

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 60 OF 2016

Confre Da Confraria De Sam Miguel
E Santas Almas of Church of Varca,
having its office at Varca Church,
situated at Varca Bazaar, Varca,
Salcete Goa, through its President,
Mr. Nazario Pinto.

... Appellant

Versus

1. Smt. Filomena Fernandes,
wife of Shri Eutimio Anthony Fernandes
and daughter of Joaquim Fernandes,
aged 62 years, housewife
and her husband

2. Shri Eutimio Anthony Fernandes,
Son of late Constancio Fernandes,
aged 68 years, married,
businessman
both residing at H.No.354,
Reprowado, Varca,
Salcete Goa.

... Respondents

Mr. Valmiki Menezes, Advocate for the appellant.

Coram:- F. M. REIS, J

Date:- 24th June, 2016

ORAL JUDGMENT

Heard Mr. V. Menezes, learned counsel appearing for the
appellant.

2. The above appeal challenges the judgments passed by the Courts below whereby the appellant has been directed to rectify the sale deed dated 26.12.1980 to correct the survey number shown therein to be surveyed under No.70/7 and not 70/4 as stated therein.

3. Mr. Menezes, learned counsel appearing for the appellant has pointed out that admittedly the sale deed was executed in the year 1980 and the suit for declaration was filed in the year 2011 which was hopelessly barred by limitation and as such the Courts below were not justified to grant the relief in the suit. The learned counsel further pointed out that it cannot be explained as to why the respondents have waited for such a long time to carry out the rectification, if at all entitled to the sale deed recording that the property purchased is surveyed under No.70/7. The learned counsel further pointed out that the party to the sale deed has not deposed in the suit and as such the evidence of the son of the plaintiffs is merely on the hearsay which could not be relied upon to decree the suit. The learned counsel further pointed out that even in the authorisation granted by the appellant to execute the sale deed, the survey number mentioned therein was 70/4 and not 70/7. The learned counsel further pointed out that the contention of the respondents that they learnt about the mistake in the sale deed only in the year 2010 is

totally erroneous considering that they themselves have obtained a licence to put up the construction in the year 1998. The learned counsel as such points out that both the Courts below have misconstrued the evidence on record to decree the suit filed by the respondents and as such there are substantial questions of law which arise in the present Second Appeal for consideration.

4. I have duly considered the submissions of the learned counsel appearing for the appellant. On perusal of the judgments passed by the Courts below, both the Courts below upon appreciating the evidence on record and taking note of the boundaries as reflected in the sale deed as well as the evidence of the expert examined by the respondents have come to the conclusion that the subject matter of the disputed sale deed was a property surveyed under No.70/7. The Courts below have also taken note of the fact that the respondents had already put up a structure in the property surveyed under No.70/7. Both the Courts below have also concurrently found that the possession of the property surveyed under No.70/7 stands in the names of the respondents. These concurrent findings of fact arrived at by both the Courts below cannot be re-appreciated by this Court in the present appeal under Section 100 of the Civil Procedure Code unless there is

perversity disclosed or shown in such findings. On perusal of the findings of the Courts below, I find that both the Courts below have rightly drawn inferences to come to the conclusion that the subject matter of the disputed sale deed is the one surveyed under No.70/7. On this count, I find that there is no substantial question of law which arises in the present appeal for consideration.

5. With regard to the contention of Mr. Menezes, learned counsel appearing for the appellant that the suit itself is barred by limitation, I find that the fact finding Courts below upon appreciating the evidence on record have come to the conclusion that the mistake of the survey number as mentioned in the sale deed came to the knowledge of the respondents only in the year 2010. This finding has been arrived at based on the material on record essentially taking note of the fact that the plaintiff no.2 was abroad and had occasion to peruse the sale deed only in the year 2010. Apart from that, the material on record also shows that the names of the respondents also stand in the survey records in respect of the property surveyed under No.70/7. It is also not disputed that the names of the respondents does not figure in the property surveyed under no.70/4. The concurrent findings of fact with regard to the realisation of the mistake in the sale deed arrived at by both the

Courts below based on the evidence on record cannot be re-appreciated by this Court in the present Second Appeal. In terms of Section 17 of the Limitation Act, the cause of action for filing a suit to correct the mistake would arise only after the mistake has been found. In the present case, considering that the fact finding Courts have come to the conclusion that the respondents had realised the mistake only in the year 2010 and there is no material brought on record at the instance of the appellant to the contrary. There is also no positive evidence produced by the appellant that the respondents know about this mistake earlier and as such the filing of the suit in the year 2011 cannot be said to be barred by limitation. In such circumstances, the contention of Mr. Menezes, on that count cannot be accepted.

6. In view of the above, considering that both the Courts below have concurrently come to the conclusion that the disputed sale deed is of the property surveyed under No.70/7, I find no perversity in such findings and as such, I find no substantial question of law arises in the present Second Appeal for consideration. Consequently, the appeal stands rejected.

F. M. REIS, J.

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