

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 279 OF 2007 & CROSS OBJECTION NO.
7/2008****FIRST APPEAL NO. 279 OF 2007**

(1) Mr. Pandharinath Shankar Shet Salkar (deceased, His LRs are already on record as LRs. of deceased Appellant No.2.)

(2) Smt. Pramodini Pandarinath Salkar (since deceased) (Legal Representatives of deceased appellant no.2)

(2a) Mr. Sarvesh Pandharinath Salkar, son of Pandharinath Shankar Salkar, aged 37 years, service, r/o. H.No.396, Near Santoshi Mata Temple, New Vaddem, Vasco-da-Gama, South Goa 403802.

2(b) Mrs. Prabhavati Sarvesh Salkar wife of Mr. Sarvesh Pandharinath Salkar, aged 28 years, housewife r/o. H.No.396, Near Santoshi Mata Temple, New Vaddem, Vasco-da-Gama, South Goa 403802.

2(c) Mr. Swapnil Pandharinath Salkar son of Mr. Pandharinath Shankar Salkar, aged 32 years, service r/o. H.No.396, Near Santoshi Mata Temple, New Vaddem, Vasco-da-Gama, South Goa 403802.

2(d) Mrs. Swapna Swapnil Salkar, wife of Swapnil Pandharinath Salkar,

aged 27 years, housewife r/o.
H.No.396, Near Santoshi Mata
Temple, New Vaddem, Vasco-da-
Gama, South Goa 403802.

(3) Shri Sitaram Shankar Shet
Salkar, son of late Shankar P. Shet
Salkar, major in age, married,
service, R/o. Near Jai Santoshi
Mata Temple, New Vaddem,
Vasco-da-gama, Goa.

(4) Smt. Sangeeta Sitaram Salkar
wife of Sitaram S. S. Salkar,
major in age, married, housewife,
R/o. Near Jai Santoshi Mata Temple,
New Vaddem, Vasco-da-gama, Goa.

(5) Shri Kamlakant Shankar Shet
Salkar son of late Shankar P. Shet
Salkar, major in age, unmarried,
unemployed, R/o. H. No.145, Non-
mon, Khariwada, Vasco-da-gama,
Goa.

(6) Kum. Jayashree Shankar Shet
Salkar, daughter of late Shankar P.
Shet Salkar, major in age, unmarried,
R/o. H. No.145, Non-mon,
Khariwada, Vasco-da-gama, Goa.

(7) Kum. Lata Shankar Shet Salkar
Salkar, daughter of late Shankar P.
Shet Salkar, major in age, unmarried,
self employed, R/o. H. No.145, Non-
mon, Khariwada, Vasco-da-gama,
Goa.

(8) Shri Laxmikant Shankar Shet
Salkar
son of late Shankar P. Shet Salkar,
major in age, unmarried,
unemployed,
R/o. H. No.145, Non-mon,
Khariwada, Vasco-da-gama, Goa.

..... APPELLANTS.

Versus

(1) Government Of Goa Through
Revenue Secretary
Secretariat, Porvorim, Goa

(2) The Revenue Secretary
Govt. Of Goa, Secretariat, Panaji,
Goa 403 001

(3) The Collector, North Goa District,
Govt. Of Goa, Collectorate Bldg.,
Panaji, Goa 403 001.

(4) The Dy. Collector & Sub-
divisional Officer
North Goa Sub--division, Mapusa,
Bardez, Goa. 403507

(5) The Mamlatdar, Bardez Taluka
Mapusa, Bardez, Goa.

(6) The Talathi Of Moira Village
Village Pancayat Bldg., Moira,
Bardez, Goa.

(7) Smt. Kassimbi Mohammad Hanif
Bepari @ Kassimbi Anif Bepari
R/o. H. No.1235, Yamkarmandi,
Kessai Galli, Hukkeri, Belgaum,
Karnataka.

(8) Mr. Khansaab Mohammad Hanif

Bepari
R/o. H. No.1235, Yamkarmandi,
Kessai Galli, Hukkeri, Belgaum,
Karnataka.

(9) Mrs. Nazmunisa Khansaab
Bepari, Major in age, married,
housewife
R/o. H. No.1235, Yamkarmandi,
Kessai Galli, Hukkeri, Belgaum,
Karnataka.

