

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 75 OF 2016

SHRI. BOMBO BAMTU VELIP AND 7 ORS. ... Appellants
Versus
SMT. GUITABAI PODMONABA SINAI
SANCOU (DEC) AND 8 ORS. ... Respondents

Mr. Vilas P. Thali, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 25th August, 2016

P.C.

Heard Mr. V. P. Thali, learned counsel appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby a suit filed by the appellants for declaration that the property purchased by the appellants pursuant to the Sale Deed dated 21.09.1979 includes the property surveyed under No.34/1 and also the property surveyed under Nos.34/2 and 35/1(part).

3. Mr. Thali, learned counsel appearing for the appellants submits that both the Courts below have misconstrued the sale deed wherein it is admitted position that the boundaries mentioned in the sale deed would include all the three survey numbers claimed by the appellants. The learned counsel further pointed out that it is well

settled that when there is discrepancy between the area and the boundary, the boundary would prevail and in support of his submission, the learned counsel has relied upon the judgment reported in AIR 1948 Privy Council 207 at p.209. The learned counsel thereafter has extensively taken me through the judgments passed by the Courts below to point out that though it is clearly admitted that the boundaries would include all the three survey numbers, the fact finding Courts have erroneously come to the conclusion that the property which was the subject matter of the sale deed is only survey no.34/1. The learned counsel further points out that the records also reveal that in the remaining portion of the suit property there are some structures occupied by the family of the appellants. The learned counsel further points out that both the Courts below have misconstrued the sale deed as well as the material on record to come to the conclusion that the appellants have failed to establish their case. The learned counsel thereafter has taken me through the portion of the evidence produced on record to point out that there is clear admission by the witnesses that the appellants were in possession of the entire property including the disputed two survey numbers. The learned counsel further submitted that in view of Sections 91 and 92 of the Evidence Act, oral evidence cannot contradict the documentary evidence and as such the Courts below have erroneously come to the findings that the sale deed only covers one survey number. The learned counsel further submits that a substantial question of law arise in the present appeal as to whether

there is discrepancy between the area and the boundaries, the boundaries would prevail. The learned counsel further points out that the appeal deserves to be considered on the aforesaid substantial question of law. The learned counsel further points out that the counter claim filed by the respondents to the effect that the boundaries in the sale deed have to be rectified is barred by law of limitation, considering the findings of the learned Judge to reject the relief sought by the appellants of similar lines.

4. I have considered the submissions of the learned counsel and I have also gone through the records. Both the Courts below have construed the sale deed executed in favour of the appellants to hold that the property purchased by the appellants is surveyed under no.34/1 of Barcem village. On perusal of the operative part of the sale deed, it clearly discloses that what has been sold is the property which is mentioned in the schedule. The schedule in fact shows that though the Land Registration Number and Matriz number are mentioned alongwith the boundaries, nevertheless, there is a specific statement therein that the subject matter of the sale deed is the property surveyed under No.34/1 admeasuring an area of 12325 square metres. Thus it is seen that the area has been mentioned and the survey number has also been disclosed in the schedule. Considering that the consideration is only Rs.10,000/-, I find that the question of contending that the sale deed would include the area admeasuring 70000 square metres which admittedly is a portion of

survey no.34/1 cannot be accepted. Normally when the area is mentioned in the sale deed, it would naturally show that the price fixed therein is based on the area as disclosed in the sale deed. In such circumstances, on going through the findings of the fact finding Courts, I find that both the Courts below upon appreciating the evidence on record have come to the conclusion that the property purchased by the appellants is restricted to the property surveyed under no.34/1. The Courts below have also arrived at a concurrent finding that the disputed survey numbers are concerned, the respondents are not in possession of the such portions of the property. These concurrent findings of fact cannot be reappreciated by this Court unless perversity has been disclosed. In the present case, it is also not disputed that as far as the disputed survey numbers bearing nos.34/2 and 35/1(part) are concerned, the names of the appellants do not figure. There are no proceedings initiated by the appellants to get the survey number accordingly rectified. The property surveyed under no.34/1 shows that the names of the appellants also figure therein. All this material would cumulatively disclose that the findings of the learned Judge that the subject property purchased pursuant to the sale deed executed in favour of the appellants is the portion surveyed under no.34/1 are justified. In such circumstances, the findings of the Courts below on that count cannot be said to be perverse and consequently, there is no substantial question of law which arises in the present appeal for consideration.

5. With regard to the contention of Mr. Thali, learned counsel appearing for the appellants that the counter claim itself was barred by limitation, I find that the counter claim has been filed on the basis that there is a mistake in the sale deed. There is nothing on record to show that this mistake was in fact to the knowledge of the respondents much prior to the date as disclosed in the written statement while filing the counter claim. In terms of Section 17 of the Limitation Act, the cause of action to file the suit to rectify the mistake would arise from the date the mistake has been found. Considering the said aspect, I find that the contention of Mr. Thali, that the counter claim itself is barred by limitation cannot be accepted.

6. In view of the above, I find that there are no substantial questions of law which arise in the present appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

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