

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 12 OF 2014**

SHRI GIRMO RAM NAIK BICAR @ GIRMO
DESSAI (SINCE DECEASED) THROUGH
LR'S. ... Appellants

Versus

THE CHIEF OFFICER, CANACONA
MUNICIPAL COUNCIL ... Respondent

Mr. D. Pangam, Advocate for the Appellant.

Mr. Sudesh Usgaonkar, Advocate for the Respondent.

Coram:- N. M. JAMDAR, J.

Date:- 23 February 2015

ORAL ORDER:

By this Second Appeal the appellants challenge the judgment and order passed by the Adhoc District Judge, South Goa, Margao dated 7 February 2011 and the judgment and order passed by the Civil Judge Senior Division, Margao, dismissing the suit of the appellants.

2. The appellants had filed a suit praying for relief of injunction against the respondent-Municipal Council. According to the appellants they are the owners of the suit property and the respondent-Municipal Council without any legal right was interfering with their possession. Both the Courts found that the appellants-plaintiff did not show any

title to the property and considering the fact that respondent-Council was using the property for more than 30 years relief of permanent injunction could not be granted.

3. Mr. D. Pangam, the learned Counsel for the appellants submitted that the appellants had adequately shown their title to the property relying upon the registration documents. He submitted that the appellate Court had proceeded with the matter without noticing specific amendment made in the plaint regarding the registration. It was also submitted that the entries in registration would be conclusive unless they are substantially rebutted and no title document has been produced by the respondent-Council. Reliance was placed on the decision of the learned Single Judge of this Court in the case of ***Bharatkumar Shrimannarayan Agrawal & Ors. V/s. Anita Trust, through Priti Razanbhai Patel & Anr.*** reported in ***2003 (1) Bom.C.R. 230***. He also submitted that since the suit is instituted on the basis of title, mere fact that respondent may have been using the property, need not preclude the appellant from grant of relief of injunction. He submitted that in the registration the name of the property is mentioned, and the other part of the property can be traced to different owners, and by appointing a Commissioner, the property in question could have been easily demarcated, if identity of the property was an issue.

4. The case of the appellant in the plaint is in respect of 1/18th part of the property. By an amendment reference was made to 1/3rd part of the property in the name of the father of

the appellant. Both the Courts below have examined the documents produced on record by the appellant. The Courts have found that the appellant failed to trace the title to the suit property. The appellate Court has rightly observed that how the property came from Bombo Nilu Naik to Rama Laximon Naik, the father of the appellant, has not been satisfactorily demonstrated. It is argued that since Bombo and Rama were brothers, property has come to Rama by succession/inheritance, but there is no such document of inheritance in favour of Rama. What is relied upon is registration of hypothecation, which is not the same thing as registration which would prove ownership. In view of this position and the fact that no other evidence, including evidence of expert as regard identity, the evaluation of evidence by both the Courts below cannot be termed as perverse. Both the Courts below have considered the documentary evidence in its correct perspective.

5. The argument that the appellate Court has not noticed the amendment when it observed that no pleadings are to be found in the plaint is not tenable, as the appellate Court has considered the concerned document produced on record and has noted that pleadings did not make reference to the inscription or description. The appellate Court was clearly referring to even the amended portion, which does not make such specific reference. Since the appellants failed to prove the case based on title, there is no question of any burden shifting to the respondent. The name of respondent-Council appears in the land records. In spite of the same, no

declaration of title is sought in the suit. Suit for simplicitor injunction is filed.

6. The factual position on record is that there is a road through the property since the year 1960. The road has been tarred and maintained for last 30 years. There are four structures in the property belonging to other persons. These structures are subject matter of Writ Petitions, in which directions have been issued against the respondent-Council not to demolish them. There is also a shop in the premises which has been put up with the permission of respondent-Council and respondent-Council is collecting monthly fees. There is a bus shed in the property. Two toilet blocks have been erected. The work of erection of arches, steps and ramp has been put up. Both the Courts below have rightly considered the continuous use of property by the respondent-Council for last several years, to deny the relief of injunction.

7. Therefore, no perversity or any substantial question of law arises in this appeal. The appeal is dismissed.

N. M. JAMDAR, J.

NH/-