(10) Mr. Jamal Mohammad Hanif
Bepari alias Jamal Bepari, major in
age, married, businessman,
R/o. H. No.1235, Yamkarmandi,
Kessai Galli, Hukkeri, Belgaum,
Karnataka.

(11) Mrs. Fatima Jamal Bepari
wife of Jamal Bepari, major in age,
married, housewife, R/o. H.
No.1235, Yamkarmandi, Kessai
Galli, Hukkeri, Belgaum, Karnataka.

(12) Shri Chandrakant Dattaram
Naik, major in age, married, business,
R/o. H. No.188/1, Angod, Mapusa,
Bardez, Goa.

(13) Smt. Chandravati Chandrakant
Naik, wife of Chandrakant D. Naik,
major in age, married, housewife,
R/o. H. No.188/1, Angod, Mapusa,
Bardez, Goa.

(14) Shri Digambar Narayan
Gadekar, major in age, married,
business, R/o. H. No.84, Morod,
Mapusa, Bardez, Goa.

(15) Smt. Kalpana Digambar
Gadekar, major in age, married,

housewife, R/o. H. No.84, Morod,
Mapusa, Bardez, Goa.

(16) Mr. Jerome Noronha, major in
age, married, R/o. H. No.635 (new),
(old H. No.501) Povoacao Waddo,
Moirá, Bardez, Goa.

(17) Mrs. Felcy Jerome Noronha,
wife of Jerome Noronha, major in
age, married, R/o. H. No.635 (new),
(old H.no.501) Povoacao Waddo,
Moirá, Bardez, Goa.

(18) Shri Kalidas Kashinath Raikar
son of Kashinath Raikar,
major in age, married, business,
R/o. H. No.271, Nachinola, Bardez,
Goa.

(19) Smt. Milan Kalidas Raikar,
wife of Kalidas K. Raikar, major in
age, married, business,
R/o. H. No.271, Nachinola, Bardez, Goa.

..... Respondents.

(20) Mrs. Priya Dattaram
Nagzarkar alias Priya
Pandharinath Salkar, wife of
Dattaram L. Nagzarkar,
daughter of Pandharinath Shankar
Salkar, aged 44 years, housewife, r/o
H.No.319C/21A, Near Rajendra
Prasad Stadium, Calcondem, Margao,
South Goa 403 601.

(21) Dattaram L. Nagzarkar,
Son of Laxman Nagzarkar, aged
aged 54 years, r/o H.No.319C/21A,
Near Rajendra Prasad Stadium,
Calcondem, Margao, South Goa 403 601.

(22) Mrs. Trupti Sanjiv Kadkade alias

Trupti Pandharinath Salkar, wife of Sanjiv Kusumakar Kadkade, daughter of Pandharinath Shankar Salkar, aged 42 years, service, r/o. H.No.44, Assoi Dongri, Alto Dabolim, South Goa, 403 806.

(23) Mr. Sanjiv Kusumakar Kadkade, son of Kusumakar Kadkade, aged 49 years, service, r/o. H.No.44, Assoi Dongri, Alto Dabolim, South Goa, 403 806.

(24) Mr. Pritam Pandharinath Salkar, son of Pandharinath Shankar Salkar, aged 40 years, service r/o. Rayesh Chamber Co-operative Housing Society, Near Ganesh Garden, Flat No.B-32, Marlem, Borda, Margao, South Goa 403 602.

(25) Mrs. Sulaksha Pritam Salkar, wife of Mr. Pritam Pandharinath Salkar, aged 35 years, service r/o. Rayesh Chamber Co-operative Housing Society, Near Ganesh Garden, Flat No.B-32, Marlem, Borda, Margao, South Goa 403 602.

..... Respondents.

Mr. T. Pereira, and Mr. L. Salkar, Advocates for the appellants.

Mr. J. P. Mulgaonkar, Advocate for the respondents No.7 to 15.

CROSS OBJECTION NO. 7/2008

(1) Mr. Pandharinath Shankar Shet Salkar (deceased, His LRs are already on record as LRs. of deceased Appellant No.2.)

