

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 20 OF 2015

MR. FRANCISCO ANTONIO ABEL PEREIRA
E SILVEIRA (DECEASED) THR. LRS., ... Appellant

Versus

MRS. FRANCISCA MARQUES PEREIRA E
SILVEIRA AND 2 ORS., ... Respondents

Shri Ressano Hector Noronha, Advocate for the Appellant.

Shri M.B. Costa, Senior Advocate with Ms. S. Chodankar, Advocate
for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE : 29th JULY, 2015

P.C:

Heard Shri Noronha, the learned Counsel for the
appellant and Shri Costa, the learned Senior Counsel for the
respondents.

2. The respondents had filed a suit for accounts and
injunction, both prohibitory and mandatory. The trial Court had
dismissed the suit, which has been reversed by the first Appellate
Court. The defendants are in appeal before this Court.

3. The perusal of the judgment of the Appellate Court shows that the appeal has been partly allowed as under:

"This appeal stands partly allowed. As a result, the impugned judgment is quashed and set aside. The suit stand partly decreed. Accordingly, the defendants are directed to give the plaintiffs the account of the income from the suit property from 1990 upto the present date and further till the suit property is partitioned and the defendants are directed to pay the plaintiffs half of the income thereof. The defendants, their agents and representatives are permanently restrained from doing any construction in the suit property, as also from doing any alteration to the suit house, from cutting of trees and/or disposing of the same without the written consent and permission of the plaintiffs and also from selling or disposing of the standing crop like mangoes and jack-fruit from the suit property, without the written consent and permission of the plaintiffs."

4. It is undisputed that there is a separate suit for partition filed by the respondents against the appellants, which is pending before the competent Court, after its remand. It is also undisputed that there is a prayer for accounts/mesne profits in the said suit. In so far as, the impugned judgment granting permanent injunction, restraining the appellants from effecting any construction/alteration in the suit house, without the consent of the appellants and from creating third party interest, is concerned, it is submitted by Shri Costa, the learned Senior Counsel that at present, the respondents have no intention to create any third party interest or to effect any alteration. Even as regards, the accounts of the income from the suit property, incurring from the year 1990, till date and till the suit property is partitioned, with further directions to pay half of the income to the respondents, it is submitted that the said issue can be gone into and decided in the partition suit. In such circumstances, it is submitted that appropriate orders be passed.

5. Having heard the learned Counsel for the parties and by consent, the Second Appeal is disposed of in the following terms:

(a) Part of the impugned judgment and decree, directing rendering of the accounts of the suit property from 1990, till date and till the suit property is partitioned and further directions to pay half of the income to the respondents, is hereby set aside.

(b) It is made clear that the said issue is expressly kept open to be gone into and decided in the partition suit, which is pending.

(c) Rest of the judgment and decree granting permanent injunction, is hereby confirmed.

(d) The Second Appeal is disposed of, in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.