

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 77 OF 2016

MRS. ELIZA DIAD AND 3 ORS.

... Appellants

Versus

MR. JOSE MANUEL CONSTANCIO AND 2
ORS.

... Respondents

Mr. Prashil Arolkar, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 29th September, 2016

P.C.:

Heard Mr. P. Arolkar, learned Counsel appearing for the appellant under Legal Aid Scheme.

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

3. The respondents filed the suit on the ground that they are the owners in possession of the property bearing Survey No.229/11 of Village Loutolim, Salcete Taluka. It is contended by the learned Counsel for the appellants that though the appellants are not claiming any right to the property survey No.229/11, without establishing the alleged encroachment claimed by the respondents, the Courts below have granted the reliefs in favour of the respondents. The learned Counsel appearing for the appellants

further points out that it is the case of the appellants that the suit teak wood tree is located in the property belonging to the appellants and, as such, the directions issued by the Courts below to pay compensation to the respondents for such tree is totally erroneous. The learned Counsel has extensively taken me through the Judgments of the Courts below to point out that both the Courts below have misread the evidence on record to come to the conclusion that there is an admission on the part of DW.1 that the said Survey No.229/11 belongs to the respondents and that there is also an admission by DW.1 to the effect that the declarations produced to the Forest Department are false declarations. The learned Counsel, as such, points out that there are substantial questions of law which arise for consideration in the above appeal.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. The property claimed by the respondents is surveyed under No.229/11. The decree passed by the Courts below is on the basis that the appellants are not claiming any right to the property survey No.229/11. The directions issued are to remove the encroachments in the property bearing Survey No.229/11. Considering that the learned Counsel appearing for the appellants is not in a position to point out any right to the subject property survey No.229/11, the contention of the appellants that the findings of the Courts below are erroneous or by misreading the evidence on record, cannot be accepted. The Courts below have also

taken note of the evidence on record of the Expert Witness who has produced a report pointing out the encroachment by the appellants. Apart from that, the Courts below have also noted the admission of the DW.1 in the cross examination that she had given a false declaration to the Forest Department to get permission to cut the teakwood tree. Besides that, the evidence on record reveals that in fact, the appellants had initiated proceedings under Section 133 of Cr.P.C. in respect of the teakwood tree in question. In such circumstances, the contention of the learned Counsel appearing for the appellants that the teakwood tree belonged to the appellants is totally without any foundation.

5. Looking into the concurrent findings of fact arrived at by the Courts below, based on the material on record, I find that there are no substantial questions of law in the present for consideration under Section 100 of C.P.C.. There is no perversity in the findings arrived at by the Courts below to come to the conclusion that the appellants have encroached in the property belonging to the respondents.

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

F. M. REIS, J.

ssm.