

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 5 OF 2015

1. Mr. Pratap Shanker Dhargalkar,
Son of Shankar N. Dhargalkar,
58 years of age, service,
Resident of “Umashankar”
H. No.195B,
Near MPT Colony,
Patrong Baina,
Vasco-da-Gama Goa,
2. Mrs. Priyanka P. Dhargalkar,
(expired on 16/07/2008)
Legal heir of deceased Appellant No.2
2(a) Mast. Sohan P. Dhargalkar,
10 years of age,
Son of Pratap S. Dhargalkar,
Resident of “Umashankar”
H. No.195B,
Near MPT Colony,
Patrong Baina,
Vasco-da-Gama, Goa. Appellants

V e r s u s

1. Mr. Madhav Shankar Dhargalkar,
Son of Shankar Dhargalkar,
Major of age, service,
Resident of H. No.159A,
Patrong Baina,
Vasco-da-Gama, Goa.
2. Mr. Sandeep Madhav Dhargalkar,
Son of Madhav S. Dhargalkar,
major of age, service,
Resident of H. No.159A,
Patrong Baina,
Vasco-da-Gama, Goa.

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3. Mrs. Deepashree Sudhir Dessai,
Major of age, housewife,
Resident of Sapana Heritage,
Behind Sri Sri Ravishankar
Institute of Management,
(near old Kare College of Law
At the base of Moti Dongar)
Borda, P.O. Fatorda,
Goa 403 602.

4. Mr. Sudhir Murlidhar Dessai,
Major of age, service,
Resident of Sapana Heritage,
Behind Sri Ravishankar
Institute of Management,
(near old Kare College of Law
At the base of Moti Dongar)
Borda, P.O. Fatorda,
Goa 403 602.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the appellants.

Mr. A. Kamat, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 23rd June, 2016

ORAL JUDGMENT

Heard Mr. A. D. Bhobe, learned counsel appearing for the appellants and Mr. A. Kamat, learned counsel appearing for the respondents.

2. Admit on the following substantial questions of law :

:3:

(i) Whether the Court/s below after having accepted the report of the Commissioner Exhibit 85, where justified in holding that the Appellant had encroached into the eastern portion of plot III allotted to the Respondents ?

(ii) Whether the judgment and decree passed by the Courts below are on a mis-interpretation of the Partition Deed at Exhibit 35 and the Commissioner's report at exhibit 85 ?

3. Mr. A. Kamat, learned counsel waives service on behalf of the respondents.

4. After hearing the matter for some time and considering that the dispute is between two brothers in connection with the alleged encroachment carried out by one of the brothers, both the learned counsel pointed out that they would explore the possibility of settlement. Accordingly, when the matter was taken up today, both

the learned counsel submit that both the parties have amicably settled their dispute and have filed the consent terms. The learned counsel appearing for the appellants and the respondents have identified the signatures of the appellants and the respondents on the consent terms. The consent terms are accordingly accepted and taken on record and marked 'X' for identification. The appellant no.1 who is also present in person has admitted the contents of the consent terms. The learned counsel appearing for the respondents on behalf of the respondents has also confirmed and accepted the terms of the consent terms. In such circumstances, as the parties have amicably settled the dispute, the suit filed by the appellants has to be decreed in terms of the consent terms marked 'X' for identification. As such, the impugned judgments passed by the Courts below deserve to be quashed and set aside.

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

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment and decree dated 14.01.2013 passed by the learned Trial Judge in

:5:

Special Civil Suit No.23/2007/A (old) and Regular Civil Suit No.144/2010/A (new) and the judgment and decree dated 27.10.2014 passed by the learned Lower Appellate Court in Regular Civil Appeal No. 30/2013 are quashed and set aside.

(iii) The suit filed by the appellants is decreed in terms of the consent terms marked 'X' for identification.

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

F. M. REIS, J.

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