RESPONDENTS****Shri J.J. Mulgaonkar, Advocate for the Appellants.****Shri A.R. Kantak, Advocate for the Respondents.****CORAM:- N. M. JAMDAR, J.****DATE:- 5th February, 2015****ORAL ORDER :**

By this Second Appeal, the appellant challenges the judgment and order passed by the District Court, North Goa, and judgment and order passed by the Civil Judge, Junior Division, Sattari dismissing the appeal and the suit filed by the appellants.

2. The appellants filed a suit seeking relief of declaration that they are the owners of suit property bearing Survey No. 103/2, 104/2 of Village Onda, by adverse possession and prescription. The Courts below found that the appellants have failed to prove their possession over the suit property and, accordingly, dismissed the suit and the appeal.

3. Shri J.J. Mulgaonkar, the learned Counsel for the appellants submitted that though in the appeal memo challenge was made to the dismissal of the application filed under Order 26, Order 39 and Section 151 of Civil Procedure Code on 27 January 2012 by the trial Court, no decision thereupon was given by the appellate Court. Perusal of the judgment of the appellate Court indicates that this point was not argued before the appellate Court. It therefore cannot be taken up in the Second Appeal.

4. Shri Mulgaonkar then submitted that various documents were produced by the appellants in support of their case that they are in possession of the suit property, and, in absence of any contra material by the respondents case of the appellants ought to have been accepted by the Courts. The Courts below have rightly taken note that none of the documents make a mention of the survey number or name of the property. Further, the names of the appellants do not appear in Cultivators column. In the cross-examination, the appellant admitted that he does not know the name of the property. The burden was on the appellants to prove their case which they failed to substantiate by documentary or oral evidence.

5. No error can be found with the decisions of the Courts below. No substantial question of law arises. Appeal is accordingly rejected.

N.M. JAMDAR, J.

NH/-