

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 80 OF 2006**

1) Mr. Mahabaleshwar R. Naik

2) Dharmendra R. Naik

3) Kashinath R. Naik

4) Umakant R. Naik

5) Chayya Umakant Naik

6) Pradeep R. Naik

7) Milan R. Naik

8) Roshan R. Naik

9) Nazima R. Naik
All major of age, and
R/o. H. No.C-4-64,
Mala, Panaji, Goa.

10) Sulochana C. Naik, major,
Dattaguru Co-op. Hsg. Society Ltd.,
Bldg. (B), G-1, Fontainhas,
Panaji-Goa.

11) Pratima S. Naik
H. No.255, Opp. State Bank Of India,
Miranda Road, Margao-Goa.

..... **Appellants.**

Versus

1) Narayandas Damodar Naik
Rep. Through Legal Heirs

1(a) Smt. Nilima Naraindas Naik

1(b) Miss Namita Naraindas Naik

1(c) Miss Nita Narayandas Naik

1(d) Miss Deepali Naraindas Naik

1(e) Miss Trupti Naraindas Naik

1(f) Miss Chandani Narayandas Naik

All major, and R/o. H. No.C-4-64,
Mala, Panaji, Goa.

..... **Respondents.**

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the appellants.

Mr. D. Pangam, Advocate for the respondents.

CORAM :- F.M. REIS, J.

Date : - 12th May, 2016.

ORAL JUDGMENT :-

Heard Mr. S. D. Lotlikar, learned Senior Counsel with Mr. C. Padgaonkar, learned Counsel appearing for the appellants and Mr. D. Pangam, learned Counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated

20th December, 2006, on the following substantial question of law.

Whether, mere residence of the Respondents and their father Damodar Naik in the suit house even after the execution of the Gift Deed, transferring the ownership of his share in favour of the Appellants, would amount to holding the specific portion of the suit house adversely, and whether the 1st Appellate Court was right in casting the burden of proving that the possession of the Respondents in the suit house was permissive, on the Appellants?

3. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the appellants has pointed out that the learned Trial Judge had granted the reliefs sought by the appellants, inter alia, for eviction of the respondent from the suit rooms which form part of the residential house. The learned Senior Counsel further points out that the suit house and the land were purchased by Damodar Naik and Ramkrishna Naik. The learned Senior Counsel further submits that the wife of the said Damodar Naik expired and upon her death, inventory proceedings were initiated whereby half of the subject property was allotted to Damodar K. Naik. The learned Senior Counsel further

submits that said Damodar Naik by Deed of Gift gifted in favour of said Ramkrishna Naik, the said half on account of his disposable quota. It is further point out that after execution of the said Gift Deed, the said Damodar Naik continued to be in permissive possession of the suit house, as both the families were living in joint family. It is further submitted that in the year 1978, after the marriage of the respondent No.1 there were quarrels with the family of the appellants and that the family of the said Damodar and his son and daughter-in-law were forced to reside separately. It is further pointed out that in the year 1989, the respondent was having the exclusive possession of the two rooms. It is further pointed out that as there were frequent quarrels between the daughter-in-law of the said Damodar Naik, and the family of the appellants, the suit came to be filed for eviction of the respondent from the suit house. The learned Counsel further points out that both the Courts below have concurrently found that the appellants are owners of the entire house and the property, and as such, the respondents are liable to be evicted from the part of the suit house occupied by them. The learned Counsel further points out that the Courts below have erroneously come to the conclusion that the respondents have established their adverse possession in respect of the

suit rooms and the appurtenant are as shown in the croque without correctly appreciating the evidence on record. The learned Senior Counsel further points out that there is no hostile title established by the respondent and consequently, the substantial question of law framed by this Court has to be answered in favour of the appellants.