(2) Smt. Pramodini Pandarinath Salkar (since deceased) (Legal

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(1) Shri Chandrakant Dattaram Naik,
major in age, married, business,
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(2) Smt. Chandravati Chandrakant
Naik, wife of Chandrakant D. Naik,
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Bardez, Goa.

(3) Shri Digambar Narayan Gadekar,
major in age, married, business, R/o.
H. No.84, Morod, Mapusa, Bardez,
Goa.

(4) Smt. Kalpana Digambar Gadekar,
major in age, married, housewife,
R/o. H. No.84, Morod,
Mapusa, Bardez, Goa.

..... Cross Objectors/
Respondent Nos. 12 to 15

Mr. J. P. Mulgaonkar, Advocate for the Cross Objectors

Mr. T. Pereira, and Mr. L. Salkar, Advocates for the respondents.

CORAM :- F.M. REIS, J.

Date :- 28 APRIL 2016

ORAL JUDGMENT :

Heard Mr. T. Pereira, learned Counsel appearing for the appellants and Mr. J.P. Mulgaonkar, learned Counsel appearing for the respondents/Cross Objectors.

2. The above appeal and the cross objection challenge the Judgment and Decree dated 10th July, 2007, passed by the learned District Judge, Panaji in Civil Suit No.195/2004, whereby the suit filed by the appellants came to be dismissed.

3. Briefly, the facts of the case are that the appellants filed the suit, inter alia, on the ground that their grand parents and father purchased the suit properties by four sale deed dated 21/4/1919, 26/3/1945, 6/12/1945 and 3rd June, 1954. It is their case that thereafter, the suit properties were surveyed in the Record of Rights under Survey No.20/6 admeasuring an area of 1250 sq. metres, Survey No. 20/7 admeasuring an area of 1250 sq. metres, Survey No. 40/4 admeasuring an area of 1200 sq. metres and Survey No.157/6 admeasuring 1425 sq. metres. It is further their case that in the original survey records, names of the predecessors of the appellants were figuring, but,

however, when the respondents started interfering with the suit properties, the appellants were forced to file the present suit and thereafter, learnt that by fraud and without giving notice to the appellants or their predecessors-in-title, names of the predecessors-in-title of the appellants were deleted and the name of the respondent No.7 came to be substituted. It is further their case that based on such fraudulent survey records, the suit properties were purported to be sold by respondents No.7 to respondents no. 12 to 19. It is further their contention that they came to know of such facts, when they verified the survey records and found that without giving any notice either to the appellants or their predecessors-in-title, the survey records were fraudulently changed in the name of the respondent No.7. It is further the case of the appellants that they are the owners in possession of the suit properties which, according to them, were registered in the Land Registration Office under No. 34720 of Book 89 and under No.21467 of Book 55. As the sale deeds executed in favour of the respondents No.12 to 19 were by a persons who had no title to the suit properties, the suit came to be filed, inter alia, to declare all the sale deeds as null and void and also for a declaration that the appellants were owners of the suit properties, as well as for a permanent

injunction. The respondents No. 7 to 15 filed their common written statement; whereas respondents No. 18 and 19 have filed their separate written statement disputing the case of the appellants. Substantially, the contention of the respondents is that the property known as “Casa de Morada and Gorbata” constitutes the property survey Nos. 20/6, 20/7, 40/4 and 40/4-A and 157/6 of Village Moira, Bardez Taluka. It is further their case that the suit properties were purchased by the respondent No.7 and her husband and that they were thereafter sold to the respondents No.12 to 19. It is also their case that the suit properties purchased by the said respondents are described in the Land Registration Office under No. 51391 at page 194 of Book B 108 and it stands inscribed in the name of the respondent No.7. It is further their case that the survey records were duly rectified as the appellants had no right to the suit property. It is also their contention that they are bonafide purchasers for value and, as such, the appellants are not entitled for any relief. The learned Trial Judge, after recording of evidence and hearing the parties, by the impugned Judgment and Decree dismissed the suit filed by the appellants.

