

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 89 OF 2016

DR. LILIA DIAS AND ANR.

... Appellants

Versus

SMT. CHRISTINA GOMES E MARQUES AND
2 ORS.

... Respondents

Mr. R. G. Ramani, Advocate for the appellants.

Mr. Ajit R. Kantak, Advocate for the respondents.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 8th December, 2016

P.C.:

The appellants in the second appeal are the original plaintiffs who had filed Regular Civil Suit No. 19/1996/B against the respondents in the Court of Civil Judge, Senior Division at Panaji for several reliefs. The first relief was for demarcation of the appellants' land being plot No.14 and the land of the respondents being Plot No. 16 of the old cadastral plan in accordance with the respective title deeds and the old survey records. The second relief was for permanent injunction, restraining the respondent NO.1 from encroaching upon the plot No.14 or any portion thereof. The third relief was of mandatory injunction for demolition of the illegal construction of the septic tank, and other construction carried out on plot No.14 of Survey No.264/11, 12 and 13 and the suit passage. The fourth relief was by way of a declaration that the sale deed dated 20th December,

1995 executed by respondent No.2 and 3 in favour of respondent No.1, so far as plot No.14 and the suit passage. The fifth relief was for permanent injunction, restraining the respondents from getting the sale deed dated 20th December, 1995 registered. The sixth relief was for an order of injunction restraining the Sub-Registrar of Bicholim from registering the sale deed and mandatory injunction, directing the respondents to remove the cement poles and the barbed wire fencing along eastern outer wall of the appellants' house in the open space admeasuring 25 sq. metres. The respondents contested the suit, inter alia, disputing that they have encroached upon the appellants' property. The Trial Court, on the basis of the pleading of the parties, framed five issues and by its Judgment and Decree dated 14th October, 2014 answering all the issues against the appellants, dismissed the suit.

2. The appellants, being aggrieved by the Judgment and Decree, filed Regular Civil Appeal No. 107/2014 to the District Court, Panaji. By the Judgment and Order dated 29th April, 2015, the appeal came to be dismissed by the learned Adhoc District Judge-1, (FTC) Panaji. Though the findings of the Trial Court on the first two issues have been reversed, the Appellate Court has held that the appellants are owners of plot No.14 and that there exists a passage of three metres width along the house of the appellants since prior to 1921. The Appellate Court

confirmed the findings of the Trial Court that the appellants have failed to prove that the suit land now shown as part of Survey No.264/10 forms part of plot no.14. The appellants also failed to prove that in December, 1995, the respondents constructed a toilet and septic tank on the suit passage and thereby encroached upon the appellants' land. The Trial Court on appreciating the pleadings and the evidence led by the parties, has held that the plaint as specified by the appellants was defective inasmuch as no sketch was produced indicating the location of the alleged encroachment by the respondents. Further, there was no super imposed plan produced by the appellants to identify 25 sq. metres from Survey No.264/10 for the purpose of identifying the location of the encroached land. The appellants had examined an expert surveyor. The expert's evidence also shows that he was unable to compare the new survey plan with the old plan. Thus, the Trial Court held that there were neither any pleadings nor evidence produced to establish the location of the alleged encroachment. The pleadings in that respect are very vague and and no decree can be passed on the basis of such vague pleas. The Appellate Court upheld the findings of the Trial Court.

3. Mr. Ramani, learned Counsel appearing for the appellants submits that since the dispute between the parties is essentially a boundary dispute, this Court may appoint a Commissioner to visit the site in order to correctly locate the

boundary line between the two properties. There can be no such interim order as prayed for by Mr. Ramani in an appeal which is pending for admission. Besides, the parties are expected to bring their own evidence before the Court to establish their respective cases. Further, the appellants had abandoned the opportunity before the Trial Court, as well as the First Appellate Court to move an application for such purpose. Since the appellants have failed to avail of such an opportunity, there is no question of granting the same at the stage of the second appeal.

4. In the above facts of the case, it is made clear that there is no substantial question of law arising in the present appeal for consideration of the Court. Hence, the second appeal is dismissed.

SMT. R. P. SONDURBALDOTA, J.

ssm.