

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 67 OF 2016

1. Shri Shripad P. Prabhu Desai,
Son of Purushottam P. Desai,
Aged 52 years, married, Agriculturist,
and his wife.
2. Smt. Vimal alias Suman Shripad P, Desai,
Major in age, housewife,
Both r/o H. No. 492,
Gopalwaddo, Loliem, Goa.
3. Shri Nagesh P Prabhu Desai,
Son of Purshottam Prabhu Desai,
Aged about 62 years, retired servant
and his wife

Now deceased represented through his
Legal Representative no. 3(a) to 3(f).

- (a) Narendra Naguesh Prabhu Desai,
 - (b) Smt. Sujata Narendra Prabhu Desai,
 - (c) Shri Nitin Naguesh Prabhu Desai,
 - (d) Smt. Poonam Nitin Prabhu Desai,
 - (e) Shri Nishikant Naguesh Prabhu Desai,
 - (f) Smt. Sumitra alias Smeeta Nishikant Prabhu Desai,
all major in age,
all residing at Anusuya Building,
Ramnagar, Aptewado, Kulgaon,
Badalpur Thane, Mumbai.
4. Smt. Neela Naguesh P. Desai,
w/o. Naguesh P. Desai,
major in age, housewife

Residing at Badalpur, Bombay
Represented by Shripad P. Desai,
Being power of attorney holder,
Loliem, Canacona, Goa.
 5. Shri Krishna Uttom Kamat,

Son of Uttom Kamat,
Major in age, service.

6. Smt. Sheela Krishna Kamat,
d/o Purshottam P. Desai,
w/o Krishna Uttom Kamat,
major in age, housewife

Both residents of Shribrupa Shantaram
Bag L. B. Shastri road, Kurla Mumbai 70,
and all are represented herein by their
Constituted attorney and Appellant no. 1,
Shri Shripad Prabhudessai.

..... Appellants

V e r s u s

1. Shri Suryakant Damodar Prabhu Desai,
s/o Damodar alias Damu Prabhu Desai,
major in age, agriculture,
Loliem, Canacona, Goa.
H. No. 491,
(Expired)
2. Smt. Aruna Suryakant Prabhu Desai,
w/o. Suryakant Prabhu Desai,
major in age, housewife,
Loliem, Canacona, Goa.
H. No. 491.
3. Tivikram Damodar Prabhu Desai,
s/o. Damodar Prabhu Desai,
major in age, retired serviceman,
represented by Vasudev Varik,
since deceased represented through
his legal representatives No. 3(a) to 3(f).
 - (a) Shri Ajit Trivikram Prabhu Desai,
 - (b) Smt. Rekha Ajit Prabhu Desai,
 - (c) Shri Abhay Trivikram Prabhu Desai,
 - (d) Smt. Seema Abhay Prabhu Desai,
 - (e) Shri Amar Trivikram Prabhu Desai,

All major in age, all r/o Solapur,
Maharashtra, H. No. 8/2.

4. Smt. Vasudha Trivikram Prabhu Desai,
w/o. Of Trivikram Porabhu Desai,
major in age, housewife,
residing at Solapur,
Maharashtra State – H. No. 8/2.
5. Smt. Dwaraki Madhava Prabhu Desai,
w/o. Late Madhava Prabhu Desai,
since deceased represented through
her legal representatives No. 5(a) to 5(o).
 - (a) Shri Vithal Vaman Bhat,
major in age, bachelor,
brother of Plaintiff No. 5,
(expired)
 - (b) Shri Ramkrishna Vasudev Bhat,
aged 35 years, service and his wife
 - (c) Smt. Rashika Ramkrishna Bhat,
aged 30 years, service,

