

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 80 OF 2009

Shri Danzil Dias (Since deceased)
through legal heirs
1(a) Smt. Florie De Souza e Dias,
w/o Danzil Dias,
age 49 years,

1(b) Ms. Flozil Donna Dias,
D/o Danzil Dias,
age 21 years,
Both resident of H.No.391,
Naik Vaddo, Sarzora,
P.O. Chinchinim,
Salcete Goa.

... Appellants

V e r s u s

1. Shri Conrad Coutinho,
13/3, Nailchi Terrace,
Kharestji Rama Street,
Grant Road,
Mumbai – 7,

2. Sr. Rudolfa,
Maria Bambino Sisters,
Hospicio Hospital,
Margao Goa.

... Respondents

Mr. Guru Shirodkar, Advocate for the appellants.

Mr. Sudin M. S. Usgaonkar, Senior Advocate with Ms. Tanvi Ghanekar,
Advocate for the respondents.

CORAM : F. M. REIS, J

DATE : 27th November, 2015

ORAL JUDGMENT

Heard Mr. G. Shirodkar, learned counsel appearing for the

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appellants and Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated 30.07.2010 on the following substantial question of law.

Whether under Sections 67, 101 and 102 of the Evidence Act, the burden of proving that the receipt at Exhibit PW1/A was executed and signed by the defendant no.1 was on the plaintiff when it is the case of the defendant that the said receipt was not issued by him and same is fake and fabricated and more so that between 15.11.1996 to 22.11.1996 he was in Bombay ?

3. The matter was heard at length and was part heard. On the next date of hearing, Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the respondents has submitted that the matter is being settled as the parties have agreed to enter into a compromise with regard to the subject recovery in the suit. Accordingly, the matter was taken up yesterday and the legal heirs of the original appellant were present in Court and have pointed out that the appellant and the respondents have amicably settled their

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dispute and that the respondents have accordingly paid a sum of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) in full and final settlement of the claim of the appellant in the suit which is the subject matter of the above appeal. Two demand drafts of Rs.87,500/- each were tendered in the name of the legal heirs nos. 1(a) and 1(b). In acknowledgment of the receipt of such demand drafts, the legal heirs of the appellant have signed a receipt which is taken on record and marked 'X' for identification. The said receipt also inter-alia records that the appellants have authorised their Advocate to sign the consent terms in the above appeal as such terms were on transit to be filed in this Court. Accordingly, both the learned counsel who are present in Court today have filed the consent terms signed by the respondent no.1 and his Advocate besides the learned counsel appearing for the appellant on behalf of the legal heirs based on the authority given by them to sign such consent terms. The consent terms are accordingly accepted and taken on record and marked 'Y' for identification.

4. In view of the above, I pass the following :

O R D E R

(i) The impugned judgments and decrees passed by the learned Trial Judge dated 29.09.2008 and the learned Lower Appellate Court dated 24.07.2009 are quashed and set aside.

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(ii) The suit filed by the appellant bearing Regular Civil Suit No.269/99/D stands decreed in terms of the consent terms marked 'Y' for identification.

(iii) The appeal stands disposed of accordingly with no order as to costs.

F. M. REIS, J

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