

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 69 OF 2007

1. Smt. Chandrawati Punu Gaonkar,
major in age, married, housewife,
and her husband
2. Shri Puno Pavto Gaonkar
major in age, both residents of
house no. 3, Kajuwada, Kanebag,
P. O. Morpila,
Quepem, Goa.
3. Smt. Laxawati Punu Velip
major in age, married, housewife,
and her husband
4. Shri Puno Bambo Velip
major in age, both residents of
house no. 45, Vaizawada, P. O. Morpila,
Quepem, Goa.
5. Smt. Jayu Laxman Velip,
major in age, married, housewife
and her husband
6. Shri Laxman Shaba Velip
major in age,
both residents of house no. 60,
Cordem, via Camoli, Balli, Goa.
7. Smt. Surangawati Narayan Gaonkar,
major in age, married, housewife
and her husband
8. Shri Narayan Punu Gaonkar,
major in age,
Both residents of house no. 22,
Kanebag, P. O. Morpila, Quepem, Goa.
All above represented herein through their
Constituted Attorney Shri Manguesh Fondu Velip,
Aged 24 years, landlord, resident of house no. 959,
Kuddem, Cabo-de-Rama, Cola, Canacona Goa,
by virtue of Power of Attorney dated 3.8.1998
Executed at Canacona Goa before the Notary
Shri Vithal V. Prabhu Dessai, registered under

No. 2868/98.

..... Appellants
(Original Plaintiffs)

V e r s u s

1. Shri Nilu Manju Velip
son of late Manju Velip
major in age, agriculturist, married,
and his wife
2. Smt. Rukmini Nilu Velip
major in age, hosuewife,
both residents of house no. 953,
Cuddem, Cabo-de-Rama,
Cola, Canacona, Goa.
3. Smt. Chandrabhagi Shaba Velip,
major in age, widow, resident of
Kudde, Cabo-de-Rama,
Canacona, Goa.
4. Smt. Lakshavati Kushali Velip
major in age, daughter, resdient of
house no. 47, Cordem,
Bali, Quepem, Goa.
5. Smt. Shobhavati Kushali Velip
major in age, daughter, and her
husband
6. Shri Kushali Gurko Velip
major in age, both reisdents of
Morpila, Quepem, Goa.
7. Shri Fondu Zorgo Velip
(Since deacesed)
 - a) Shri Mangesh Fondu Velip
son of lagte Fondu Velip
Aged 37 years, married, service,
 - b) Smt. Mansi Mangesh Velip
aged 33 years, married, service,
 - c) Shri Gokuldas Fondu Velip
Son of late Fondu Velip
Aged 35 years,
All above residents of House
No. 929, Kudali Cola, Canacona, Goa.

- d) Smt. Smita Datta Velip
Daughter of late Fondu Velip
and widow of late Datta Velip
aged 40 years, housewife
- e) Shri Darshan Datta Velip
son of late Datta Velip,
Aged 19 years, student
Both above residents of House
No. 82-A, Cordem Balli,
Quepem, Goa.
- f) Smt. Kirti Kushali Velip
Daughter of late Fondu Velip
Aged 38 years, married,
and her husband,
- g) Shri Kushali Kusta Velip
Son of Justa Velip
Aged 48 years,
Both above residents of
House no. 198/1, Morpila,
Fatorpa, Quepem, Goa.
- 8. Smt. Abole Fondu Velip.
Major in age, housewife,
both residents of house no. 959,
Cuddem, Cabo-de-Rama, Cola,
Canacona, Goa.

..... Respondents
(Original Defendants)

Mr. S. S. Kakodkar, Advocate for the Appellants.

Mr. C. A. Coutinho, Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 21st August, 2015.

ORAL JUDGMENT

Heard Shri Kakodkar, learned Counsel appearing for the Appellants
and Shri Coutinho, learned Counsel appearing for the Respondents.

2. At the time of the hearing of the above Appeal, Shri S. S. Kakodkar, learned Counsel appearing for the Appellants, pointed out that the challenge in the above Appeal is to the Decree in the Counter Claim filed by the / Respondents passed by the Lower Appellate Court pursuant to a review Order dated 05.4.07, whereby the Counter Claim filed by the / Respondents came to be decreed. Learned Counsel further pointed out that the substantial questions of law which arise on the basis of such relief granted to the / Respondents has not been framed by this Court as proposed by the Appellants. After hearing both the learned Counsel, the following substantial question of law is framed in the above Appeal :

- (i) Whether the First Appellate Court erred in law in granting the relief of permanent injunction to the defendants no. 1, 2 and 5 prayed in the counter claim when there was no identification of the northern half of the suit property nor there was legal evidence of exclusive ownership and possession of the above defendants ?

