

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 151 OF 2004

Mr. Antonio Francisco Santana Fernandes,
son of Lucio Francisco Roque Jose Fernandes,
major in age, widower,
Residing at B – Dando,
Goa, Velha. Ilhas, Goa.

..... Appellant

V e r s u s

1. Mr. Antonio Raul Bernadetto Fernandes,
major in age, married,
residing at Gilalem Morod,
Taleigao, Ilhas, Goa.

2. Mr. Holando Fernandes,
major in age,
residing near St. Inez Church,
St. Inez, Goa.

..... Respondents

Mr. Prasheen Lotlikar, Advocate for the Appellant.

Coram :- **F. M. REIS, J**

Date : **10th June, 2016.**

ORAL JUDGMENT

Heard Shri P. Lotlikar, learned Counsel appearing for the Appellant.

None appeared for the Respondents though duly served.

2. The above Appeal came to be admitted on 24.08.2005 on the following substantial question of law :

1. Whether the non-inclusion of the name of the appellant into the record of rights in respect of the suit

property, and the inclusion only of the name of the respondents as occupants thereof, would cast doubt on the title of the appellant in respect of the suit property, and give him cause of action to file a suit for declaration, and whether the suit for declaration in these circumstances, is maintainable ?

3. Shri Lotlikar, learned Counsel appearing for the Appellant, has pointed out that pursuant to a Deed of Partition executed between the ancestors of the Appellant and the Respondents, the property surveyed under no. 41/13 which include plot nos. A, B, C and D in the plan annexed to the plaint belongs to the Appellant herein. It is further pointed out that pursuant to the said Deed of Partition, the ancestors of the Appellant and thereafter the Appellants have been enjoying the said property as owners in possession thereof. It is further submitted that as the name of the Respondents reflected in the duly promulgated records in respect of the subject property surveyed under no. 41/13 of Mandur Village, the Appellant filed a suit for declaration that they are the owners in possession of such property and also for a direction to the survey authorities to accordingly rectify the survey records. The learned Counsel further submits that the Respondents though served failed to remain present before the learned Trial Judge and the suit proceeded ex parte. However, by Judgment and Decree dated 03.04.2003, the suit filed by the Appellants came to be rejected on the ground that the suit was barred by law of limitation. The Appellant thereafter preferred an Appeal before the Appellate Court being Regular Civil Appeal no. 106 of 2003 which came to be dismissed by Judgment dated 05.02.2004, inter alia, holding that the Appellants have no cause of action to file the suit. The learned Counsel, as such points out

that both the Courts below have erroneously come to the conclusion that the Appellant was not entitled for the reliefs when, according to him, the law is well settled that seeking a relief of declaration of title is a continuous cause of action which accrues until the title is lost by adverse possession or otherwise. The learned Counsel has thereafter taken me through the Judgments passed by the Courts below to point out that the learned Judge has erroneously dismissed the suit filed by the Appellant.

4. I have considered the submission of the learned Counsel and with his assistance I have also gone through the records. The suit filed by the Appellant is based on title and such title is derived by the Appellant on the basis of the Deed dated 24.08.1938 which is at exhibit Pw.1/B. The averments in the plaint to the effect that the property which has been allotted to the Appellant on the basis of the said Deed of Partition, have not been disputed by the Respondents by filing a written statement. Consequently, the identity of the property to the effect that the property allotted to the Appellants in the Deed of Partition, corresponds to the property surveyed under no. 41/13 cannot be disputed. As the Respondents have not filed the written statements, it appears that the Respondents are not interested to dispute the claim of the Appellants over the subject property. On the background of these undisputed facts, I shall proceed to examine whether the findings of the learned Judge that the Appellant has no cause of action can be sustained. Once the Appellant is claiming to be owner in possession of the property, naturally, the survey records should reflect his name in the occupant's column of such property. It is the case of the Appellant that the property stands in

the record of rights in the occupants column in the name of the Respondent. Immediately, after they learnt about such wrong entries, naturally, the Appellants have a cause of action to get the survey records rectified so that they can correctly reflect in the name of the person in occupation of such property. In such circumstances, as the records of rights have been duly promulgated, the only remedy available to the Appellant would be to file a suit for declaration on the basis of which the survey records could be rectified. No doubt, the Civil Court has no jurisdiction to direct the survey authorities to rectify the records. Nevertheless, a declaration as sought by the Appellant can be granted by the Civil Court to enable the Appellant to correct the survey records.

5. In such circumstances, I find that when the Appellants have relied that survey records do not correctly disclose the name of the occupants and such entries are likely to be acted upon by the Respondents, a cause of action definitely arises to the Appellant to get the survey records rectified if they so desire. The substantial question of law is answered accordingly.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The impugned Judgment and Decree dated 05.02.2004 is quashed and set aside. Regular Civil Appeal no. 106 of 2003 is restored to the file of the Lower Appellate Court.

(iii) The Lower Appellate Court is directed to decide the Regular Civil Appeal afresh in the light of the observations made herein above in accordance with law, as expeditiously as possible, preferably within a period of three months from the date of receipt of this Order.

(iv) The parties are directed to appear before the Lower Appellate Court on 08.08.2016 at 10.00 a.m.

(v) Appeal stands disposed off accordingly.

F .M. REIS, J.

arp/*