

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEALS NO.29 & 30 OF 2008****SECOND APPEAL NO.29 OF 2008**

1 Shri Balcrishna Shivram Naik
Gaoncar,
son of Shivram Naik Gaoncar,
since deceased, through legal
heirs

1(a) Mr. Chetan Subhash Fall
Dessai,
son of Subhash Purshottam
Fall Dessai,
Aged 22 years, bachelor,
Indian National.

1(b) Miss Sonia Subhash Fall
Dessai,
D/o. Subhash Purshottam Fall
Dessai, Aged 26 years,
spinster, Indian National.

Both residents of House
No.1332/1, Next to I.T.I.,
Ambeafondi Ward,
Nagorcem, Palolem,
Canacona, Goa.

2 Smt. Vijayabai B.N. Gaoncar,
teacher, adult, married,
Both residents of Chaudi,
Canacona-Goa and presently
residing at Flat No.C-5-9,
Junta Quarters, Pajifond,
Margao-Goa.
since deceased, through legal
heirs

- 2(a) Mr. Shivram Balkrishna Naik
Gaonkar,
son of Mr. Balkrishna Naik
Gaonkar, Aged 46 years,
married, Government
Employee, Indian National
and his wife
- 2(b) Mrs. Sheetal Shivram Naik
Gaonkar,
Daughter of Kushali Naik,
Aged 40 years, married,
service, Indian National.
- 2(c) Mr. Vinay Balkrishna Naik
Gaonkar,
Son of Mr. Balkrishna Naik
Gaonkar, Aged 42 years,
married, service, Indian
National, and his wife.
- 2(d) Mrs. Priya Vinay Naik
Gaonkar,
Daughter of Tukaram Lau
Salgaonkar, Aged 36 years,
married, Service, Indian
National.
- 2(e) Mrs. Kalpana Sandeep Naik
Gaonkar,
Daughter of Ramdas Mahadev
Phal, W/o. Sandeep
Balkrishna Naik Gaonkar,
Aged 40 years, widow,
service, Indian National.

All residents of Mandop,
Shanti Colony, House
No.269/H, Aquem Baixo,

Navelim, Salcete-Goa.

- 2(f) Mrs. Vinita Sajo Naik,
D/o. Mr. Balkrishna Naik
Gaonkar, Aged 36 years,
married, Housewife, Indian
National and her husband.
- 2(g) Mr. Sajo Pandarinath Naik,
Son of Pandarinath
Chandrakant Naik, Aged 42
years, married, service, Indian
National.

Both Residents of Mandop,
Shanti Colony, House
No.269/H, Aquem, Baixo,
Navelim, Salcete-Goa.

- 3 Shri Govind M. Sinai
Nagorsekar
since deceased, through legal
heirs
- 3(a) Mr. Mallesh Govind Sinai
Nagorsekar,
Son of late Govind M. Sinai
Nagorsekar, Aged 30 years,
married, service, Indian
National, and his wife,
- 3(b) Mrs. Siddhi Mallesh Govind
Sinai Nagorsekar,
Daughter of late Anand
Prabhu, Aged 23 years,
married, Indian National.

Both residents of opposite

Church, Chaudi, Canacona-Goa.

3(c) Miss Manjiri Govind Sinai
Nagorsekar,
D/o. late Govind M. Sinai
Nagorsekar, Aged 30 years,
unmarried, Indian National,
Resident of opposite Church,
Chaudi, Canacona-Goa.

3(d) Mrs. Mithila Amey Kamat,
D/o. late Govind M. Sinai
Nagorsekar, Aged 25 years,
married, Housewife, Indian
National and her husband.

3(e) Mr. Amey Venkatesh Kamat,
son of Shri Venkatesh Kamat,
Aged 28 years, married,
Indian National.

Both resident of opposite
Madkai, Ponda-Goa.

4 Smt. Suchita Govind Sinai
Nagorsekar,
adult, teacher.
Residing at Chaudi,
Canacona, House No.52,
Near St. Theresa High School,
Opp. Church of Canacona-
Goa.

5 Smt. Sitabai Rama N. Dessai,
widow of Rama Fakir N.
Dessai, adult, housewife and
her sons.

- 6 Shri Pramod Rama N. Dessai,
son of late Rama Fakir N.
Dessai, adult, widower,
teacher.
- 7 Shri Ashok R.N. Dessai, son
of late Rama Fakir N. Dessai,
Adult, bachelor.
- 8 Shri Pradeep R.N. Dessai,
son of late Rama Fakir N.
Dessai, adult, bachelor.
- 9 Shri Prashant R.N. Dessai,
son of late Rama Fakir N.
Dessai, adult, bachelor.

All residing at House
No.1203, Near the Pimpla
Pedda, Ponsulem, , Canacona-
Goa.

