

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 23 OF 2016

MR. PERPETUA ALIAS PERPET
FERNANDES AND 4 ORS.,

... Appellants

Versus

MR. JOSE ANTONIO FERNANDES AND
ANR.,

... Respondents

Ms. Ketaki L. Pednekar, Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 15th July, 2016

P.C.

Heard Ms. K. Pednekar, learned counsel appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellants came to be dismissed. It is the case of the appellants that they are exclusive owners in possession of the subject property and the house existing therein. The respondents have produced the deed of gift executed by the mother of the appellants inter-alia disclosing that as the original defendant no.1 was legitimate son, the half portion of the house was gifted in his favour. On perusal of the judgment passed by the learned Trial Judge, it has been clearly held that the deed of gift has been duly executed by the mother of the plaintiff no.1 in favour of the defendant no.1 and the execution thereof has not been disputed.

The learned Lower Appellate Court by reappreciating the evidence on record has come to the conclusion that based on the gift deed the claim of the appellants that they are exclusive owners of the subject property cannot be accepted. The findings of fact arrived at by the Courts below based on the appreciation of evidence on record and the documents cannot be reappreciated by this Court in the present Second Appeal. The Courts below have accepted the validity of the subject deed of gift. On perusal of the proposed substantial questions of law, I find that such substantial questions of law would entail reappreciation of evidence on record. Apart from that, it is not disputed that the survey records stand in the name of the appellants and the respondents which further corroborate the case put forward by the respondents herein. Hence, I find no substantial question of law arises in the present Second Appeal for consideration. Consequently, the appeal stands accordingly rejected.

F. M. REIS, J.

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