

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.138 OF 2004**

- 1 Smt. Varsha K. Sawant
wife of Shri Kishore Sawant,
aged 44 years, housewife,
r/o. H.No.VSP 420,
Vishwanber wadi, Sanvordem,
Taluka Sanguem-Goa.
- 2 Smt. Sitabai Rajaram Kavlekar,
wife of Shri Rajaram Kavlekar,
aged 55 years, housewife,
r/o. H.No.312, Bhag,
Sanvordem Taluka, Sanguem-Goa.
- 3 Shri Suresh Shivram Naik,
son of Shri Shivram Naik,
aged 59 years, employed,
r/o. H.No.214, Sanvordem Taluka,
Sanguem-Goa.

....Appellants

V/s

- 1 The Chief Secretary,
Government of Goa State,
Vidhan Sabha Complex,
Porvorim-Goa.
- 2 The Director of Land Survey
with its office at
Land Survey Department,
Panaji-Goa.
- 3 Shri Ramakant Shankar Karapurkar,
s/o. Shri Shankar Karapurkar,
major of age, businessman,
r/o. H.No.29, Anandiva,
Sanvordem Taluka, Sanguem-Goa.

- 4 Smt. Savitabai Vaikunt Naik,
major of age, r/o. H.No.25,
Anandiwadi, Sanvordem-Goa.
- 5 Dr. Upendra Narcinva Sinai Sanvordekar
(since deceased)
represented by his successors in interest
Smt. Shilavati Upendra Sinai Sanvordekar,
widow, 65 years of age,
d/o. Ganpat Anandrao Wagle,
both r/o. H.No.20, Cuncolim, Goa.
- 6 Shri Shivanand Raghuvir Sinai Sanvordekar,
married, major of age, landlord,
son of Raghuvir Sinai Sanvordekar and his
wife.appeal abated
- 7 Smt. Kamladevi S.S. Sanvordekar,
married, aged 49 years, housewife,
wife of Respondent No.6,
House no.216.
- 8 Vidyanand Raghuvir Sinai Sanvordekar
bachelor, aged 61 years, landlord,
s/o. Raghuvir Sinai Sanvordekar,
House no.216.
- 9 Utoma R.S. Sanvordekar
married, aged 54 years, landlord,
s/o. Raghuvir Sinai Sanvordekar,
House No.83, and his wife.
- 10 Smt. Nayan Utoma Sinai Sanvordekar
married, aged 48 years, housewife,
House No.83.
All r/o. Sanvordem, Goa.Respondents

Mr. Sudesh Usgaonkar, Advocate for the Appellants.
Ms. Priyanka Kamat, Additional Government Advocate for the Respondents No.1 & 2.

CORAM : F.M. REIS, J.

DATE : 18th MARCH, 2016

ORAL JUDGMENT :

Heard Mr. Sudesh Usgaonkar, the learned Counsel appearing for the appellants and Ms. P. Kamat, the learned Additional Government Advocate appearing for the respondents no.1 & 2.

2. The above appeal came to be admitted by an order dated 19/08/2005 on the following substantial question of law:

1. Whether the Appellate Court ought to have seen that in the absence of record of Land Registration document, document of matríz, though is a document prepared in connection with collection of revenue, could not be brushed aside because it was the only document in existence even prior to coming into force of the Land Revenue Code, 1968 under which the Survey of Record of Rights was conducted?

2. Whether the Courts below were right in discarding the record of cadastral survey, in which the name of the predecessor in title of the vendors of the appellants was admittedly recorded and proved so, on the ground that the document of survey does not constitute document of title, but at the same time considering the survey of Record of Rights relied upon by the respondent no.1 and 2, which is also a survey document, to answer issue no.7 viz. that respondents no.1 & 2 have proved that property belongs to the Government of Goa in the affirmative?

