

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 101 OF 2009**

1. Narendra Pandu Chatim,
of major age, married,
businessman,

2. Mrs. Vandana Narendra Chatim,
wife of Narendra Pandu Chatim,
teacher, Both residing at
House No.196A,
Badem, Salvador-do-Mundo,
Bardez, Goa.

..... Appellants.

V/s.

1. Premanand Babuso Naik,
son Babuso Naik, aged about 48 years,
married, service,

2. Sou. Pravita Premanand Naik,
of major age, wife of Premanand Naik,
Housewife, married,
both residing at H.No.350,
Ubovado, Salvador-do-Mundo,
Bardez, Goa.

3. Mrs. Bicu Babuso Naik,
widow of Babuso Naik, aged about 60 years,
housewife, residing at House No.350,
Ubovado, Salvador-do-Mundo,
Bardez, Goa.

4. Mr. Dnyneshwar Babuso Naik,
married, residing at House No.350,
Ubovado, Salvador-do-Mundo,
Bardez, Goa.

5. Mrs. Dnyneshwar Naik,

wife of Dnyaneshwar Naik,
housewife, residing at House No.350,
Ubovado, Salvador-do-Mundo,
Bardez, Goa.

..... Respondents.

Mr. Nigel Costa Frias, Advocate for the appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. V. Palyekar, Advocate
for the respondents No.1 and 2.

CORAM :- F.M. REIS, J.

Date : - 11 DECEMBER 2015.

ORAL JUDGMENT :-

During the Course of hearing of the above appeal, both the learned Counsel fairly accept that the issue on possession would be material to decide the matter in controversy and, in fact, both the Courts below have not given any categorical finding on possession claimed by the appellants.

2. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the respondents has pointed out that the learned Trial Judge has, in fact, decreed the suit filed by the appellants based on the Judgment and Decree passed in Regular Civil Suits No.42/1995/D and 49/95/B. Mr. Nigel Costa Frias, learned Counsel appearing for the appellants, but, however, disputes the said contention and it is pointed out that the

learned Trial Judge had also examined other contemporaneous material brought on record by the appellants to establish their claim of title. But, however, on perusal of the Judgment of the learned Trial Judge, I find that the learned Trial Judge has also relied upon the Judgment passed in the said Regular Civil Suits whilst deciding the suit filed by the defendants, against which the respondents have preferred Regular Civil Appeals No. 19/2000 and 20/2000, challenging the said Judgment before the Appellate Court, which appeals came to be allowed by the Judgment and Decree dated 4/11/2004. In such circumstances, I find that the said Judgment passed in the said suit would also have some bearing whilst deciding the issue of title claimed by the appellants herein.

3. Mr. Costa Frias, learned Counsel appearing for the appellants has also pointed out that the said suit is now fixed for hearing before the learned Trial Judge, but, however, the suit has been dismissed for nonprosecution and the appellants shall take necessary steps to get the said suit revived, in accordance with law.

4. In the peculiar facts and circumstances, the impugned Judgments and Decree dated 6th October, 2009 passed in Regular Civil

Appeal No.44/2008 is quashed and set aside. Regular Civil Suit No. 6/1998/A restored to the file of the learned Trial Judge. Pending the hearing and final disposal of the above suit, by consent of the learned Counsel, interim order passed by this Court, dated 22/9/2010 in Civil Application No.273/2009 shall continue and the appellants shall continue to deposit a sum of Rs.3,000/- in terms of the conditions imposed in the said interim order. Liberty to the appellants to seek for stay of the above suit after the Regular Civil Suit No.6/1998/A is restored to the file, in accordance with law.

Needless to say that the learned Trial Judge shall proceed to decide the said suit in the light of the observations made herein above, after hearing the parties, in accordance with law. All contentions of both the parties, on merits, are left open. Liberty to the parties, if they so desire, to file an appropriate application in case the suit is revived, either for stay of the order or for continuation of the order. Further, liberty to the respondents to withdraw the amount deposited in this Court. Such amount shall be subject to final order, if any, passed in the above suit.

F.M. REIS, J.

ssm.