All r/o near Swamy Samarth Temple,
Morees, Goa. H. No. 30.
 - (d) Smt. Vrudavani Keshav Bhat,
major in age, housewife,
sister in law of Respondent no. 5,
and her children.
 - (e) Smt. Prema Shriram Bhat,
major in age, housewife,
both are r/o. Kajalquer,
Loliem, Canacona.
 - (f) Shri Radhakrishna Shriram Bhat,
major in age, landlord, housewife
 - (g) Smt. Savita Radhakrishna Bhat,
major in age, landlord, housewife
 - (h) Shri Damodar Shriram Bhat,
major in age, landlord

- (i) Smt. Mitra Damodar Bhat,
major in age, housewife,
all resident of Kodkani, Taluka Kumtha,
H. No. 13-9.
- (j) Shri Ashok Shriram Prabhu,
major in age and his wife
- (k) Smt. Suvarna Ashok Prabhu
major in age, housewife,
both r/o. Post Monki, Taluka – Honnawar,
Karnataka State.
- (l) Shri Ramdas Bhat,
major in age, and his wife,
- (m) Smt. Shamal Ramdas Bhat,
major in age, housewife,
both residing at Alavalli,
Post Moroor, Taluka Kumta,
Karnataka, State.
- (n) Shri Dattatray Shriram Aslurkar,
major in age, landlord and his wife,
- (o) Smt. Mangala Dattatray Aslurkar,
major in age, housewife, both
residing at 2nd main, 1st cross, Dharwad
Karnataka.
- 6. Smt. Meerabai Madhusudan Prabhudessai,
since expired through her legal representative.
 - (a) Smt. Smita Ramchandra Prabhudessai,
resident of Loliem, Canacona, Goa.
- 7. Shri Vasudev Dhaklo Varik,
son of late Dhaklo Varik,
Major in age, landlord,
Residing at Kajalquer, Loliem,
Canacona, Goa.
- 8. Smt. Shanti alias Laxmibai V. Varik,
w/o. Vasudev Dhaklo Varik,
major in age, housewife,
residing at Kajaquer, Loliem,
Canacona, Goa.

9. Shri Vinayak Purshuram Prabhugaonkar,
s/o. Parshuram Prabhugaonkar,
major in age, businessman since deceased
represented through his legal heirs
No. 9(a and b)

(a) Master Viraj Vinayak Prabhugaonkar,
aged 8 years, minor.

(b) Master Shriraj Vinayak Prabhugaonkar,
age 6 years, minor

Both represented by their mother
and natural guardian, the Respondent no. 10,
resident of Loliem, Canacona, Goa.

10. Smt. Rajashri Vinayak Prabhugaonkar,
d/o. Madhusudan Prabhudessai,
of major age, housewife.

11. Shri Vijay Krishna Varik,
s/o. Krishna Varik,
major in age, service.

12. Smt. Vasanti Vijay Varik,
d/o late Madhusudan Prabhudessai,
major in age and housewife,
all resident of Loliem, Canacona, Goa.

..... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the
Petitioner.

Mr. R. G. Ramani, Advocate for the Respondent nos. 2, 6a, 7, 8, 10, 11 and 12.

Coram :- F. M. REIS, J

Date : 12th August, 2016

ORAL JUDGMENT

Heard Shri Sudin Usgaonkar, learned Senior Advocate appearing for

the Appellants and Shri Ramani, learned Counsel appearing for the Respondent nos. 2, 6a, 7, 8, 10, 11 and 12.

2. Admit on the following substantial question of law :

(i) Whether the operative part of the impugned Judgment passed by the Lower Appellate Court dated 13.02.2014 is inconsistent with the reasoning of the body of the Judgment whilst recording the survey numbers of the properties subject to partition ?