3. Mr. Sudesh Usgaonkar, the learned Counsel appearing for the appellants has pointed out that the appellants have produced documents to establish their title which include cadastral survey plan in respect of the suit property surveyed under no.6 of Rumbrem village of Sanguem Taluka. The learned Counsel further submits that though the survey plan prepared under Land Revenue Code did not stand in the name of the appellants, nevertheless, this by itself cannot defeat the title of the appellants over the suit property. The learned Counsel further pointed out that the suit property is inscribed in the Taluka Revenue Office (matriz) under no.38, 39 and 40 which stands in the name of the predecessor in title of the appellants. The learned Counsel further pointed out that respondents no.3 & 4 have purchased 4 different portions of the suit property by a registered Sale Deed which came to be executed way back in the year 1988. The learned Counsel further submits that pursuant to the execution of the Sale Deed, the appellants have been occupying the suit property and carrying out plantation therein. The learned Counsel further submitted that the appellants even put up two constructions after obtaining permission from the statutory authorities. The learned Counsel further submits that the learned Trial Judge has come to the conclusion that the boundaries shown in the matriz record and boundaries as shown as per survey record correspond

to one another as far as three sides of the property are concerned and as far as one side, the boundary is shown as of a name of the private person. The learned Counsel has thereafter taken me through the boundaries as shown in the matríz record as well as the boundaries as established by the appellants abutting on the four sides of the said survey no.29 of the property of the said village to point out that both the boundaries are the same. The learned Counsel further submits that it is well settled that once the properties are inscribed in the matríz record such entries are inter alia for the purpose of land revenue and, as such, the question of inscribing the properties of the Government in such record would not arise at all. The learned Counsel further submits that it is well settled that the properties of Government are not inscribed in the matríz record and, consequently, this would itself suggest that the property does not belong to the respondents no.1 & 2. The learned Counsel has thereafter taken me through the judgment of the learned Trial Court to point out that the learned Judge only on the basis of the Survey Record has non-suited the appellants of their claim of title over the disputed property. The learned Counsel further pointed out that merely because the appellants did not have land registration document by itself cannot defeat the claim of title of the appellants over the disputed property. The learned Counsel further submits that the

appellants have also established their possession over the disputed property by examining PW3, who was caretaker for nearly 14 years and looking after the suit property on behalf of all the five owners of the suit property. The learned Counsel further pointed out that even in the written statement of respondents no.1 & 2 besides bear denial there is a specific averment by the respondents that the appellants have encroached into the property of the respondents which according to him would itself suggest that any presumption in favour of the respondents in terms of Section 105 of the Land Revenue Code stands rebutted. The learned Counsel has thereafter taken me through the provisions of Article 274 of decree 3602 to point out that the property shown in the cadastral survey would mean that such property has been shown after verifying the title of all the adjoining owners of such property. The learned Counsel has thereafter taken me through the provisions of Section 51 of the Land Revenue Code to point out that even assuming that cadastral survey records are not promulgated such records are deemed to be records of rights under the Land Revenue Code. The learned Counsel has also taken me through the provisions of Section 107 of the Land Revenue Code to point out that unless and until there is a substitution of the names as shown in the earlier records by due legal process the question of holding that the record of rights under the Land

Revenue Code, 1969 would prevail over a survey record under the erstwhile regime is totally erroneous. The learned Counsel has taken me through the judgment of the learned Trial Judge to point out that the learned Judge has non-suited the appellants only on the ground of survey record and not by examining the specific matrix record. The learned Counsel has taken me through the judgment of the Lower Appellate Court to point out that merely because there were no inventory proceedings cannot be a ground to non-suit the appellants of their title. The learned Counsel further pointed out that the Courts below have also erroneously dismissed the suit for declaration on the basis of limitation when it is now well settled that a title holder can lose his title only by adverse possession. The learned Counsel in support of his submission has relied upon the judgment of this Court in the case of F.A. No.197/2007 in the case of Shri Vidhyadhar A. Umarye v/s. The Chief Secretary by judgment dated 21/03/2014. The learned Counsel, as such, pointed out that both the substantial questions of law are to be answered in favour of the appellants.

