

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 91 OF 2012

1. Smt. Zainabi Manipuri,
since deceased,
1(a) Shaikh Rafiya Azim Manipuri,
wife of Azim Manipuri,
1(b) Mohammed Manipuri,
s/o late shaikh Ibrahim Manipuri,
1(c) Shaikh Mumtaz Mohammed Manipuri,
w/o Mohammed Manipuri.
2. Shri Azim Manipuri,
Son of Shaikh Ibrahim Manipuri,
Age 48 years,
Both residents of Aralli,
Betul – Goa. Appellants

V e r s u s

Smt. Zubeda Bi,
Major of age,
Widow of late Shaikh Abdul
Rehaman Muzawar,
r/o Pirwada, Betul – Goa.

since deceased represented by legal heirs:-

1. Shaikh Mohemmed Muzawar,
and his wife,
2. Sakina Bi,
3. Shaikh Ibrahim Muzawar,
4. Nacima Bi,
5. Shaikh Sikandar Muzawar,
and his wife,
6. Shamshad Begum,
7. Smt. Kulsam Bi, (since deceased) Lrs on record
and her husband,
8. Mulla Issac (expired)
9. Smt. Hafisa Bi,
widow,
10. Smt. Camrunissa Bi,
11. Shri Mohemmad Bi,
12. Smt. Gulzar Bi,
13. Shri Shaikh Kadar,
14. Smt. Samina Bi,
and her husband,
15. Shri Shaikh Abubakar,
16. Smt. Zabina Bi,
Spinster,
17. Shri Abdul Munaff,
Bachelor,
18. Smt. Safoora Bi,
and her husband,
19. Shri Rehamnat Khan,
All residents of Pirwada,

Betul.

20. Amir Mula Issac,
(since deceased through LR's)
20A Mr. Mulam Mahzad Amiruddin,
Major of age,
s/o Amir Mulla,
R/o F-2, Shaifa Residency,
Nagamasjid, Ponda, Goa.

20B Mr. Mulam Luqman Amiruddin,
Major of age,
s/o Amir Mulla,
R/o F-2, Shaifa Residency,
Nagamasjid, Ponda, Goa.

21. Farah Mulla Amir,
Wife of Amir Mulla,
Age 40 years,
C/o Imran Khan,
P.O. Box 5025,
Dubai, U.A.E.

..... Respondents

Mr. Nigel D' Costa Frias, Advocate for the Appellants.

Mr. Mahesh Amonkar, Advocate for Respondents no.1, 17 and 19.

CORAM: N. M. JAMDAR, J.

DATE: 11 MARCH, 2015.

ORAL ORDER:

By this appeal, the appellants challenge the Judgment and decree passed by the Civil Judge, Senior Division, Quepem dated 3 November, 2008 and the Judgment and order passed by the learned District Judge, South Goa, Margao dated 11 May, 2010, decreeing the suit filed by the respondents and dismissing the appeal filed by the appellants, respectively.

2. The respondents had instituted a suit on the ground that they had purchased the suit property in a Court auction. According to them, they have become owners of the property. The appellants were allowed to reside in the property on humanitarian grounds, however, the appellants started creating nuisance for the respondents-plaintiffs. It was the case of the respondents-plaintiffs that the appellants made some extension to the northern and western side of the house in which they were permitted to reside and refused to demolish the same. The respondents-plaintiffs accordingly sought an order of permanent injunction against the appellants and also a mandatory injunction to demolish the extension. The learned Trial Judge decreed the suit and the appeal filed by the appellants was dismissed by the impugned orders.

3. Mr. Nigel Da Costa Frias, the learned counsel for the appellants firstly submitted that the property which the respondents-plaintiffs had purchased in the Court auction is not the same as the suit property. He submitted that the

documents on record would substantiate this fact. This argument however, has not been made in these terms before the Trial Court nor in the Appellate Court. This ground is also not taken in the appeal memo filed before the District Court. Mr. Costa Frias submitted that the issue of title of the respondents-plaintiff was raised in the notes of arguments before the District Court. However, the ground, that the property mentioned in the sales certificate is not the suit property which, would entail a factual inquiry. Such specific ground ought to have been taken and it cannot be that merely because the title is denied, the burden is shifted on the respondents-plaintiffs. The respondents-plaintiffs had produced the sales certificate. It was upon the appellants to demonstrate how it was not in respect of the suit property. Furthermore, since this point is not taken in the Courts below, it is not open to take this ground for the first time in a Second Appeal.

4. Mr. Costa Frias then submitted that the appellants have become owners by adverse possession. Both the Courts below have found, as a finding of fact, that the appellants have failed to prove their possession. Furthermore, to set up a plea of ownership by adverse possession all ingredients need to be proved and established. Merely because the appellants have continued in permissive possession and there are entries in the record that does not mean that title by adverse possession is established. To establish a claim of adverse possession, the acts of the party must be hostile and in denial to the title of the owner. There is no such factual position on record. This ground has been rightly negated by both the courts below.

5. The learned counsel for the appellants then submitted that there are no particulars as regards the extension which is sought to be demolished and without there being any prayer for possession, no order of demolition of extension could be passed. He relied upon the decision of the learned Single Judge of this Court in the case of “*Smt. Lakshmi Pednekar Vs. Shri Diogo Antonio Fernandes*” in Second Appeal No.43 of 1985 .

6. In the plaint, the respondents-plaintiffs had sought demolition as regards the extension as specified in the survey plan. Evidence was led by the plaintiffs of himself and two witnesses. The surveyor who had drawn the plan was also examined. Both the Courts below considered the survey, evaluated the evidence of both sides, and came to the conclusion that the extension covered the area of 18 sq. metres. The appellants had ample opportunity to point out that there was no extension as alleged and in fact they produced evidence in that regard which was considered, as not sufficient. The respondents-plaintiffs had sought demolition of the extension. Once it was established that the extension was done without the permission of the respondents-plaintiffs, the true owner of the property, then merely because a relief of possession as regards extension was not sought for, the direction for demolition of unauthorized extension cannot be set aside. The facts in the case of *Smt. Lakshmi Pednekar* (supra) were not identical to the present matter. In the present matter, both the Courts on evidence

have found that the extension was unauthorized.

7. There is no merit in the appeal. No perversity is found in the concurrent findings recorded by both the Courts below. The appeal is accordingly dismissed.

N. M. JAMDAR, J.

Ap/-