

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 54 OF 2015

SMT. SATYAVATI TUKARAM SALGAONKAR
(SINCE DECEASED) THROUGH HER LEGAL
HEIRS AND 13 ORS., ... Appellants

Versus

SHRI.MAXIMIANIO DONATO ZUZARTE
BOCARRO REP. BY MISS MARIA SANTANA
LILIA ZUZARTE BOCARRO AND 10 ORS., ... Respondents

Mr. N. Sardesai, Senior Advocate with Mr. Vibhav Rajiv Amonkar, Advocate for the appellants.

Mr. S. S. Kantak, Senior Advocate with Mr. A. Kamat, Advocate for the respondent no.1.

Mr. J. P. Mulgaonkar, Advocate for the respondent no.11.

Coram:- F. M. REIS, J

Date:- 15th April, 2016

ORAL ORDER :

Heard Mr. N. Sardesai, learned Senior Counsel appearing for the appellants, Mr. S. S. Kantak, learned Senior Counsel appearing for the respondent no.1 and Mr. J. P. Mulgaonkar, learned counsel appearing for the respondent no.11.

2. The above appeal challenges the judgments passed by

the Courts below whereby the suit filed by the respondent no.1 for injunction and restoration of possession came to be decreed.

3. Briefly, the facts of the case are that the respondent no.1 claimed that he is the owner in possession of the property known as 'Tarchi Batty" described in the Land Registration Office under No.10042 and inscribed in the Taluka Revenue Office under Matriz No.6793 and bounded towards the east by the property of Ezzo Tari, on the west by Diogo Antonio Fernandes, on the north by the property of Augusto Belarmino and on the south by the heirs of Mariano Fernandes. It is further the case of the respondent no.1 that the said property is surveyed in record of rights under Nos.175/29 and 175/25 of Siolim Village. The appellants disputed the claim of the respondent no.1 inter-alia claiming that they were in possession of the subject property and further that the property was purchased by their ancestors and since that time they were enjoying the property. The learned Trial Judge initially by judgment dated 29.09.2001 decreed the suit filed by the respondent no.1. But however, the appellants preferred the First Appeal before this Court which came to be disposed of by judgment dated

11.08.2006 whereby the matter was remanded to the learned Trial Judge to pass a fresh judgment in the light of the observations made therein. The learned Trial Judge upon remand after permitting the respondent no.1 to record further evidence by judgment dated 19.04.2007 partly decreed the suit filed by the respondent no.1. Being aggrieved by the said judgment, the appellant preferred an appeal before the learned Lower Appellate Court wherein the respondent no.1 filed cross objection with regard to the refusal of the relief of restoration of possession in respect of No.175/25. The learned Lower Appellate Court dismissed the appeal preferred by the appellants and allowed the cross objection filed by the respondent no.1. Being aggrieved by the said judgment, the appellants have preferred the present Second Appeal.

4. Mr. N. Sardesai, learned Senior Counsel appearing for the appellants has pointed out that it was the specific contention raised by the appellants that the Courts below had exceeded its jurisdiction in not following the scope of remand as directed by this Court while disposing of First Appeal. The learned Senior Counsel has taken me through the judgment passed by this Court to point

out that the matter was remanded for limited purpose to examine the aspect of possession and keeping the issue raised by the appellants with regard to the identity of the property open. The learned Senior Counsel further pointed out that both the Courts below have failed to examine the scope of remand while decreeing the suit filed by the respondent no.1. The learned Senior Counsel further submits that the findings of the Courts below that the property has been duly identified are perverse as according to him such findings have been arrived at by misreading of the Land Registration document produced by the respondent no.1. The learned Senior Counsel thereafter has taken me through the Land Registration document to point out that the boundaries of the property shown towards the northern and eastern side have been wrongly recorded in the name of late Tukaram Salgaonkar which clearly discloses that there is misreading of Land Registration document which resulted in perverse findings by the Courts below with regard to the identity of the property. The learned Senior Counsel has thereafter taken me through the arguments advanced before the learned Lower Appellate Court with regard to the scope of remand pursuant to the judgment passed by this Court to point

out that the Courts below were not justified to permit any evidence to be recorded with regard to the identity of the property. The learned Senior Counsel as such points out that on this ground alone the substantial questions of law arise for consideration in the present Second Appeal.

5. On the other hand, Mr. S. S. Kantak, learned Senior Counsel appearing for the respondent no.1 has pointed out that both the Courts below upon appreciating the evidence on record have come to the conclusion that the respondent no.1 has duly identified the property vis-a-vis the Land Registration document and the survey records under Nos.175/29 and 175/25. The learned Senior Counsel has thereafter taken me through the written statement filed by the appellants at para 30 wherein it is clearly stated that the property belongs to one Tukaram is on the northern boundary of the property belongs to the respondent no.1 which clearly shows that the property of the appellants is located towards the southern side. The learned Senior Counsel further pointed out that DW1 has also admitted that the said Tukaram who is the father/father in law of the appellants had purchased the said property from one Belarmino

de Costa in a Court auction. The learned Senior Counsel has thereafter taken me through the Land Registration document to point out that the northern boundary in the Land Registration document clearly shows that the property of Belarmino De Costa is located on southern side. The learned Senior Counsel has thereafter taken me through the boundaries shown on the eastern side which shows the name of Diogo Fernandes who is the father of the respondent no.1. The learned Senior Counsel further points out that on due appreciation of evidence on record by the learned Trial Judge, a categorical finding has been arrived at to the effect that the property registered in the Land Registration office under No. 10042 corresponds to the property surveyed under Nos.175/29 and 175/25. The learned Senior Counsel has pointed out that there are no substantial questions of law which arise in the present Second Appeal for consideration of this Court. The learned Senior Counsel further pointed out that the findings on identity have been arrived at based on the documents produced by the appellants themselves with regard to the Land Registration document in respect of the property purchased by the father/father in law from the adjoining northern owner of the property belonging to the respondent no.1.

