

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 8 OF 2015

MR. BALTAZAR DE SANTA CLARA NEVES
JAQUES FERNANDES AND 3 ORS., ... Appellants
Versus
SHRI FRANCISCO GERALD MARTIRES AND
ANR., ... Respondents

Adv. Mr. A. F. Diniz with Adv. Ryan Da Piedade Menezes, for the Appellants.

Mr. R. G. Ramani, Advocate for Respondent no.1aa.

Ms. R. Pereira, Advocate for Respondent no. 2.

Coram:- C. V. BHADANG, J.

Date:- 14th October, 2015

Oral Order:

By this appeal, the appellants/original plaintiffs are challenging the concurrent finding of dismissal of their suit being Regular Civil Suit no.225/1995/D by the learned Civil Judge, Junior Division, Margao. That was a suit filed for the relief of partition and separate possession. It appears that after the evidence was recorded in the suit and the oral arguments were heard, along with written notes of arguments, an application came to be filed on behalf of the respondent no.2 on 23/4/2010 for production of certain documents, as mentioned in paras 5, 6 and 7 of the said application. It is thereafter, that the suit came to be dismissed by judgment and order dated 21/5/2010, which was challenged by the appellants before the learned District Judge in Regular Civil Appeal no.438/2010. The said

appeal came to be dismissed by judgment and order dated 31/10/2014, which is subject matter of challenge in this appeal.

2. I have heard Mr. Diniz, the learned counsel appearing for the appellants, Ms. Pereira, the learned counsel appearing for respondent no.2 and Mr. Ramani, the learned counsel appearing for respondent no.1(aa).

3. It is contended by Mr. Diniz, the learned counsel for the appellants that the Courts below could not have considered and relied upon the inscription no.45490, when the application for production of the same was not formally allowed and the said document was not admitted in evidence or exhibited. He submits that in such circumstances, the matter be remanded to the First Appellate Court for deciding it afresh after considering the application dated 23/4/2010 filed by the respondent no.2 for production of documents.

4. The learned counsel appearing for the respondents have no objection for such a course of action being followed.

5. It is submitted by the learned counsel for the parties that in the event the production of the documents is allowed, the Appellate Court may pass appropriate orders in accordance with the provisions of Order 41 Rule 28 of C.P.C., after hearing the parties and then decide the appeal afresh in accordance with law.

6. I have considered the circumstances and the submissions made at the bar. Having regard to the concession recorded at the bar, the following order is passed:

(i) The appeal is partly allowed.

(ii) The impugned judgment and decree passed by the learned District Judge in Regular Civil Appeal No.438/2010 dated 31/10/2014 is hereby set aside.

(iii) The appeal is restored to the file of the learned District Judge at its original number.

(iv) The First Appellate Court shall decide the application dated 23/4/2010 filed by respondent no.2, in accordance with law.

(v) In the event the application is allowed, the First Appellate Court shall be at liberty to consider the proof of the documents in accordance with Order 41 Rule 28 of C.P.C.

(vi) The First Appellate Court shall thereafter decide the appeal afresh, after hearing the parties in accordance with law.

(vii) The parties to appear before the First Appellate Court on

20/11/2015 at 10.a.m.

(viii) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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