

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 56 OF 2016

SHRI HARI VISHNU KORGAONKAR ALIAS
HARISCHANDRA VISHNU SHETYE AND
ANR.,

... Appellants

Versus

SMT. SAFIRA IGNES D'SOUZA
(DECEASED) THR. LRS. SHRI. EDWARD
N. CORREIA THR. POA MR. ALINO
FERNANDES

... Respondent

Mr. Devidas J. Pangam, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 15th September, 2016

P.C.

Heard Mr. D. Pangam, learned counsel appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the respondent for declaration and correction of survey records was partly decreed and the declaration as prayed for by the respondent came to be granted.

3. Mr. Pangam, learned counsel appearing for the appellants has pointed out that the subject property is the property surveyed under No.20/20. It is pointed out that in the duly promulgated survey records, the names of the respondent figures in the occupant column

whereas the names of the appellants are shown in the other rights column as an occupant of the hut. The learned counsel further pointed out that as the respondent has failed to establish his title to the subject property, the question of granting a declaration as prayed for by the respondent is totally misconceived. The learned counsel has taken me through the cross examination of PW1 to point out that there is a specific admission by such witness that he has no title documents in respect of the subject property. The learned counsel further submits that the respondent has deliberately filed the suit to seek a negative declaration as he was conscious about the fact that the respondent was not in a position to establish her title to the property. The learned counsel further pointed out that though the Courts below have drawn a presumption in terms of Section 105 of the Land Revenue Code in favour of the respondent, such presumption ought to have been also taken as far as the occupation of the structure in the subject property by the appellants. The learned counsel further submits that it is the case of the appellants that the subject structure had demolished and as such did not figure in the survey records. The learned counsel thereafter has extensively taken me through the judgments of the Courts below to point out that instead of examining whether the respondent has established her claim of title over the subject property, the Courts below have proceeded to consider whether the defence raised is established by the appellants. The learned counsel as such points out that there are substantial questions of law which arise in the present appeal for

consideration by this Court.

4. I have considered the submissions of the learned counsel and with his assistance, I have also gone through the records. The suit filed by the respondent is not for declaration of title but only for rectification of an error in the survey records. Admittedly, the respondent filed proceedings before the Dy. Collector for rectification of the survey records. But however, as the records were already promulgated, the respondent was directed to resort to a civil remedy to get the records rectified. Therefore, the respondent filed a suit for declaration, as the survey records in Form I & XIV which disclosed the existence of a structure was not reflected in the survey plan in respect of the property surveyed under No.20/20. The fact that the structure is not existing at loco in the property surveyed under No.20/20 is not disputed by the appellants. Though it is contended that the structure which was existing had thereafter collapsed, both the Courts below concurrently have come to the conclusion that this aspect has not been established by the appellants. In such circumstances, the error in the survey records is obvious and as such, the declaration granted by the Courts below to enable the correction of the survey records cannot be faulted. Both the courts below have concurrently come to the conclusion that the structure is not existing in the subject property. Besides an opportunity was given to the learned counsel appearing for the appellants to verify whether such structure is in fact shown in the duly promulgated survey plan. Mr.

Pangam, learned counsel appearing for the appellants fairly concede that the structure is not found shown in the duly promulgated survey plan. In such circumstances, the records of the survey do not reflect the correct position as depicted in the survey plan which forced the respondent to file the suit for such rectification. The declaration granted by the Courts below by itself would not confer title to the respondent which will have to be examined if so required on its own merits in appropriate proceedings.

5. Be that as it may, as the suit is merely for rectification of an error which has cropped up in the survey records which has been duly established, I find that there are no substantial questions of law which arise in the present Second Appeal for consideration. The substantial questions of law proposed by the learned counsel appearing for the appellants would entail reappreciation of evidence which cannot be done in a Second Appeal under Section 100 of the Civil Procedure Code. Hence, I find no merits in the above appeal which stands accordingly rejected.

F. M. REIS, J.

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