- 10 Mrs. Kishori C. Fadte,
daughter of late Rama F.N.
Dessai, housewife, adult and
her husband.
- 11 Shri Chandrakant V. Fadte,
landlord, adult.
Both residing at House
No.83(3), Fadtewado, near
Avertano's Bungalow,
Veroda, Cuncolim, Salcete-
Goa.
- 12 Smt. Shobha Eknath Prabhu,
daughter of late Rama Fakir
N. Dessai, housewife, adult

and her husband.

- 13 Shri Eknath N. Prabhu,
son of N. Prabhu, adult,
married.
Both residing at House
No.154, Usgao, Zoriwada,
Barazan Ponda-Goa.

.... Appellants

V/s

- 1 Shri Santosh Narayan Dessai,
Son of Narayan S. Dessai,
Adult, businessman, married,
residing at House No.1331/1,
near Navodaya Vidyalaya,
Next to I.T.I., Ambeafondi
Ward, Nagorcem, Palolem,
Canacona, Goa and his wife.
- 2 Mrs. Santosh Narayan Dessai,
Adult, married, residing at
House No.1331/1, Next to
I.T.I., Ambeafondi Ward,
Nagorcem, Palolem,
Canacona, Goa.

.... Respondents

**WITH
SECOND APPEAL NO.30 OF 2008**

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son of Shivram Naik Gaoncar,
since deceased, through legal
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Dessai,
son of Subhash Purshottam
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Aged 22 years, bachelor,
Indian National.

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Phal, W/o. Sandeep
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son of N. Prabhu, adult,
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Both residing at House
No.154, Usgao, Zoriwada,
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.... Appellants

V/s

- 1 Shri Subhash Purshottam Fall
Dessai,
son of Purushottam Fall
Dessai, Adult, businessman
and Contractor, married,

residing at House No.1332/1,
Near Navodaya Vidyalaya
Next to I.T.I., Ambeafondi
Ward, Nagorcem, Palolem,
Canacona, Goa and his wife

- 2 Mrs. Santosh Narayan Dessai,
Adult, married, residing at
House No.1331/1, Next to
I.T.I., Ambeafondi Ward,
Nagorcem, Palolem,
Canacona, Goa.

.... Respondents

Shri Shivan Desai, Advocate for the Appellants.
Shri P.A. Kamat, Advocate for the Respondents.

CORAM : F.M. REIS, J.

DATE : 9th JANUARY, 2015

ORAL JUDGMENT:

Both the above appeals were admitted on 17/03/2009 on the following substantial questions of law:

- (i) Whether the Courts below fell in error in ignoring the fact that the defendants had set up a title in the third person while granting protection to them under Section 53A of Transfer of Property Act ?
- (ii) Whether the Courts below fell in error in ignoring the fact that the defendants had shown their willingness to purchase the property @ Rs.20/- per square metre when the agreement stipulated the rate @ Rs.60/-per square metre and when the defendants raised the plea that they are ready to purchase the property only if the plaintiff had a marketable title ?

(iii) Whether the Courts below fell in error in holding that suit was barred by limitation on the ground that the suit was one for demolition of the structure when essentially, the suit was one for possession ?

2. I have heard Shri Shivan Desai, learned Counsel appearing for the appellants and Shri P.A. Kamat, learned Counsel appearing for the respondents.

3. During the course of the hearing of the above appeal it was pointed out by Shri Shivan Desai, learned Counsel for the appellants that during the pendency of the above appeal the appellants filed an application under Order 41 Rule 27 of the Civil Procedure Code to rely upon the judgment and decree dated 17/04/2012 passed in Regular Civil Appeal No.147/2011, which according to him was in respect of the disputed property. The learned Counsel further pointed out that the findings in the said judgment conclusively establish the ownership of the appellants over the disputed property.

4. Shri P.A. Kamat, learned Counsel for the respondents points out that the stand of the respondents with regard to the title of the appellants was essentially on the ground that there was no conclusive

adjudication of the dispute in respect of the ownership of the appellants. Learned Counsel further pointed out that the said judgment will have a material bearing to decide the matter in controversy. Both the Counsel, as such, pointed out that to examine the relevancy or otherwise of the said judgment, it would be appropriate to direct that the Lower Appellate Court to decide both the appeals preferred by the appellants afresh in the light of the findings in the said judgment. Hence, the substantial questions of law are answered accordingly.

5. In view of the above, by consent, the following order is passed:

O R D E R

(i) The impugned judgments dated 31/07/2007 in Second Appeals No.29/2008 and 30/2008 are quashed and set aside.

(ii) Regular Civil Appeal No.126 of 2008 and Regular Civil Appeal No.127 of 2005 are restored to the file of the learned Lower Appellate Court.

(iii) The Lower Appellate Court shall proceed to decide the said appeals afresh in the light of the observations made herein above.

(iv) Needless to say, all the contentions of the both the parties are left open.

(v) Both the appeals stand disposed of accordingly with no orders as to costs.

(vi) Parties are directed to appear before the lower appellate Court on 2/03/2015 at 2.30p.m.

F.M. REIS, J.

NH/-