

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 19 OF 2014

1] Mulla Ali Riza Muzawar and others ...Appellants.

Versus

1] M/s. Damodar Builders and others ...Respondents.

Mr. I. Agha, Advocate for the appellants.

Mr. Valmiki Menezes, Advocate with Ms. V. Shetye, Advocate for the respondents.

Coram :- M. S. SANKLECHA, J

Date : - 1st April, 2015.

Oral Order :

This second appeal is filed challenging the order dated 2 August, 2013, passed by the District Court (First Appellate Court), upholding the order dated 19 May, 2007, passed by the trial Court dismissing the suit filed by the petitioners.

2. Though the appellants have sought to raise various questions of law in its memo of appeal at the time of the hearing, the same were abandoned and re-framed questions of law were tendered. However, during the course of hearing the appellant pressed only the following two questions of law for my consideration.

- (1) Whether the Ld. Appellate Court having held in paras 33 and 34 based on the judgment in the case of *Vidhyadhar V/s. Manikrao (AIR 1999 SC 1441)* that Defendants having

not stepped in the witness box, the prescription pleaded by them as a form of acquisition of the property, does not stand proved, the Appellate Court erred in law in not decreeing the suit in favour of the Appellants ?

- (2) Whether the Deed of Lease (Aforamento) dated 22/03/1956 could at all create title in favour of Surya Kushna Nagvekar to sell the suit property in favour of Defendant nos. 3 to 16 and in turn thereafter by defendant nos.3 to 16 in favour of defendant nos.1 and 2.

3. On 1 November, 1995, the appellants filed a suit against the respondents, to declare a sale deed dated 27 February, 1992, in respect of property known as Predio Urdgal situated at Upper Bazar, Ponda Goa, registered as a whole under No.6396 of Book B-17 (new) and the Land Revenue Office under No.693 a portion ad-measuring 875 sq. mts. of Survey No.157/1 (hereinafter referred to as “suit property”) executed by the legal heirs of one late Mr. T. Shirsat i.e. respondent Nos.3 to 16 in favour of respondent Nos.1 and 2 as null and void. Besides seeking permanent injunction restraining the respondent Nos.3 to 16 from in any manner interfering with the suit property. In this appeal we are concerned with 875 sq. mts. (suit property) out of a larger portion of the land claimed to be owned by the appellants.

4. The basis of the above suit filed by the appellants is that their grand father had on 22 March, 1956 granted a deed of Aforamento (a perpetual lease) to one Nagvekar of the suit property. Thereafter, the Nagvekar by a deed dated 15 June, 1962 sold the suit property to one T. Shirsat. The appellants have claimed ownership with regard to the suit property inter alia on the basis that their father had filed a civil suit in the year 1963 being Civil Suit No.4744/1963, and the same was decreed on 1 November, 1963 in favour of their father. Thus, according to them the order dated 1 November, 1963 of the Court held that the aforamento granted by the plaintiffs grand-father to Nagvekar in 1956 as well as the sale deed dated 15 June, 1962 entered into between Nagvekar and the predecessor of respondent Nos.3 to 16, null and void.

Regarding Question No.(1) :

5. The trial Court in its order held that the respondent Nos.3 to 16 claimed title to the suit property by virtue of adverse possession. Before the Appeal Court the appellants contended that respondent Nos.3 to 16 had not proved adverse possession. The Appeal Court by its impugned order proceeded on the basis that even if the claim of adverse possession as raised by the respondents, is not accepted, yet it is an admitted position that the permanent lease i.e. aforamento was granted by the appellants father to said Nagvekar and who while in possession of the

same had transferred it to respondent Nos.3 to 16. Therefore in the present facts the question No.1 as formulated becomes academic. This is so as respondent Nos.3 to 16 were entitled to deal with the suit property on the basis of the permanent lease i.e. aforamento. It is pertinent to note that the finding of the trial Court is that the aforamento is a permanent lease has not been challenged before the Appeal Court.

6. Accordingly question No.1 as formulated does not give rise to any substantial question of law. Thus question No.1 dismissed.

Regarding Question No.(2) :

7. The trial Court inter alia framed the issue, whether the appellants prove that the deed of aforamento (perpetual lease) dated 22 March, 1956 granted by the appellants father to Nagvekar, is null and void and answered the same in the negative. The trial Court held that the appellants were not able to produce any document / certified copy of the alleged order of the Civil Court in favour of the appellants father in suit No.4744/1963, which declares the perpetual lease (aforamento) dated 22 March, 1956, entered between the appellants father and one Nagvekar, as null and void. Thus, it held that the consequent transfer by the said Nagvekar also cannot be held to be null and void. In appeal, the Appeal Court, by the impugned order held that the plaintiffs had not produced any record in respect of Suit No.4744/1963 and more important copy of

the decree in Suit No.4744/1963, under which they claimed that the perpetual lease to Nagvekar and the consequent sale by the said Nagvekar to the predecessor of respondent Nos.3 to 16 had been declared null and void. It will therefore be noticed that the trial Court as well as the Appeal Court have reached a concurrent finding of fact that the appellants have not been able to establish their title to the suit property. In the above view, question No.1 as formulated would not arise as both the Courts below have come to a finding of fact that the appellants did not prove their title of the suit property. Consequently, there is no occasion for the appellants to challenge the transfer of the suit property by the said Nagvekar to the predecessor of respondent Nos.3 to 16 and thereafter by respondent Nos.3 to 16 to respondent Nos.1 and 2. The aforesaid finding of fact is not shown by the appellants to be perverse or arbitrary.

8. Accordingly, question No.2 in the present facts does not give rise to any substantial question of law. Thus question No.2 dismissed.

9. Appeal dismissed. No order as to costs.

M. S. SANKLECHA, J.

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