3. Shri C. A. Coutinho, learned Counsel appearing for the Respondents, was duly notified with regard to the aforesaid substantial question of law.

4. Mr. Kakodkar, learned Counsel appearing for the Appellants, has pointed out that after the Appeal preferred by the / Respondents was disposed of by Judgment and Decree dated 18.11.2006, the / Respondents filed an application to review the said Judgment on the ground that the / Respondents had also challenged the refusal of the relief of Counter Claim by the learned Trial Judge.

Corrections
Carried out as
Per order dated
21.01.2016
Passed in MCA
no. 771 of 2015.

Defendant nos. 1, 2 & 5 in the suit

Defendant nos. 1, 2 & 5 in the suit

Defendant nos. 1, 2 & 5 in the suit

Corrections
Carried out as
Per order dated
21.01.2016
Passed in MCA
no. 771 of 2015.

Defendant nos. 1 to 6

Defendant nos. 1 to 6

Corrections
Carried out as
Per order dated
21.01.2016
Passed in MCA
no. 771 of 2015.

This application for review was opposed by the Appellants but, however, by the impugned Order dated 18.11.2006, the learned Judge allowed the application and, consequently, modified the Decree, inter alia, restraining the original / **Defendant** **Respondent** in the suit nos. 3 and 4 / from interfering with the northern half of the disputed property. Learned Counsel further pointed out that there is no identification of the alleged northern half and, consequently, granting the relief of this nature is totally unjustified. Learned Counsel further pointed out that the Appellants are also entitled to the disputed property being the sisters of the original defendant no. 3 and, as such, any alleged division of the property as claimed by the Respondents is not at all binding on the Appellants. Learned Counsel as such submits that the substantial question of law be answered in favour of the Appellants and the injunction granted by the learned Judge be set aside.

5. On the other hand, Shri C. A. Coutinho, learned Counsel appearing for the Respondents, has pointed out that the Appellants cannot be considered to be an aggrieved person with the relief granted by the Lower Appellate Court as, according to him, the injunction granted is only as against the Respondent nos. 3 and 4. Learned Counsel further pointed out that as the Appellants cannot be considered to be the aggrieved party, the question of interfering with such part of a Decree at the instance of the Appellants would not at all be justified. Learned Counsel as such submits that the above Appeal be rejected.

6. Upon hearing the learned Counsel appearing for the respective parties and on perusal of the records, it is not disputed that the alleged northern

half claimed by the Respondents has not been identified by producing any croqui or plan on record. In such circumstances, unless such portion is adequately identified the question of granting any permanent injunction by the learned Judge is not at all justifiable. Granting of such a permanent injunction would result in vagueness in the relief granted by the Court which is not permissible in law. Considering that Mr. C. A. Coutinho, learned Counsel appearing for the Respondents fairly accepts that the Respondents have not placed on record any plan or croqui identifying such northern half, the learned Judge was not justified to grant the relief of permanent injunction.

7. With regard to the contention of Mr. Coutinho, learned Counsel appearing for the Respondents, that the Appellants cannot be considered to be the aggrieved person, I find that the alleged claim of the Respondents to obtain such a relief is on the basis that there is a partition of the disputed property between the / **Defendant** Respondent nos. 1, 2 and 5 on one part and the Respondent nos. 3 and 4 on the other part. Admittedly, the Appellants are not parties to such alleged partition. As such, any finding with that regard would naturally affect the claim of the Appellants, if any, over the disputed property. In such circumstances, when a party can show that he would be remotely affected with any findings arrived at by the Courts below, such party can challenge such finding before the Appellate Court as otherwise it would affect her rights to the subject property. The learned Judge was not justified to grant such relief in the review application filed by the Respondents. Hence, the contention of Mr. Coutinho, learned Counsel appearing for the Respondent on that count, deserves to be rejected.

Corrections
Carried out as
Per order dated
21.01.2016
Passed in MCA
no. 771 of 2015.

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

ORDER

(i) The impugned Order dated 05.04.2007 passed in Review application no. 01 of 2007 and the consequent Corrigendum passed by the learned Judge dated 05.04.2007 are quashed and set aside.

(ii) Appeal stands disposed of according with no Orders as to costs.

F .M. REIS, J.

arp/*