4. On the other hand, Mr. D. Pangam, learned Counsel appearing for the respondents submits that despite alleged Gift Deed executed by the deceased Damodar Naik, the possession of the suit house continued with said Damodar as well as his children, along with the respondent No.1 and thereafter with the respondent No.1(a) who is the daughter-in-law of the said Damodar Naik. The learned Counsel further points out that it is clearly alleged in the plaint that originally the respondents along with said Damodar were occupying five rooms and that they were removed from three rooms in the year 1989. The learned Counsel further points out that there is an averment in the plaint that the relationship between the appellants and the family of said Damodar was strained from the year 1978, which itself would suggest that the possession of the respondent of the subject rooms was adverse to the appellants. The learned Counsel has, thereafter, taken

me through the impugned Judgment of the learned Lower Appellate Court to point out that the learned Lower Appellate Court, upon appreciation of the evidence on record and on considering the oral evidence adduced by the parties, has categorically come to the conclusion that the hostile title of the respondent was from the year 1978. The learned Counsel has further pointed out that the electricity meter, as also the water connection of the said portion of the house are separate. The learned Counsel further points out that the findings of fact by the learned Lower Appellate Court cannot be reappreciated by this Court and, as such, the substantial question of law framed by this Court has to be answered in favour of the respondents. The learned Counsel further submits that the alleged gift deed executed by the said Damodar Naik was on the basis of an allotment in the inventory proceedings in favour of the original respondent No.1 who is now deceased. The learned Counsel further submits that even in perusal of the said Deed of Gift it clearly shows that the alleged disposition was towards the disposable quota and as such, there is no material on record to show that the said Damodar Naik had left any other estate and unless the disposable quota is established, the question of evicting the respondents of the subject house would not arise at all. The learned

Counsel further points out that inspite of the said Deed of Gift, the said Damodar as well has his family continued to reside in the suit house, which would itself establish that the possession of the suit house was never delivered in favour of the appellants, based on such Deed of Gift. The learned Counsel, as such, submits that the appeal be rejected.

5. I have considered the submissions of the learned Counsel, and I have also gone through the records. The short point for consideration based on the substantial question of law framed by this Court, is whether mere permissive possession could be considered to be a hostile title as held by the learned Lower Appellate Court while disposing of the appeal filed by the respondents. In the present case, it is well settled that a possessor possesses the property in his own name. In such circumstances, once the appellants themselves accept that the respondents were in possession of the two separate rooms in the house which was found by the Lower Appellate Court from the year 1978. This itself suggests that the possession of the said two rooms was in the own name of the said Damodar Naik and, thereafter, by his son and daughter in law. Once the legal position, as far as possession of the property is accepted, it was incumbent upon the appellants to show that

the possession of the respondent of the part of the house was permissive.

6. In the present case, with the assistance of the learned Counsel appearing for the appellants, I have perused the evidence of PW.1, as well as the evidence of the appellants. There is no material on record, nor any specific pleadings to show as to how possession of said Damodar Naik of the subject house which dates back from the time of purchase of the house, had changed into permissive possession after the alleged deed of gift was executed in favour of the appellants herein. There is no other inference which can be drawn based on material on record to suggest that the possession of the respondent was permissive possession as alleged by the appellants. The learned Lower Appellate Court, based on the evidence on record, has found that the claim of the appellants that the respondent was in permissive possession of the house has not been established. Once the permissive possession of the house is not established, the question of considering whether the possession of the house of the respondent was hostile would not at all survive. But, however, the learned Lower Appellate Court, upon appreciation of the evidence on record, has come to the

conclusion that the occupation of the respondent dates back from the year 1978 in view of the quarrels between the families. This finding of fact cannot be interfered by this Court. In the present case, the respondents have established that they are occupying two separate rooms having their own essential services for the last so many years and that the appellants never raised any objection to such occupation. Once, the appellants have failed to establish that the alleged cause of action which forced them to file the suit, the question of directing the respondents to hand over possession of the subject two rooms would not arise. The substantial question of law is accordingly answered against the appellants.

7. In view of the above, I find no merit in the above appeal, which stands accordingly dismissed.

F.M. REIS, J.

ssm.