

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 19 OF 2016

SHRI.VISHWANATH GOVIND GADDI AND 9
ORS.,

... Appellants

Versus

SHRI CHUDU RAGHOBHA GADDI AND 24
ORS.,

... Respondents

Shri. Ashwin D. Bhobe, and Ms. Maria Advocates for the appellants.

Coram:- F. M. REIS, J.

Date:- 10th June, 2016

P.C.:

Heard Shri A. D. Bhobe, learned Counsel appearing for the appellants.

2. The above appeal challenges the Judgments passed by the Courts below, whereby a suit filed by the respondents for injunction simpliciter came to be decreed.

3. Shri A.D. Bhobe, learned Counsel appearing for the appellants has assailed the impugned Judgments on the ground that the learned Judge has relied upon a Deed of Partition, executed way back in the year 1918 which was held to be prima facie null and void by the then Judicial Commissioner's Court to come to the conclusion that the respondents were entitled to the relief of permanent injunction. The learned Counsel further points out that the appellants

and the respondents are descendants of a common ancestor and inventory proceedings upon his death are pending before the Inventory Court wherein the subject property has also been described. The learned Counsel further submits that the respondents admitted that they have a house in the subject property which, according to him, clearly establishes that the appellants are also entitled to enjoy the subject-property as co-owners thereof. The learned Counsel has, thereafter, taken me through the findings of the Lower Appellate Court to point out that at one place the learned Judge has taken a view that the appellants are co-owners of the property, nevertheless, the finding has been rendered that though the appellants have a residential house in the property, the possession of the property was with the respondents. The learned Counsel has further pointed out that though the survey records stand in the name of the husband of the respondent No.1, nevertheless, according to him, the property belongs to the common ancestors of the appellants and the respondents and, as such, no relief can be sought on the basis of such entry. The learned Counsel further points out that both the Courts below have failed to consider the evidence produced by the appellants to the effect that the appellants are also in possession of the subject property. The learned Counsel has, thereafter, taken me through the Judgments of the learned Trial Judge, as well as of the learned Lower Appellant Court to point out that the findings of possession by the learned Judge are perverse which would require consideration by this Court in the present Second Appeal. The

learned Counsel has further submitted that though the inventory proceedings are pending before the Inventory Court, the findings in the present suit would come in the way of the appellants claiming their right to the subject property therein. The learned Counsel, as such, submits that the above appeal deserves consideration.

4. I have considered the submissions of the learned Counsel and I have also gone through the record. On perusal of the Judgments of the learned Trial Court, as also of the learned Lower Appellate Court, I find that upon minute analysis of the evidence adduced by the parties, both the Courts have concurrently come to the conclusion that the respondents were in possession of the subject property. The Courts below have also taken note of the fact that the appellants have a house located in the subject property and whilst granting the relief, the occupation of the house by the appellants has not been disturbed. The findings rendered by the Courts below stand corroborated by a Consent Decree executed between the appellants and the respondents wherein the appellants themselves have accepted that the possession of the subject property would be with the respondents until the rights claimed by the appellants in the inventory proceedings over the subject-property are conclusively established.

5. In such circumstances, considering that the suit was only for injunction simpliciter and the possession allowed to continue with the respondents, subject to the right which the appellants may

establish in the pending inventory proceedings, I find that there is no perversity in the findings arrived at by both the Courts below. The Trial Court, as well as the Appellate Court, have examined every piece of material produced by the parties to come to the conclusion that the respondents are in possession of the subject property.

6. Apart from that, the survey records also apparently stand in the name of the husband of the original respondent No.1 and, as such, I find that there is no misreading of evidence, nor can it be said that the findings rendered by the Courts below, on that count, are by overlooking any piece of clinching material that would take a contrary view to the findings in the impugned Judgments.

7. In such circumstances, I find that there are no substantial questions of law which arise in the present appeal for consideration under Section 100 of the C.P.C..

8. Subject to the above, the appeal stands rejected.

F. M. REIS, J.

ssm.