4. On perusal of the impugned Judgment, I find that the

learned Trial Judge has come to the conclusion that though the appellants have established their ownership in respect of the suit property, nevertheless, as the respondents were the bonafide purchasers of the property the appellants were not entitled for any relief. It was further held that the respondents have failed to establish any title to the subject properties and consequently, the sale deeds executed in favour of the respondents No.12 to 19 cannot be in respect of the suit property belonging to the appellants. The learned Trial Judge has also taken a view in the impugned Judgment that the suit is barred for non-joinder of necessary parties as co-owners of the properties were not parties to the suit. It is to be noted that after being served, the respondents filed cross objections, disputing the correctness of the said findings rendered by the learned Trial Judge while passing the impugned Judgment in favour of the appellants.

5. Mr. T. Pereira, learned Counsel appearing for the appellants has taken me through the impugned Judgment to point out that though the learned Trial Judge has come to the conclusion that the ownership of the property has been established by the appellants, the suit has been dismissed essentially on the ground that the suit is bad for

non-joinder of necessary parties. The learned Counsel has further pointed out that the property is registered in the Land Registration Office under the said two numbers and, as such, the fact that the property belongs to the appellants cannot be disputed. The learned Counsel has further submitted that the respondents did not specifically take a stand in the written statement as to who were the necessary parties who were not made parties to the suit and, as such, on such a vague plea the learned Judge was not justified to dismiss the suit filed by the appellants. The learned Counsel further points out that even assuming that the respondents/purchasers are bonafide purchasers that, by itself would not establish that the appellants have lost title to the property as, it was incumbent upon the learned Trial Judge to direct payment of compensation in terms of the value of the land. The learned Counsel further points out that in any event, there are no pleadings in the written statement to contend that the respondents No.7 to 12 are ostensible owners of the property to claim the benefit under Section 41 of the Transfer of Property Act. The learned Counsel further points out that it is also not their case that the respondents have carried out any development of the property to defeat the claim of substantive relief of the appellants. The learned Counsel further points

out that even assuming that the relief of declaration of title could not be granted, the learned Trial Judge, by no stretch of imagination could have rejected the relief to declare the sale deeds null and void and the injunction sought by the appellants, as it is well settled that a co-owner can file a suit for injunction and even assail the sale deed executed of his property. The learned Counsel, as such, points out that the learned Judge has misconstrued the evidence on record and failed to consider the Land Registration documents produced by the appellants whilst dismissing the suit filed by the appellants.

6. On the other hand, Mr. J. P. Mulgaonkar, learned Counsel appearing for the respondents No.7 to 15 has supported the impugned Judgment. The learned Counsel has pointed out that it is a specific case of the respondents that the subject property is registered in the Land Registration Office under No.51391 and on perusal of the impugned Judgment, it appears that the learned Trial Judge has not at all examined the fact that the property claimed by the respondents corresponds to the boundary as shown in the Land Registration Document. It is further pointed out that it is the specific case of the respondents that the predecessors-in-title of the appellant had conveyed

the property in favour of the respondent No.7 which came thereafter to be inscribed in the name of the respondent No.7 in the Land Registration Office. It is further pointed out that the appellants have failed to discharge their burden to establish that the property which was sold pursuant to the sale deeds by the predecessor-in-title of the appellants in the year 1956 does not correspond to the property claimed by the appellants in the suit. The learned Counsel further points out that the failure to examine the title documents produced by the respondents would itself vitiate the findings of the learned Trial Judge and, as the appellants have failed to establish their ownership over the suit property. The learned Counsel further points out that during the cross examination of the witnesses of the appellants, it is clearly established that the property also devolved in favour of the sister of the appellants and, as such, as the said sister, nor her legal heirs are parties to the suit, the learned Trial Judge has rightly dismissed the suit for non-joinder of necessary parties. The learned Counsel further submits that the respondents are owners in possession of the suit property and, as such, according to him, the appellants are not entitled for any relief as claimed in the suit. The learned Counsel further points out that the findings of the learned Trial Judge that the appellants are owners of

the suit property be quashed and set aside and the suit filed by the appellants be rejected.

7. I have considered the submissions of the learned Counsel and I have also gone through the records. The points for determination which arise in the present appeal are :

- (1) Whether the Judgment passed by the learned Trial Judge stands vitiated for not examining whether the properties claimed by the appellants as registered in the Land Registration Office under Nos. 34720 and 21467, correspond to the suit property in the suit ?
- (2) Whether the finding of the learned Trial Judge that the appellants are owners of the suit property, stands vitiated for non-consideration of the claim of the respondents that the property stands registered in the Land Registration Office under No.51391 ?

