

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 114 OF 2014**

1. Shri Raghunath Keshav Kambli,
major, mason and his wife,
both Sangolda, Bardez Goa.
 2. Mrs. Raghunath Keshav Kambli,
(since deceased through her legal heirs)
2(a) Chandrakant R. Kambli, & his wife

2(b) Smt. Sangeeta B. Kambli,
both r/o House No.340/2,
Morrod, Sangolda, Bardez Goa.

2(c) Anand R. Kambli & his wife,

2(d) Smt. Sonali A. Kambli,
both r/o House No.350/2,
Morrod, Sangolda, Bardez Goa

2(e) Smt. Ashwini A. Talkar & her husband

2(f) Shri Ashok B. Talkar,
both r/o House No.373/2,
Morrod, Sangolda, Bardez Goa.

2(g) Smt. Seema B. Mayekar,

2(h) Shri Babi B. Mayekar,
Both r/o House No.35/1,
Head land Sada,
Vasco Goa.

2(i) Smt. Manali M. Naik and her husband,

2(j) Shri Mangaldas Naik,
Both r/o House No.361, Wadle Bhat,
Neura, Ilhas Goa.
- Appellants

V e r s u s

Mr. Alvaro Faria,
major of age,
Son of late Milot Faria,
Residing at Dilkhush Building,
Mapusa, Bardez Goa.

..... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate for the appellants.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 26th August, 2016

ORAL JUDGMENT

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the appellants and Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the respondent.

2. During the course of the hearing of the above appeal, both the parties were given an opportunity to try and settle the dispute. But however, the parties could not arrive at a settlement and consequently, I proceed to examine the rival contentions on merits.

3. The above appeal challenges the judgment passed by the

learned Lower Appellate Court whereby the appeal preferred by the appellants challenging the judgment passed by the learned Trial Judge decreeing the suit filed by the respondent came to be dismissed. By such decree, it has been declared that the entry in the survey records showing the suit plot as belonging to the defendant no.1/appellant no.1 bearing survey No.1/16 of Village Guirim is null and void. It is also declared that the appellants have no right or title to the suit plot as shown in Exhibit PW1/I Colly. The appellants have also been restrained from encroaching into the suit plot as shown in Exhibit PW1/I Colly and directed to demolish the structure erected in the suit plot and restore the land to its original condition and also to hand over the possession thereof. The counter claim filed by the appellants also came to be dismissed.

4. Briefly, the facts of the case of the appellants that there exists a property bearing survey No.1, sub division nos. 12 and 16 in the Village of Sangolda which was purchased by the appellant no.1 pursuant to the sale deed dated 27.08.1976 which is in their enjoyment. Prior to the appellants, one Caetano Apolinario Mesquita and his family members were in continuous and peaceful possession of the suit

property. The name of the said Caetano Mesquita was recorded as the occupant of the said two plots and after the purchase of the said two plots, the appellants started plantation of coconut saplings in the said property and, thereafter, in the year 1984 the mutation entry in the survey records was recorded in favour of the appellant no.1. Since the said property was purchased for the purpose of construction of the house, a sanad from the Dy. Collector was obtained on 06.11.1991 and the construction licence was also obtained from the Village Panchayat on 02.12.1991. It is the contention of the appellants that somewhere in the year 1991, one Manuel Coelho filed some proceedings against the appellants claiming right to the suit property however, the said proceedings were dismissed and, thereafter, the present respondent/plaintiff filed the suit. It is the contention of the appellants that they are the owners in peaceful possession of the property bearing survey Nos.1/12 and 1/16 of Village of Sangolda and the present respondent falsely claimed to be the owner of the suit property. It is contended that the respondent in collusion with the said Manuel Coelho has filed the suit in order to harass the appellants. The learned Judge framed issues and by judgment dated 30.04.2003 decreed the suit filed by the respondent. While examining the issue no.1, whether the

respondent proves that the suit plot is wrongly included in survey no.1/16, the learned Judge found from the documents produced on record and the contents thereof, that the plot bearing old Cadastral survey no.727 corresponds to Matriz no. 1216 and new survey no.1/16 (part) which is the suit plot and that the same tallies with the boundaries on north, south, east and west with the boundaries mentioned in the old Cadastral survey plan. The learned Judge also noted that the documents produced on record clearly indicate the nexus between the suit plot and the property claimed by the respondent. The learned Judge also noted that the property under Matriz no.1223 (surveyed under no.1/12 part) is on the north and Matriz no. 1227 (surveyed under No.1/16) part) is on the south. The learned Judge also noted that as per the Cadastral survey plan at Exhibit PW1/D Colly and other documents, the property under Matriz No.1227 (surveyed under No. 1/16 part), old Cadastral survey no.726 is on the west of Matriz no.1226 (surveyed under No.1/16 part) i.e. the old Cadastral survey no.727 of the respondent and also Matriz no.1223 (surveyed under No.1/16 part) is on the north of the suit property bearing Matriz No.1226 (surveyed under No.1/16 Part) which means that the suit property belonging to the respondent is on the south of the Matriz No.1223 (surveyed under No.1/12 part)