4. On the other hand, the learned Additional Government Advocate appearing for the respondents no.1 & 2 has supported the impugned judgment. The learned Counsel has pointed out that the suit itself is

barred by limitation as both the Courts below have come to the conclusion that the appellants were aware of the entries in the survey record in the year 1989. The learned Counsel has thereafter taken me through the finding of the learned Judge to point out that both the Courts below have come to the conclusion that the suit for declaration of title is barred by limitation, as the appellants were aware of the erroneous entries in the survey record. The learned Counsel, as such, pointed out that on this ground alone the appeal deserves to be dismissed and the question of examining the substantial question of law framed by this Court would not at all be justified. The learned Counsel has thereafter pointed out that the appellants have failed to establish their ownership over the disputed property as according to her there was no document of title produced by the appellants to substitute their claim. The learned Counsel has taken me through the evidence of PW1 to point out that there is a clear admission in the cross-examination that he has no documents besides the matríz record and further pointed out that the predecessor in title of the appellants had initiated action for correction of survey record. The learned Counsel further pointed out that the Courts below have also dismissed the suit on the basis that all necessary parties are not parties to the suit as according to her all the heirs of the predecessor in title of the appellants and the respondents no.3 & 4 were

necessary parties to the suit. The learned Counsel has further pointed out that, as such, the question of any interference in the impugned judgment passed by the Courts below would not at all be justified. The learned Counsel has thereafter taken me through the evidence of PW1, PW2 as well as PW3 to point out that the appellants have failed to establish that they were in possession of the suit property. The learned Counsel, as such, submits that the Courts below have rightly drawn the presumption under Section 105 of the Land Revenue Code that respondents no.1 & 2 are in possession of the disputed property. The learned Counsel further pointed out that PW1 has also admitted in the cross-examination that he had no documents to show how the properties have devolved from ~~Raut~~ Uttam Sanvordekar in favour of the sellers of the property. The learned Counsel as such pointed out that as both the Courts below have decided issue nos.1 & 2 framed by the Trial Court by examining the evidence on record there is no case made out by the appellants for interference in the impugned judgment. The learned Counsel, as such, pointed out that the appeal itself be dismissed.

Corrections carried
out as per order
dtd.5/05/2016.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. Dealing with the first substantial question of law, I find that merely because the suit property is not

registered in the Land Registration Office by itself cannot defeat a claim of title over suit property. Title can be proved in different manners as established by him. In the present case, the appellants are claiming to be the title holders of the property based on the Sale Deed which has been duly registered before the Sub-Registrar of Sanguem. It cannot be disputed that the Sale Deed duly registered before the registration authorities is a document of title provided title of the vendors is established. The only aspect, as such, to be examined is whether the sellers of the appellants had a title over the disputed property. In the present case, in support of the claim of title, the appellants have produced the cadastral survey plan in respect of the subject property.

On perusal of the cadastral survey plan, I find that the property surveyed under no.6 stands in the name of one ^{Uttam} ~~Raut~~-Sanvordekar. It is the case of the appellants that the vendors in the said Sale Deed are the descendants of ^{Uttam} ~~Raut~~-Sanvordekar. In the absence of any evidence adduced by the respondents to disapprove such aspect the appellants were justified to ^{Uttam} prima facie say that the respondents were descendants of ~~Raut~~-Sanvordekar. Apart from that, in support of the title of the vendor, the

