

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 70 OF 2015

1. Mr. Joaquim Teles,
son of late Pedrinha Diniz Teles,
and of late J. S. Santana Teles,
Govt. Employee,
Residing at H.No.216/1,
Rukmini Apartments,
Opposite St. Inez Church,
St. Inez, Panaji Goa.
2. Mrs. Theresa Teles,
Wife of J. S. Santana Teles,
Major, Govt. Employee,
Residing at H.No.216/1,
Rukmini Apartments,
Opposite St. Inez Church,
St. Inez, Panaji Goa.
3. Mr. Francisco Teles,
Son of late Pedrinha Diniz Teles,
and of late J. S. Santana Teles,
Govt. Employee,
Residing at C-6, Patto Govt. Quarters,
Panaji Goa.
4. Mrs. Leena Teles,
Wife of Francisco Teles,
Major, Govt. Employee,
Residing at C-6, Patto Govt. Quarters,
Panaji Goa.
5. Mrs. Doris Teles Martins
Daughter of Late Pedrinha Diniz Teles,
and of late J. S. Santana Teles,
Govt. Employee,
Residing at H.No.35,
Near Cross Well,
Virlosa Ward,
Britona, Bardez Goa.

6. Shri John Martins,
Husband of Doris Teles Martins,
Govt. Employee,
Residing at H.No.35,
Near Cross Well,
Virlosa Ward,
Britona, Bardez Goa.
 7. Mr. Anthony Pacheco,
Major, r/o 1st Floor,
Darshan Apartments,
Near Dempo College, Tonca,
Miramar, Panaji Goa
 8. Miss Cheryl Pacheco,
Daughter of Mr. Anthony Pacheco,
and late Maria Augusta Teles Pacheco,
major, Employee,
Resident of 1st Floor,
Darshan Apartments,
Near Dempo College, Tonca,
Miramar, Panaji Goa.
- Appellants

V e r s u s

1. Shri Luis Caetano Guilerme Welington
Fernandes e D'Mello
Son of late Abel Francisco Xavier Jose
Filipe Augusto Rocha e Melo,
Major, married,
r/o H.No.25, D'Mello Building D. B. Marg,
Panaji Goa.
 2. Mrs. Doris D'Mello,
Wife of Welington D'Mello
Major, Landlady,
r/o H.No.25, D'Mello Building D. B. Marg,
Panaji Goa.
- Respondents

Mr. Arjun F. Naik, Advocate for the appellants.

Mr. R. G. Ramani, Advocate for the respondents.

Coram:- F. M. REIS, J

Date:- 8th July, 2016

ORAL JUDGMENT

Heard Mr. A. Naik, learned counsel appearing for the appellants and Mr. R. G. Ramani, learned counsel appearing for the respondents.

2. Admit on the following substantial question of law :

Whether the learned Judge was justified to decree the suit filed by the respondents relying upon the judgment of this Court reported in AIR 1985 Bombay 202 in the case of Smt. Purificacao Fernandes v/s Dr. Hugo Vicente de Perpetuo Socorro Andrade Menezes & Ors. ?

3. Heard forthwith with the consent of the learned counsel.

4. Mr. R. Ramani, learned counsel waives service on behalf of the respondents.

5. Mr. A. Naik, learned counsel appearing for the appellants has assailed the impugned judgment on the ground that the learned Lower Appellate Court has misconstrued the evidence on record to come to the conclusion that the appellants were not living with the deceased during her lifetime. The learned counsel further pointed out that the learned Trial Judge at para 26 had clearly arrived at findings that the appellants were visiting the deceased and as such they were associated with the deceased during her lifetime. The learned counsel further submits that the subject tenancy was for residential purpose and consequently, the learned Lower Appellate Court was not justified to rely upon the judgment of Smt. Purificacao Fernandes (supra) to come to the conclusion that the tenancy was for commercial purpose. The learned counsel further submits that as the appellants had met all the ingredients to come within the definition of "tenant" in terms of Section 2(o) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, (herein after referred to as "the Rent Control Act ") the learned Lower Appellate Court was not justified to pass the impugned judgment. The learned counsel further points out that the judgment of this Court has been overruled by the Hon'ble Apex Court by the judgment reported

in (1985)2 SCC 683 in the case of **Smt. Gian Devi Anand v/s Jeevan Kumar and others**. The learned counsel as such points out that the impugned judgment deserves to be quashed and set aside.

6. On the other hand, Mr. Ramani, learned counsel appearing for the respondents has pointed out that there is a categorical finding of fact arrived at by the learned Lower Appellate Court to hold that the appellants were not living with the deceased as members of the family to meet the requirements of the definition of "tenant" in terms of Section 2(o) of the Rent Control Act. The learned counsel further pointed out that as the appellants are not the tenants of the subject property, the question of non suiting the respondents based on the judgment of this Court in the case of **Smt. Purificacao Fernandes** (supra) would not arise. The learned counsel fairly accept that the judgment of this Court relied upon by the learned Lower Appellate Court was not at all applicable to the facts of the present case as admittedly, the tenancy is for residential purpose and not for commercial purpose. The learned counsel as such points out that the findings of fact have been arrived at based on the appreciation of evidence on record and there is no case made out by the appellants for

any interference in the impugned judgment.

7. I have considered the submissions of the learned counsel and I have also gone through the records. The finding of fact arrived at by the learned Lower Appellate Court to the effect that the appellants were not living as members of the family with the deceased cannot be interfered by this Court in the present appeal. Such findings have been arrived at upon appreciating the evidence on record. In such circumstances, the only aspect to be examined is the conclusion in law based on such finding of fact. The learned Lower Appellate Court while allowing the appeal preferred by the respondents has erroneously considered that the subject tenancy was for commercial purpose. Both the learned counsel appearing for the respective parties have accepted that the subject tenancy was for residential purpose. In such circumstances, the question of decreeing the suit on the ground that the commercial tenancy is not heritable by relying upon the judgment of this Court in the case of **Smt. Purificacao Fernandes** (supra) cannot be sustained. The only aspect the learned Lower Appellate Court would have to examine is the conclusion in law based on the findings of fact in the impugned judgment passed by the learned Lower Appellate Court which do not

call for any interference. To the extent that the learned Lower Appellate Court has relied upon the judgment of this Court in the case of **Smt. Purificacao Fernandes** (supra) to grant relief to the respondents deserves to be quashed and set aside. The only aspect the learned Lower Appellate Court would have to re-examine is the conclusion to be drawn based on the findings of fact arrived at in the impugned judgment. The substantial question of law is answered accordingly.

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

ORDER

- (i) The appeal is partly allowed.
- (ii) The impugned judgment dated 30.11.2010 passed by the learned Lower Appellate Court to the extent referred to herein above is quashed and set aside.
- (iii) Regular Civil Appeal No. 152/2010 is restored to the file of the learned Lower Appellate Court.
- (iv) The learned Lower Appellate Court is directed to decide the appeal afresh in the light of the observations made herein above after hearing the parties in accordance with law as expeditiously as possible and in any event within three months from the date of the receipt of the above judgment of this Court.

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

(vi) The parties are directed to appear before the learned Judge on 08.08.2016 at 10.00 a.m.

F. M. REIS, J.

at*