

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 51 OF 2008

1. Josefa Artemisia Lobo e Sa
(deceased)

2. Matias P. De Sa (deceased) through
his LRs.

2a) Cajetan Philip De Sa

2b) Smt. Maria De Sa

Both residing at Divar.

2c) Andrew De Sa,

2d) Smt. Doris P. De Sa

Both residing at 67, Permfield Path,
Etobiwile Ontario,
M9C4Y5, Canada.

2e) Gustavo De Sa

2f) Maria Felicia de Sa

Both with address at

National Bank of Kuwait

(Operations Division)

P.O. Box 95, Safat,

13001 Safat, Kuwait.

2g) Smt. Ana Francisca Bonina Sa e
Rodrigues.

2h) Thomas de Piedade Rodrigues

Both residing at Divas, Ilhas, Goa.

3. Smt. Maria Helena Conceicao
Coutinho,

Residing at Divar, Ilhas, Goa.

(Appellants No. 2c, 2d, 2e, 2f and

3 through their constituted Attorney

Smt. Ana Francisca Bonina Sa

e Rodrigues Appellant 2g.

..... **Appellants.**

V e r s u s

1. Inacio Basilio Lobo

(since deceased) through his LR's.

1a) Smt. Milagrina Lobo e Menezes,

1b) Albano Menezes

Both c/o. Mrs. Wadlda Menezes

House No.88(1), S. Matias Malar,

Piedade Ilhas, Goa.

1c) Francisco Lobo,

1d) Seby Lobo,

1e) Anthony Lobo,

2. Pascoela Lobo e Dias,

All residing at Cristav waddo,

Marcel, Goa.

3. Francis Gabriel Lobo,

4. Maria Vitoria Lobo (deceased)
through LR's.

4a) Nicholas Lobo,

4b) Antonetta Lobo

Both residing at Shivdarsha

Co-operative Housing Society,

B-1, Dr. Malavia Road, Mulund West,

Mumbai

4c) Ivan Eusebio Lobo,

4d) Savita Lobo

Both residing at Nohar Villa A,

Flat No.11, Dr. Malavia Road,

Mulund West, Mumbai.

4e) Simon Lobo,

4f) Eva Lobo,

4g) Leo Lobo

4h) Victoria Lobo,

4i) Mrs. Effie Aerimich

4j) David Aerimich

4k) Nanda Lobo,

All residing at Jivan 5,

St. Paes X Society, Nahor Road,

Mulund West, Mumbai 400 080.

5. Agnelo Lobo,
6. Flycintha Lobo e Coelho,
7. Joseph S. Lobo,
8. Geraldina Lobo e Fernandes,

All residing at Shree Sai Baba Nagar,
Building No.6, Flat No.8, F.F.
Pune Road, Kalva, Thana, Mumbai.

..... **Respondents.**

9. Maria Helena Conceicao Coutinho,
Residing at Divar, Ilhas, Goa.
(transposed as Appellant No.3)

Mr. M. B. De Costa, Senior Advocate with Ms. Vallari Kudchadkar,
Advocate for the appellants.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Rohit Bras de Sa,
Advocate for the respondents No. 1(a), 1(b), 1(e), 1(d) and 2.

CORAM :- F.M. REIS, J.

Date : - 10th March, 2016.

ORAL JUDGMENT :-

Heard Mr. M. B. De Costa, learned Senior Counsel
appearing for the appellants and Mr. J.E. Coelho, learned Senior
Counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated

3rd February, 2012, on the following substantial question of law.

Whether the Courts below have misconstrued the pleadings of the parties and have erroneously refused the whole relief in the Plaint for permanent injunction when the Courts have come to the conclusion that the title in respect of the suit plot was established in favour of the appellants ?

3. The appeal was heard at length and thereafter, as it was prima facie found that the dispute between the parties was in respect of identification of their respective properties, a Commissioner was appointed by consent of the learned Counsel by an order dated 10th December, 2015. Accordingly, the Commissioner has submitted his report on 14th January, 2106. Plot “B” belonging to the appellants and the Plot “C” belonging to the respondents have been identified in the plan prepared by the Commissioner. Both the learned Senior Counsel, thereafter, sought time to sort out the matter on the basis of such Commissioner's report and, accordingly, when the matter was taken up, both the learned Senior Counsel have submitted that the parties have settled their dispute by filing Consent Terms, duly signed by the appellants and the respondents, except respondents No.1(d) and 1(e) who are not presently in Goa. But, however, Mr. Rohit Bras de Sa,

learned Counsel on record, upon instructions has signed the consent terms also on their behalf.

4. The appellants, who are present in the Court have confirmed the consent terms and has pointed out that they have accepted the consent terms and that the suit filed by the appellants may be disposed of accordingly. The respondents, who are present in the Court along with their Counsel, have also confirmed and accepted the consent terms. The said Consent Terms are, accordingly, accepted and marked "X" for identification. The Plot B belonging to the appellants and the Plot C belonging to the respondents are as depicted in the plan which is attached to the Consent Terms marked "X" for identification. The appellants have also acknowledged receipt of acceptance of the amounts referred to in the consent terms. The substantial question of law is answered accordingly.

5. Both the learned Counsel also point out that the respondents No.3 to 8 who were the defendant No. 3 to 8 in the suit, were ex-parte and are not affected by the present consent terms.

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

O R D E R

(I) The impugned Judgment, Order and Decree dated 16th October, 2004, passed by the learned Civil Judge, Jr. Division, Ponda in Regular Civil Suit No.280/2000/C and the Judgment dated 15th November, 2007 passed by the learned District Judge, Panaji in Regular Civil Appeal No.188/2004 are quashed and set aside.

(II) The suit filed by the appellants bearing Regular Civil Suit No.280/2000/C is decreed in terms of the Consent Terms marked “X” for identification.

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

(IV) Decree to be drawn accordingly.

F.M. REIS, J.

ssm.