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appellants have also produced the matríz record. The matríz record bearing numbers 38,39 & 40 disclose that the property stands in the name of said ^{Uttam} ~~Raut~~-Sanvordekar. It cannot be disputed that the properties

of the Government are not inscribed in the matríz record. The very fact that the subject property is stated to be inscribed in the matríz record would itself suggest that the property cannot belong to the Government. In the present case, the Courts below whilst examining the boundaries as shown in the matríz record vis-a-vis the survey record in respect of the property survey no.29 have come to the conclusion that the boundaries correlate with each other though the learned Trial Judge whilst examining the said aspect has categorically held that three of the boundaries shown in the matríz record correspond to the subject property, but however, the Court below has erroneously held that the property did not correspond with one another. Apart from that, the identity of the property is not disputed by the respondents no.1 & 2 in the written statement. On perusal of the written statement filed by the respondents no.1 & 2, as rightly pointed out by Shri Sudesh Usgaonkar, it is the stand taken by the said respondents that the appellants have encroached into the property of the respondents no.1 & 2. This itself would suggest that the contention of the respondents that they are in possession of the subject property is not at all correct. Besides that on perusal of the evidence of PW1, I find that there is no material or any statement made in the deposition that the respondents no.1 & 2, are in possession of the disputed property. In such circumstances, I find that

the learned appellate Court was not justified to dismiss that appeal filed by the appellants merely relying upon the survey record. It is well settled that the entries in the survey record cannot create or defeat title. No doubt, it cannot be disputed that matrix record by itself is not a document of title but however the entry therein is an instance to be considered to the realm in the claim of title by a person in whose name such entry stands. Apart from that, in the present case though the appellants have adduced evidence to claim that they are in possession of the disputed property the learned appellate Court had failed to examine such aspect merely because the names of the appellants do not figure in the survey record. The evidence of witness, who is stated to be the caretaker of the suit property has not at all been examined by the Lower Appellate Court whilst coming to the conclusion that the appellants have failed to examine their possession over the subject property. Having failed to do so, I find that the judgment of the Lower Appellate Court dismissing the appeal filed by the appellants cannot be sustained and deserves to be quashed and set aside. Apart from that, in terms of Article 274 of the Decree 3602 the cadastral survey are conducted after minute observation of the title document of all the adjoining owners. In such circumstances the entries in the cadastral cannot be easily quashed and set aside unless there is cogent evidence to establish that the entries

therein are not correct. In the present case, the respondents no.1 & 2 have failed to produce any document contrary to the entries in the cadastral survey plan. Apart from that, as per section 51 of the Land Revenue Code even the process of survey which has been not been completed is deemed to be record of right. The effect of these provisions would have to be re-examined while considering the case put forward by the appellants.

6. In view of the above, I find that both the Courts below have not examined all these aspects while coming to the conclusion that the appellants have failed to prove their case. In such circumstances and in the interest of justice, it would be appropriate to quash and set aside the judgments passed by the Courts below and direct the learned Trial Court to decide the suit filed by the appellants afresh in accordance with law. The contention of Mr. Usgaonkar, learned counsel appearing for the appellants that the suit is within a period of limitation would also have to be re-examined by the learned Trial Judge after hearing the parties in accordance with law. In terms of Section 26(A) of the Goa Civil Courts Act, 1965 all suits which were pending before the learned Senior Civil Judge stand transferred to the learned District Court.

7. Hence, I pass the following :

O R D E R

(i) The appeal is partly allowed.

(ii) The impugned judgment and decree passed by the learned Trial Judge dated 10/12/2003 in Regular Civil Suit No.63/2001/A is quashed and set aside.

(iii) The impugned judgment and decree dated 10/08/2004 passed by the learned Lower Appellate Court in Regular Civil Appeal No.4/2004 is quashed and set aside.

(iv) The Regular Civil Suit No.63/2010/A stands transferred to the learned District Court, South Goa, Margao.

(v) The learned Judge is accordingly directed to decide the suit filed by the appellants afresh in the light of the observations made herein above in accordance with law.

(vi) All contentions of both the parties on merits are left open.

(vii) The parties are directed to appear before the learned Lower Appellate Court on 10/06/2016 at 10.00 a.m

F.M. REIS, J.

NH/-