

**IN THE HIGH COURT OF BOMBAY AT GOA****SECOND APPEAL NO. 133 OF 2013**

1) MRS. FLAVIA VAZ (since deceased)  
represented by LRS. and others. .... Appellants.

V/s.

1) SMT. EUGENIA HELENA VAZ  
and others. .... Respondents.

Mr. Anirudha A. Sinai Borkar, Advocate for the appellants.

Mr. A. F. Diniz, Advocate for the respondents No.1, to 5, 6(a) to 6(c).

**CORAM :- F.M. REIS, J.**

**Date : - 1<sup>st</sup> April, 2016.**

**ORAL ORDER :-**

Heard Mr. A. A. S. Borkar, learned Counsel appearing for the appellants and Mr. A.F. Diniz, learned Counsel appearing for the respondents No.1 to 5, 6(a), 6(b) and 6(c).

2. The above appeal challenges the Judgments passed by the Courts below whereby the suit filed by the appellants for declaration and injunction came to be rejected.

3. Mr. Borkar, learned Counsel appearing for the appellants has pointed out that the appellants are claiming right to the disputed property as they are the grand children of the original owner Mariano Vaz, who had two sons by names Joao Pedro and Antonio Francisco Vaz and a daughter by name Sifroza Vaz. The learned Counsel further points out that the appellants claim to be the descendants of said Antonio Francisco Vaz, who was the son of said Mariano Vaz and, as such, according to him, the ancestry of the appellants has been duly accepted by the Courts below, though the suit was dismissed. The learned Counsel further points out that the respondents are claiming their right through one Joaquim Vaz whose rights and interest were expressly excluded in the Inventory Proceedings No.279/1924 initiated way back in the year 1924. The learned Counsel further submits that as the property claimed by the respondents was not the subject matter of the said inventory proceedings, the Courts below were not justified to refuse the reliefs sought by the appellants as, according to him, the subject-property is the property which was allotted to the father of the appellants in such inventory proceedings. The learned Counsel further points out that both the Courts below

have failed to examine that the property stands described in the name of said Mariano Vaz as, according to him, it is well settled that possession follows title. The learned Counsel has, thereafter, taken me through the impugned Judgments passed by the Courts below to point out that both the Courts have misconstrued the documents on record, as well as the evidence adduced by the appellants to come to the conclusion that the appellants have failed to establish their claim. The learned Counsel, as such, points out that there are substantial questions of law which arise for consideration in the present appeal.

4. On the other hand, Mr. A. F. Diniz, learned Counsel appearing for the respondents has supported the Judgments passed by the Courts below. The learned Counsel has pointed out that the property is not inscribed in the name of said Mariano Vaz, but, however, there is an endorsement in the records of the Land Registration Office to the effect that the property was transferred to the possessor and prior to that, it was with the said Mariano Vaz. The learned Counsel further submits that this, itself, suggests that the said Mariano Vaz, who is stated to be the ancestor of the appellants, was not in possession of the disputed property as he had already transferred

the possession to the possessor. The learned Counsel further submits that both the Courts below, upon appreciation of the evidence on record, have come to the conclusion that the appellants have failed to prove that they are in possession of the disputed property. The learned Counsel further submits that the respondents have also partitioned the property and third party rights have also been created. The learned Counsel points out that the Courts below have also found that the appellants have filed the suit for declaration and injunction without impleading necessary parties in the suit. The learned Counsel has, thereafter, taken me through the Judgments of the Courts below to point out that the finding of facts of both the Courts below to the effect that the respondents are in possession of the suit property, is based on oral, as well as documentary evidence which cannot be interfered with by this Court in the present second appeal. The learned Counsel, as such, submits that there are no substantial questions of law which arise in the present appeal for consideration.

5. I have thoughtfully considered the submissions of the learned Counsel and I have also gone through the records. The suit filed by the appellants is for declaration and permanent injunction. It

is not in dispute that the appellants have not sought for restoration of possession. Both the Courts have appreciated the evidence on record to come to the conclusion that the appellants have failed to prove their possession over the disputed property. The learned Counsel appearing for the appellants was unable to point out any piece of material which has not been considered by the Courts below while arriving at a conclusion that the appellant has failed to establish their possession over the disputed property or that there is misreading of evidence by the Courts below while coming to such conclusion. As no perversity has been committed by the Courts below to hold that the appellants have failed to establish their possession over the suit property, the question of interfering on such concurrent findings of facts by this Court under Section 100 of the Code of Civil Procedure would not at all be justified.

6. Apart from that, it is pointed out that the appellants have not sought for restoration of possession though the appellants have sought for declaration of title. It is well settled that to obtain a declaration of exclusive title, the aspect of possession is very relevant. As the appellants have failed to prove their possession, the question of

seeking such a relief, without impleading all the necessary parties, would not at all be justified. That apart, Mr. Diniz, learned Counsel appearing for the respondents has submitted that the endorsement in the document of Land Registration clearly suggests that Mariano Vaz had transferred the possession to some possessor. It is contended by Mr. Diniz that this possessor would include the predecessor-in-title of the respondents. Without examining such aspects, I find that as the endorsement in the Land Registration itself suggests that the possession has been transferred by Mariano Vaz, the question of the appellants now claiming to be owners in possession of the disputed property, based on inheritance from the said Mariano Vaz, is not all justified. The said endorsement in the Land Registration document has also not been explained.

7. With regard to the contention of the learned Counsel appearing for the appellants that the property belonging to Joaquim Vaz who is the predecessor-in-title of the respondents was expressly excluded in the earlier Inventory Proceedings No. 279/1924 initiated upon death of said Mariano Vaz, on perusal of Item No.2 in the said inventory proceedings, it is seen that item No.2 has been expressly described as undefined and disputable right in the properties

belonging to different persons, including Joaquim Vaz. As such, the contention of the learned Counsel appearing for the appellants that the property belonging to Joaquim Vaz was not the subject-matter of the inventory proceedings cannot be accepted. Both the Courts below, upon appreciation of the evidence on record, and on examining the documentary evidence adduced by the parties, have come to the conclusion that the appellants have failed to establish their claim to the disputed property. As such, this Court cannot interfere with the concurrent findings of fact by the Courts below, unless any perversity or any error of law is pointed out by the appellants. Having failed to do so, I find that the question of interference in the impugned Judgments passed by the Courts below would not at all be justified. On perusal of the proposed substantial questions of law, I find that all such questions are essentially based on evidence which this Court cannot reappreciate in its jurisdiction under Section 100 of C.P.C.

8. I find that as such, no substantial question of law arises in this appeal for consideration. Hence, the appeal stands rejected.

**F.M. REIS, J.**

ssm.