and on the east of Matriz No. 1227 (surveyed under No.1/16 part) of the property purchased by the appellants from the said Caetano Mesquita which clearly reveals that the property of the appellants is distinct and separate property. The learned Judge further found that the appellants have failed to produce any documents besides the sale deed nor examined the predecessor in title to establish that they are the owners of the entire suit property including the survey no. 1/16 (part) corresponds to Matriz No. 1216. The learned Judge also noted that the sale deed clearly admits the case set out by the respondent that the appellants are the owners of survey No.1/12 (part) and 1/16 (part) and that the suit property is the eastern part of the survey no.1/16 which is not covered by the sale deed of the appellants. The learned Judge as such noted that the said Caetano Mesquita is the owner of the adjoining property and that the respondent is the owner of the new survey no.1/16 (part) corresponding to 727 and Matriz No. 1226 as identified in the plan at Exhibit PW1/I Colly. The learned Judge as such accepted the plan prepared at Exhibit PW1/I Colly identifying the suit plot and the new construction carried out therein and therefore, rejected the claim of the appellants. The learned Judge further noted that the appellants have failed to establish any right to the suit plot. Consequently, the trial

Judge decreed the suit.

5. In the appeal preferred before the learned Lower Appellate Court, the learned Lower Appellate Court upon reappreciating the evidence on record has confirmed the findings of the learned Trial Judge. The learned Judge found the documents produced at Exhibit PW1/O which is a Certificate issued by the Directorate of Settlement and Land Records clearly shows that the old Cadastral plot no. 726 (part) and 727 corresponds to new survey no.1/16 of Village Sangolda. The learned Judge also noted that PW2 has issued the Certificate along with plan showing the area of survey no.1/16 which corresponds to Cadastral survey No.727. In view of the findings rendered therein, the learned Lower Appellate Court found that the respondent has established the identity of the suit property and right of co-ownership therein and consequently, dismissed the appeal preferred by the appellants.

6. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the appellants has pointed out that the dispute in the present case is in respect of a small strip of land which otherwise has no value to the

respondent being adjoining to the plot admittedly purchased by the appellants. The learned Senior Counsel further pointed out that both the Courts below have failed to consider that the sale deed itself discloses that the whole property surveyed under No.1/16 was purchased by the appellants. It is further submitted that both the Courts below have misconstrued the sale deed to come to the conclusion that the survey no.1/16 (part) did not form part of the land purchased by the appellants.

7. On the other hand, Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the respondent has submitted that both the Courts have concurrently found that the respondent has established his case. It is further submitted that the co-ownership right has been duly established by the respondent and the appellants have trespassed into the property of the respondent and consequently, there is no case made out by the appellants for interference in the impugned judgment.

8. I have considered the rival contentions of the learned counsel and I have also gone through the records. There is a categorical finding rendered by the Courts below that the suit property which forms

survey no.1/16 (part) as identified in the plan at Exhibit PW1/I Colly is not part of the subject matter of the sale deed executed in favour of the appellants. These findings have been arrived at after minutely examining the cadastral survey records, matriz records and Land Registration Document. The identity of the property has been established by the respondent based on the cadastral survey records and the new survey plan which has not been disputed by the appellants. In fact, the learned Senior Counsel appearing for the appellants was unable to point out any perversity in such findings arrived at by the Courts below.

9. With regard to the identity of the suit property, the Courts below have concurrently found that the respondent is the co-owner of the suit plot. The appellants have not derived any title to the suit plot bearing survey No.1/16 (part) as identified in the plan. The concurrent findings of fact cannot be reappreciated by this Court in the present Second Appeal as I find no perversity in such findings. Merely because the plot is a narrow strip of land by itself does not entitle the appellants to encroach into the property of the respondent.

10. For the reasons stated herein above and looking into the concurrent findings of fact by the Courts below, I find that the appellants are not entitled to the suit plot bearing survey No. 1/16 (part) as identified in Exhibit PW1/I Colly. The learned Judge has rightly construed the sale deed executed in favour of the appellants to come to the conclusion that the suit plot was not the subject matter of the sale deed. The claim of the appellants of adverse possession has also been rejected by this Court. As such, the substantial questions of law proposed by the appellants do not arise in the present appeal as this Court cannot reappreciate the findings of fact on record. In such circumstances, the appeal stands rejected.

F. M. REIS, J

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