IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 32 OF 2016

MRS. LAUENCA SIQUEIRA PINTO
AND ANOTHER. …...... APPELLANTS.

VERSUS

MRS. FATIMA BORGES
R/O. CULVADO, CUNCOLIM. ….….... RESPONDENT.

Mr. J.A. Lobo, Advocate for the appellants.

Ms. Agnetha Lobo, Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 21 OCTOBER 2016.

ORAL ORDER :-

Heard Mr. J. A. Lobo, learned Counsel appearing for the appellants and Ms. A. Lobo, learned Counsel appearing for the respondent.

2. The above appeal challenges the Judgments passed by the Courts below whereby the suit for declaration filed by the appellants, inter alia, contending that the subject matter of the gift deed in favour

of the appellant No.1 would also include the property surveyed under No.185/24, came to be dismissed.

3. Mr. J.A. Lobo, learned Counsel appearing for the appellants has pointed out that the appellants have been able to duly identify the subject property on the basis of the report of the Commissioner which conclusively stated that the property inscribed in the Matriz records under No.5739 would include different survey numbers, including the property Survey No.185/24. The learned Counsel further points out that the Courts below have erroneously rejected the evidence of the Commissioner based on the answer given by him in the cross examination. The learned Counsel further points out that the learned Trial Judge has also come to the conclusion that the respondent has also failed to establish that she is the owner of the property. The learned Counsel has extensively taken me through the findings of the learned Trial Court to point out that the respondent has failed to prove her claim that Survey No.185/24 also belongs to them. The learned Counsel, as such, points out that there is perversity in the findings arrived at and the appeal deserves consideration.

4. I have considered the submissions of the learned Counsel and I have gone through the records. The suit filed by the appellants is for declaration. The burden is, therefore, on the appellants to establish whether the subject property bearing Survey No.185/24 is included in the Gift Deed relied upon by the appellants. Both the Courts below, upon appreciating the evidence on record, have concurrently come to the conclusion that the appellants have failed to establish their claim over the subject property. Apart from that, from perusal of the survey records in respect of Survey No.185/24, it cannot be disputed that the subject property stands in the name of the respondent. That apart, perusal of the Gift Deed inter alia discloses that 2/3rd of the property “Anvanllem” was gifted in favour of the appellant No.1 herein. PW.2 who is the Surveyor examined by the appellants has not identified 2/3rd of the suit property from 1/3rd which was not gifted to the appellant. The learned Lower Appellate Court whilst examining the appeal preferred by the appellants has also taken note of the inconsistency of PW.2 recorded in his cross examination. Both the Courts below have, upon appreciating the evidence on record, come to the conclusion that the appellants have failed to establish their claim over the subject property bearing Survey No.185/24 which is admeasuing 175 sq.

metres. There is no material on record produced by the appellants to disclose that the said property was included in the said gift deed. The evidence brought on record does not disclose that the subject property survey No.185/24 is included in the property gifted to the appellants. Once 2/3rd of the property has not been clearly identified by PW.2, the question of claiming any declaration on the basis of such evidence in favour of the appellants would not arise at all. Both the Courts below have rightly come to the conclusion that the appellants have failed to establish their claim over the subject property. Merely because the respondent has not establish their case, would not mean that the appellants would be entitled for a declaration. Apart from that, in a suit for declaration simplicitor, a plaintiff would not be entitled for such declaration under Section 34 of the Specific Relief Act, without claiming any further relief in accordance with law. No consequential relief has been sought by the appellants.

5. In such circumstances, I find no merit in the above appeal, which stands accordingly rejected.

F.M. REIS, J.

ssm.