

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 125 OF 2012

1. Shri Maximo J R De Souza,
son of Francisco Augustino de Souza,
 2. Smt. Maria Helena De Souza,
major of age,
both residing at Housd eno. 12-,
Velsao, P. O. Cansaulim,
Goa. 403 712.
- Appellants

V e r s u s

1. Shri Vinayak Laddu Naik, and
2. Smt. Vinayak Laddu Naik, alias
Sumanti Vinayak Naik
both residing at House no. 191,
Velsao Beach Road,
Velsao, P.O. Cansaulim,
Goa 403 712.
3. Shri Shyamsundar Laddu Naik, and
4. Smt. Shyamsundar Laddu Naik alias
Jayshree Shyamsundar Naik,
both residing at House no. 112, Murdi,
Cuelim, P. O. Cansaulim, Goa. 403 712.
5. Smt. Sulochana Da Costa,
6. Shri Rajan Da Costa
7. Smt. Deepali Da Costa,
all residents of Sucaldem Ward,
Chinchinim, Goa, 403 715.
8. Shri Richard Fernandes,
9. Smt. Marlen Fernandes,
both residents of House no. 452,
Grande Pulvaddo, Benaulim,
Salcete, Goa. 403 716.

10. Shri S. R. Raghukulendra
11. Smt. Shirley Raghukuchendra,
both residents of House no. 173,
Navilu Road,
A & B Block,
Kuvempunagar, Mysore 507023.
12. Shri Francisco Xavier De Sa,
resident of House no. 125, Palmar Grande,
Chinchinim, Salcete, Goa, 403 715.
13. Smt. Lolita Pinto Souza
14. Dr. Savio De Souza,
15. Smt. Lira De Souza,
all residents of Near Desterro Chapel,
Vasco da Gama, Goa, 403 802.
16. Smt. Gemma Fernandes,
resident of House no. 188,
3rd Ward, Colva, Goa, 403 708.
17. Shri Anand Madgaonkar,
18. Smt. Celsa Madgaokar,
both residents of Nizari Bhavan, 5th Floor,
Menezes Braganza Road,
Panaji, Goa, 403 001.
19. Shri Lorna De Souza,
20. Smt. Zara De Souza
21. Shri Minguel Dias,
22. Shri Vira Dias
23. Shri Jorge Menezes Souza,
24. Smt. Sarojini Menezes Souza,
all residents of Menezes Souza Building,
Menezes Braganza Road,
Near MPT Hospital,
Baina,
Vasco da Gama, Goa, 403 802.

25. Dr. Frida Monteiro,
resident of A-18, La Marvel Colony,
Dona Paula, Goa, 403 004.
 26. Smt. Otilia Clovis Da Costa,
 27. Smt. Ana Liza Clovis Da Costa,
 28. Shri Ashvin Clovis Da Costa
 29. Shri Anibal Almeida
 30. Smt. Soraya Almeida,
all residents of Clovis Building,
Aquem Alto,
Marga, Goa, 403601.
 31. Shri Claudio F. A. Da Costa,.
 32. Smt. Alzira Da Costa,
both residing at House no. 125,
Palmar Grande, Chinchinim,
Salcete, Goa, 403 715.
- Respondents

Mr. M. P. Almeida, Advocate for the Appellants.

Mr. D. Pangam, Advocate for the Respondent nos. 1 and 2.

Coram :- F. M. REIS, J

Date : 7th October, 2016

ORAL JUDGMENT

Heard Mr. Almeida, learned Counsel appearing for the Appellants and
Mr. Pangam, learned Counsel appearing for the Respondents.

2. During the course of the hearing of the above Appeal, the Appellants
have settled their dispute with the Respondent nos. 1 to 4 and have filed Consent
Terms. By Orders dated 12.12.2014 and 16.09.2016, the Appeal preferred by the

Appellants as against the said Respondents was settled and Consent Terms were filed. Consequently, the Appeal against Respondent nos. 1 to 4 came to be disposed of.

3. During the Course of further hearing of the above Appeal, the learned Counsel appearing for the Appellants pointed out that an additional substantial question of law arises in the present Appeal :

(i) Whether the Courts below were justified to non-suit the Counter Claim filed by the Appellants on the ground that the findings in the earlier Regular Civil Suit no. 46 of 1987 are barred by principles of resjudicata ?

4. Upon hearing the learned Counsel appearing for the Appellants, the Counter Claim filed by the Appellants as against the original Plaintiff nos. 21 and 22 and the other Defendant nos. 5 to 13 were essentially to declare that the Appellants who are the original defendant nos. 30 to 32 were the exclusive owners of the subject property surveyed under no. 80/6/A situated at Velsao Village. On going through the Judgment of the Lower Appellate Court, the learned Judge has come to the conclusion that the claim of the original Plaintiffs-Respondents nos. 30 and 31 herein that they were the co-owners of the subject property, cannot be accepted. The learned Judge further found at para 22 after examining the evidence on record and the documents produced therein that the claim of co-ownership right claimed by the Original Plaintiffs along with the Defendant nos. 5 to 37 in respect of the subject property has failed and it has been further held that the title of the

Appellants stands established on the basis of the documents as well as the oral evidence on record. The findings arrive at by the Appellate court are not challenged before this Court by any of the Respondents herein. The only aspect as such is to examine whether the relief sought by the Appellants as against the Respondent nos. 5 to 32 is available to the Appellants.

5. Admittedly, the said Respondents were not parties to the suit filed by the Appellants against the Original Respondent no. 1 before the Court. The suit filed was essentially for injunction. A suit for injunction is essentially decided on the basis of possession. Though incidentally the question of title may come for consideration whilst disposing of such suit, the findings therein can at the most be resjudicata as against the parties to the the suit. Thus as the remaining Respondents were not parties to the said suit and the finding of the Lower Appellate Court that the findings are resjudicata and as such the Appellants are not entitled for the relief of declaration, cannot be sustained. Once the Court comes to the conclusion that the claim of the Appellants of co-ownership has been established, there is no reason to refuse the relief of declaration sought by the Appellants herein. It is also to be noted that the title of the Appellants has also been accepted by the Respondent nos. 1 to 4 whilst filing the Consent Terms in the present case. The substantial question of law is answered accordingly.

6. In view of the above, I pass the following :

ORDER

- (1) The Appeal is partly allowed. The impugned Judgment passed by the Courts below stands partly modified.
- (2) The impugned Judgment dismissing the Counter Claim is quashed and set aside.
- (3) The Counter Claim is partly decreed and consequently the Appellants are declared to be the owners in possession of the subject property surveyed under no. 80/6A located at Velsao Village, Salcete Taluka.
- (4) The Appeal stands disposed of accordingly with no Orders as to costs.

F .M. REIS, J.

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