The learned Senior Counsel has pointed out that there are no substantial questions of law which arise in the present appeal for consideration.

6. Mr. Mulgaonkar, learned counsel appearing for the respondent no.11 has adopted the submission of Mr. Kantak, learned Senior Counsel appearing for the respondent no.1. The learned counsel pointed out that there is a subsequent sale deed executed in the year 2008 in favour of the respondent no.1 which according to him would justify the refusal of the relief of restoration of possession in favour of the respondent no.1. The learned counsel further points out that the review petition is pending on that count before the learned Lower Appellate Court.

7. I have considered the submissions of the learned counsel and I have also gone through the records. The only point which arises for determination in the present Second Appeal is with regard to the contention of Mr. N. Sardesai, learned Senior Counsel appearing for the appellants that the Courts below have exceeded the scope of remand as directed by this Court while

disposing of the First Appeal. On perusal of the judgment passed by this Court, I find that this Court has set aside the judgment passed by the learned Trial Judge and directed the learned Trial Judge to decide the suit afresh in the light of the observations made therein. The judgment further discloses that the issue with regard to the identity of the property was disputed by the appellants herein. Apart from that, the remand was also to examine whether the respondent no.1 was entitled for the possession of the property based on the amendment which was allowed to be carried out to the plaint. In such circumstances, I find that both the Courts below have proceeded to examine the identity of the property on the basis of the documents produced by the appellants thereafter. On perusal of the findings of the learned Trial Judge at para 41, I find that the learned Trial Judge has appreciated the material on record specially the documents produced by the appellants themselves to come to the conclusion that the boundaries of the property as shown in the Land Registration document towards the northern side and the eastern side have been clearly identified. As far as the other two boundaries are concerned, there was no grievance raised on that count by the appellants herein. The learned Lower Appellate Court

by re-appreciating the evidence on record has confirmed the findings of the learned Trial Judge. In such circumstances, I find that the concurrent findings of fact with regard to the identity of the property arrived at based on appreciation of evidence on record cannot be re-appreciated by this Court.

8. The contention of Mr. N. Sardesai, learned Senior Counsel appearing for the appellants that such findings are perverse and by misreading the boundaries as shown in the Land Registration document cannot be accepted. In fact, the Courts below have considered the boundaries as shown in the Land Registration document vis-a-vis the actual boundary which exist on loco and have also noted the admission of DW1 and the documents which were exhibited by the respondent no.1 in the cross examination of DW1 to come to the conclusion that the property has been duly identified. As such, I find no perversity in such findings which would call for interference of this Court in such findings. On perusal of the judgment of the learned Trial Judge, I find that the learned Judge has elaborately examined the boundaries in the documents and co-related with the boundaries at loco to come to

the conclusion that the property surveyed under Nos.175/29 and 175/25 forms part and the parcel of the property claimed by the respondent no.1. The learned Lower Appellate Court has reappreciated the evidence on record and found that the appellants have not produced any documentary evidence to prove their title to the property "Tarchi Batty" bearing survey Nos.175/29 and 175/25 but their entire case is based only on the Form I & XIV. The learned Lower Appellate Court has further considered the evidence of DW1 and the documents produced on record by observing at para 19 thus :

"19. Thus, defendant no.10 has admitted in his cross examination that the defendants do not have any title documents to show their title to the suit property Tarchi Batty which is surveyed under nos. 175/29 and 175/25 but the defendants have Inscription and Description documents of the property Sallachem Bhat. Thus, the learned Trial Judge rightly came to the conclusion that the plaintiffs proved that the property Tarchi

Batty surveyed under No.175/25 and 175/29 belongs to the plaintiffs based on the Inscription and Description documents, Will and also through the evidence of the surveyor/PW2. Thus, the name of late Tukaram Salgaonkar who is the husband of defendant no.1 and deceased father of defendant no.2 to 14 is wrongly recorded in the occupant's column of Form I and XIV pertaining to survey nos. 175/29 and 175/25. In the instant appeal application dated 22.4.2009 at Exhibit 3 is moved by the respondent no.1 to produce additional evidence under Order 41 Rule 27 of CPC i.e. certified copies of the cadastral survey records and plan of cadastral nos. 767 and 768; letter dated 3.4.2009 from the Public Information Officer of Mamlatdar, Bardez to the effect that mutation file No.1600 is not available and the certificate dated 21.4.2009 issued by the Superintendent of Survey and Land

Records, Panaji to the effect that cadastral 767 corresponds inter alia with survey No.175/25 and 175/29 of Siolim Village. Substantial cause has been shown by the respondent no.1 for not producing the said documents before the trial Court. The aforesaid documents also fortify the case of the plaintiff. The instant point is, therefore, answered in the negative."

Considering the said findings of the learned Lower Appellate Court based on the evidence on record, I find that the contention of the learned Senior Counsel appearing for the appellants that the findings arrived at by the learned Judge are perverse cannot be accepted. The learned Lower Appellate Court as such has rightly granted the relief by dismissing the appeal preferred by the appellants and allowing the Cross Objection filed by the respondent no.1. Hence, I find that no substantial question of law arises in the present appeal on that count.

9. As far as the contention of Mr. Mulgaonkar, learned

counsel appearing for the respondent no.11 is concerned, the question of examining such dispute in this Court without filing any cross objection would not arise at all. As pointed out by Mr. Mulgaonkar, learned counsel appearing for the respondent no.11, the review petition filed by the respondent no.11 before the learned Lower Appellate Court shall be examined on its own merits in accordance with law.

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

F. M. REIS, J.

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