8. On perusal of the impugned Judgment, I find that whilst appreciating the evidence on record one of the crucial aspects which had to be examined was whether the extent of the property claimed

by the appellants as registered in the Land Registration Office under No.34720 and under No.21467 corresponds to the suit property surveyed in the record of rights under Survey Nos. 20/6, 20/7, 40/4 and 40/4-A and 157/6. Even while coming to the conclusion that the appellants have established their ownership, the learned Judge has failed to consider the boundaries as shown in the Land Registration document produced by the respondents in respect of the property described under No.51391. These material aspects to examine the identity of the property have not at all been considered by the learned Trial Judge whilst dismissing the suit filed by the appellants. It is not disputed that neither the appellants nor the respondents have examined any expert to consider the identity of the property claimed by the appellants and the respondents vis-a-vis the survey numbers as pleaded in the plaint.

9. It is well settled by this Court that when identity of the property is in dispute, the Court can appoint a Commissioner to consider the identity of the property based on the documents of title of the parties. In the present case, as the extent of the property as shown in the Land Registration document and claimed by the appellants was

seriously disputed by the respondents, as this aspect has not at all been considered by the learned Trial Judge it would by itself vitiate the Judgment passed by the learned Trial Judge. As has been pointed out herein above, the learned Trial Judge could have appointed a Commissioner to consider the identity of the property as claimed by the appellants and the respondents.

10. One of the crucial aspects to be examined in this context is to consider the extent of the property as described in the Land Registration Office under No.34720 and 21467 vis a vis the survey records claimed by the appellants. While carrying out this exercise, the extent of the property as claimed by the respondents as described in the Land Registration Office under No.51391 vis a vis the survey records claimed by the respondents also have to be examined. Only after such exercise is carried out, the learned Trial Judge can proceed to consider whether the appellants are entitled for the relief sought in the suit. To carry out such exercise in the present appeal would not be justified as expert evidence would have to be adduced to decide such aspect. In the present case, as no such exercise has been carried out, I find that the impugned Judgment passed by the learned Trial Judge cannot be

sustained and deserves to be quashed and set aside. Needless to say, the findings of the learned Trial Judge to the effect that the appellants have established their ownership or that the respondents have failed to establish their title over the suit property cannot be sustained and deserves to be set aside in the facts of the present case.

11. With regard to the findings of the learned Trial Judge that the respondents are *bonafide* purchasers, I find that there are no pleadings in the written statement that the respondents have purchased the suit property from an ostensible owners on behalf of the appellants. It is also not their case that any development has been carried out in the property which would entitle them for any equities in that direction. In such circumstances, the findings of the learned Trial Judge that the respondents are bonafide purchasers cannot be sustained and deserve to be quashed and set aside.

12. As far as finding of the learned Trial Judge that the suit itself is bad for non-joinder of necessary parties, I find that there were no specific particulars pleaded in the written statement to the effect that any specific person/party was left out from the suit. In any event,

considering the relief sought in the suit, even assuming that the appellants were not entitled for the declaration of title, the learned Trial Judge could have examined in the facts of the case, whether the appellants were entitled to the other relief of permanent injunction and declaration that the sale deeds are null and void. It cannot be disputed that a sale deed executed non domino, is a nullity and as such, only after examining the extent of the claim of the appellants based on the title documents, the value of the sale deed would have to be considered.

13. For the aforesaid reasons, I find that the learned Trial Judge has not at all considered the material issues, in accordance with law, whilst coming to the conclusion that the appellants were not entitled for the reliefs in the suit. The points for determination are answered accordingly.

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

O R D E R

- (I) The appeal and the Cross Objection are partly allowed.
- (II) The impugned Judgment and Decree dated 10/07/2007,

passed by the learned District Judge, Panaji in Civil Suit No.195/2004, is quashed and set aside.

(III) The Civil Suit No.195/2004 is restored to the file of the learned District Judge, Panaji and the learned District Judge is accordingly directed to decide the suit afresh in the light of the observations made herein above, in accordance with law.

(IV) All the contentions of both the parties are left open.

F. M. REIS, J.

ssm.