3. Learned Counsel appearing for the Respondent nos. 2, 6a, 7, 8, 10, 11 and 12 waives service.

4. Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Appellants, has pointed out that the Respondents filed a suit for partition, inter alia, in respect of the property surveyed under nos. 182/1, 182/2, 182/3, 182/4 and 185/2 of Village Loliem on the premise that the property stands undivided and the share of the Respondents is one half whereas the share of the Appellants is the other undivided half. In such suit, the Appellants filed a counter claim, inter alia, contending that besides the said property, there was a property surveyed under no. 183/1 consisting of dry crop and garden land under survey nos. 182/3 and 185/2 of the same Village which though stand in the name of the Respondents is also the subject matter of partition on the basis of the same shares as claimed by the Respondents. It is further pointed out that the Lower Appellate Court whilst considering the Appeal preferred by the Appellant, has come to the conclusion that all the properties referred to in the plaint as well as the Counter Claim are in co-

ownership between the Appellants and the Respondents but, however, whilst issuing the directions in the operative part, has erroneously failed to record the survey numbers of the said property as mentioned in the counter claim. Learned Senior Advocate has thereafter taken me through the Judgment of the learned Trial Judge to point out that the suit filed by the Appellants as well as the Counter Claim filed by the Respondents came to be rejected. But, however, the Lower Appellate court whilst examining the Appeal preferred by the Appellants has decreed the suit filed by the Respondents as well as the Counter Claim filed by the Appellants but erroneously failed to record the survey numbers of the property as reflected in the Counter Claim. Learned Senior Advocate as such pointed out that operative part of the Judgment is inconsistent with the findings in the Judgment passed by the Lower Appellate Court. Learned Senior Advocate as such submits that the substantial question of law be answered in favour of the Appellants and the Decree passed by the learned Appellate Court be accordingly modified.

5. On the other hand, Shri R. G. Ramani, learned Counsel appearing for the Respondent nos. 2, 6a, 7, 8, 10, 11 and 12, has pointed out that the Appellants can have no grievance with regard to the Judgment of the Lower Appellate Court as, according to him, the Appeal preferred by the Appellants has been allowed and the suit filed by the Respondents as well as the Counter Claim consequently were partly allowed. Learned Counsel further pointed out that considering the findings in the Judgment of the Lower Appellate Court, it cannot be disputed that the learned Judge has come to the conclusion that the Appellants and the Respondents are in co-ownership of properties mentioned in the plaint as well as in the Counter Claim.

Learned Counsel as such submits that the Appellants can have no grievance as their claim has been accepted by the Lower Appellate Court and the substantial question of law be answered in favour of the Respondents.

6. I have considered the submissions of the learned Counsel appearing for the respective parties and I have also gone through the records. The undisputed facts and the findings of the Lower Appellate Court are that the properties mentioned in the plaint as well as in the Counter Claim are in co-ownership wherein the share of the Appellants is one half and the share of the Respondents is the other half. Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Appellants, is justified to contend that the survey numbers as mentioned in the Counter Claim have erroneously not been included in the operative part of the Judgment passed by the Lower Appellate Court. The Lower Appellate Court has in fact allowed the Appeal filed by the Appellants wherein there was a challenge by the Appellants to the refusal of the challenge. The learned Judge has also partly decreed the Counter Claim though the survey numbers mentioned in the Counter claim are not found recorded in the directions issued therein.

7. In such circumstances, I find that besides the survey numbers mentioned in the operative part of the Decree, the survey nos. 183/1 dry crop garden, 183/4, 183/8, 184/1 and 185/5 of Loliem Village are also to be included to be partitioned as per the shares as directed by the Lower Appellate Court. All the other directions which the learned Judge to draw a preliminary Decree and partition

stand confirmed. Needless to say, the respective areas in possession of the respective parties in the properties in question may be preferably maintained if found appropriate whilst partitioning all the properties by metes and bounds. The substantial question of law is answered accordingly.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The impugned Judgment passed by the Lower Appellate Court shall stand modified and besides the survey numbers of the properties as mentioned in the Judgment of the Lower Appellate Court, the property surveyed under nos. 183/1 dry crop garden, 183/4, 183/8, 184/1 and 185/5 of Loliem Village stand included in the operative part of the Judgment of the Lower Appellate Court and to the extent possible to be partitioned by metes and bounds as per the shares referred to therein in the light of the observations made herein above and in accordance with law.

(iii) The Appeal stands disposed of accordingly with no Orders as to costs.

F .M. REIS, J.

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