

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NOS. 5 & 6 OF 2010 & 17 OF 2012****SECOND APPEAL NO. 5 OF 2010**

Smt. Ratan Ashok Nawagekar,
wife of Shri Ashok Nawagekar,
major of age,
housewife,
r/o Plot No. E-42,
Housing Board Colony,
Mapusa, Bardez Goa.

.... Appellant

V e r s u s

1. Shri Subhash Bhupalrao Avalakki,
s/o Bhupalrao Avalakki,
major of age,
Civil Engineer,
r/o near Maruti Temple,
Hindawadi,
Belgam, Karnataka.

2. Shri Ashok Ningojirao Nawagekar,
s/o Late Ningojirao Nawagekar,
major of age,
[Govt. Servant],
r/o Plot No. E-42,
Housing Board Colony,
Mapusa, Bardez Goa.

.... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the appellant.

Mr. J. J. Mulgaonkar, Advocate for the respondent no.1.

AND

SECOND APPEAL NO. 6 OF 2010

Shri Ashok Ningojirao Nawagekar,
s/o Late Ningojirao Nawagekar,
aged 60 years, married,
retired Govt. Servant,
r/o House No. 353/9,
Plot No. E-42,
Housing Board Colony,
Mapusa, Bardez Goa 403 507 ... Appellant

V e r s u s

1. Shri Subhash Bhupalrao Avalakki,
s/o Bhupalrao Avalakki,
aged 61 years, married,
Civil Engineer,
r/o near Maruti Temple,
Hindawadi,
Belgam, Karnataka.
2. Smt. Ratan Ashok Nawagekar,
wife of Shri Ashok Nawagekar,
aged 50 years, housewife,
r/o House No. 353/9,
Plot No. E-42,
Housing Board Colony,
Mapusa, Bardez Goa. Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the appellant.

Mr. J. J. Mulgaonkar, Advocate for the respondent no.1.

AND

SECOND APPEAL NO. 17 OF 2012

Shri Subhash Bhupalrao Avalakki,
son of Bhupalrao Avalakki,
aged 61 years,
Civil Engineer,
r/o near Maruti Temple,
Hindwadi,
Belgam, Karnataka.

... Appellant

V e r s u s

1. Shri Ashok Ningogirau Nawgekar,
aged 60 years, and his wife

2. Smt. Ratan Ashok Nawagekar,
aged 50 years,
both residing at
353/9, Plot No. E-42,
Housing Board Colony,
Mapusa, Bardez Goa. 403507

.... Respondents

Mr. J. J. Mulgaonkar, Advocate for the appellant.

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the respondents.

Coram:- F. M. REIS, J

Date:- 24th June, 2016

ORAL JUDGMENT

All the above three Second Appeals were ordered to be taken up together as they arise from a common judgment and decree passed by the Courts below.

2. Second Appeal No.5 of 2010 came to be admitted by order dated 26.10.2010 on the following substantial questions of law.

(i) Whether the agreement dated 19.9.1989 on the basis of which the plaintiff sued the defendants, was liable to be declared as void, since the plot in question having been allotted to the defendant no.1 under a Scheme specially enunciated by the Housing Board for the benefit of persons fulfilling certain criteria, as prescribed under the scheme which the plaintiff apparently did not fulfill ?

(ii) Whether the suit instituted by the plaintiff was not maintainable in view of the relief sought in the plaint, without making the Housing Board a party to the suit ?

(iii) Whether the finding recorded by the trial Court, that the plaintiff was in possession of the suit house is perverse, and the First Appellate Court has misdirected itself in proceeding to decide the appeal of the appellant, without considering the correctness of the said finding in appeal ?

(iv) Whether the finding recorded by the First Appellate Court that the agreement dated

19.9.1989, was binding on the defendant no.2, and was liable to be enforced against her, for having been impliedly consented to by the defendant no.2, when it was case of the plaintiff that the defendant no.2 had expressly consented to the said agreement, and whether such a conclusion is in derogation of Sections 91 and 92 of the Indian Evidence Act ?

3. Second Appeal No.6 of 2010 came to be admitted by order dated 26.10.2010 on the following substantial questions of law.

(i) Whether the agreement dated 19.9.1989 on the basis of which the plaintiff sued the defendants, was liable to be declared as void, since the plot in question having been allotted to the defendant no.1 under a Scheme specially enunciated by the Housing Board for the benefit of persons fulfilling certain criteria, as prescribed under the scheme which the plaintiff apparently did not fulfill ?

(ii) Whether the suit instituted by the plaintiff was not maintainable in view of the relief sought in the plaint, without making the Housing Board a party to the

suit ?

(iii) Whether the finding recorded by the trial Court, that the plaintiff was in possession of the suit house is perverse, and the First Appellate Court has misdirected itself in proceeding to decide the appeal of the appellant, without considering the correctness of the said finding in appeal ?

4. Second Appeal No.17 of 2012 came to be admitted by order dated 21.03.2012 on the following substantial questions of law.

(i) Whether having upheld the validity of the agreement dated 19.09.1989 between the plaintiff and the defendant no.1, the Courts below ought not to have decreed the plaintiff's suit for specific performance in terms of prayer clause (a), (b) and (c) of the plaint ?

(ii) Whether the plaintiff's prayer for mandatory injunction for removal of locks of the suit house put by the defendants having been granted, could the plaintiff have been denied the relief

of perpetual injunction from interfering with or disturbing the plaintiff's possession of the suit house and the suit plot ?

5. During the course of the hearing of the above appeals, the learned counsel appearing for the original plaintiffs as well as the defendants have pointed out that the parties have amicably settled their disputes and have executed consent terms. The consent terms are duly signed by the appellant who is stated to be the defendant no.1 in the suit as well as the respondent no.1 who is stated to be the plaintiff in the suit and the respondent no.2 who is stated to be the original defendant no.2 along with their respective Advocates. The appellant as well as the respondents are present in Court and have admitted the consent terms. The learned counsel appearing for the respective parties have also identified their signatures on the consent terms. It is further submitted that the suit for specific performance filed by the original plaintiff has been settled based on such consent terms. The consent terms are accepted and taken on record and marked 'X' for identification. The learned counsel appearing for the respective parties have pointed out that as such the impugned judgments passed by the Courts below be quashed and set aside and the suit filed by the respondent no.1 be

decreed in terms of the consent terms marked 'X' for identification. The substantial questions of law framed by this Court are answered accordingly.

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

ORDER

- (i) All the three appeals are partly allowed.
- (ii) The impugned judgments and decrees passed by the learned Trial Judge dated 07.11.2007 in Special Civil Suit No.150/1995 as well as the judgment dated 24.09.2009 passed by the learned Lower Appellate Court in Regular Civil Appeal Nos.102/2007, 103/2007 and 108/2007 are quashed and set aside.
- (iii) The suit filed by the plaintiff stands decreed in terms of the consent terms marked 'X' for identification.
- (iv) All the three appeals stand disposed of accordingly with no order as to costs.
- (v) The decree to be drawn accordingly.

F. M. REIS, J.