

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NOS. 51, 52 & 53 OF 2007****SECOND APPEAL NO. 51 OF 2007**

1. Vasant Vital Bhonsle,
Son of Vithal Bhonsle,
aged about 45 years,
married,
 2. Mrs. Vasant Vithal Bhonsle,
wife of Vasant Bhonsle,
both residing at Manxebhatt,
Penha da Franc,
Bardez Goa.
- Appellants

V e r s u s

1. Mr. Narendra Pandurang Chatim,
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa.
 2. Mrs. Vandana Narendra Chatim,
wife of Narendra Chatim,
residing at Salvador do Mundo,
Bardez Goa.
 3. Mr. Harikumar Pandurang Chatim,
(since deceased)
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa
- 3a) Abhita Harikumar Chatim,
resident of Salvador do Mundo,
Bardez Goa.
- b) Abhaykumar Harikumar Chatim,
r/o Salvador do Mundo,

Bardez Goa.

4. Mrs. Aruna Harikumar Chatim,
wife of Harikumar P. Chatim,
residing at Salvador do Mundo,
Bardez Goa

.. Respondents

WITH

SECOND APPEAL NO. 52 OF 2007

1. Mr. Ramnath Yeshwant Parvotkar,
(since deceased)
represented by
1a) Shri Rajesh Ramnath Parvotkar,
son of late Ramnath Parvotkar,
unmarried, major of age,

b) Miss Sunita Ramnath Parvotkar,
d/o late Ramnath Parvotkar,
umarried, major of age,
both r/o Manxe Bhatt,
Penha de Franca, Bardez Goa.

2. Mrs. Ramnath Yeshwant Parvotkar,
wife of Ramnath Y. Parvotkar,
Residing at Manxe Bhatt,
Penha de Franca, Bardez Goa.

.... Appellants

V e r s u s

1. Mr. Narendra Pandurang Chatim,
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa.
2. Mrs. Vandana Narendra Chatim,
wife of Narendra Chatim,
residing at Salvador do Mundo,
Bardez Goa.

3. Mr. Harikumar Pandurang Chatim,
(since deceased)
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa.
3a) Abhita Harikumar Chatim,
resident of Salvador do Mundo,
Bardez Goa.

b) Abhaykumar Harikumar Chatim,
r/o Salvador do Mundo,
Bardez Goa.

4. Mrs. Aruna Harikumar Chatim,
wife of Harikumar P. Chatim,
residing at Salvador do Mundo,
Bardez Goa.

...Respondents

WITH

SECOND APPEAL NO. 53 OF 2007

1. Meghashama Vinaik Gharse,
married, major of age and
his wife,
2. Mrs. Meghashama Vinaik Gharse,
wife of Meghashama V. Gharse,
both residing at Maxebhatt,
Penha de Franca, Bardez Goa.

... Appellants

V e r s u s

1. Mr. Narendra Pandurang Chatim,
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa.
2. Mrs. Vandana Narendra Chatim,
wife of Narendra Chatim,
residing at Salvador do Mundo,

Bardez Goa.

3. Mr. Harikumar Pandurang Chatim,
(since deceased)
son of Pandurang alias Pandu Chatim,
major of age, married,
residing at Salvador do Mundo,
Bardez Goa.

3a) Abhita Harikumar Chatim,
resident of Salvador do Mundo,
Bardez Goa.

b) Abhaykumar Harikumar Chatim,
r/o Salvador do Mundo,
Bardez Goa.

4. Mrs. Aruna Harikumar Chatim,
wife of Harikumar P. Chatim,
residing at Salvador do Mundo,
Bardez Goa.

...Respondents

Mr. N. Sardessai, Senior Advocate with Mr. V. Amonkar and Ms. S. Pereira, Advocates for the appellants.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar and Ms. M. Furtado, Advocates for the respondents.

Coram:- F. M. REIS, J

Date:- 7th October, 2016

ORAL JUDGMENT

Heard Mr. N. Sardessai, learned Senior Counsel appearing for the appellants and Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondents.

2. All the above three appeals were taken up together at the request of the learned Senior Counsels appearing for the appellants and the respondents as it was pointed out by the learned Senior Counsels that the substantial question of law framed by this Court was identical.

3. All the above appeals came to be admitted by order dated 31.03.2008 on the following substantial question of law.

“Whether on true construction of the partition deeds between the members of the plaintiff's family and inventory proceedings read with decree in the civil suit between the plaintiffs and Martha Viegas, the learned Courts below could have come to a valid conclusion that the respondents/plaintiffs are the owners of the suit property bearing survey No.14/2”.

4. The parties shall be referred to in the manner they so appear in the cause title of the judgment of the learned Trial Court.

5. Mr. N. Sardessai, learned Senior Counsel appearing for the defendants has submitted that the plaintiffs/respondents herein have not produced any document of title to substantiate that they are the owners in possession of the subject property. The learned Senior Counsel has thereafter taken me through the judgments passed by the Courts below to

point out that the title of the plaintiffs/respondents was accepted on the basis of the Deed of Partition as well as the survey records and the allotment made in the Inventory Proceedings which according to the learned Senior Counsel would not confer any title on the plaintiffs. It is further pointed out that the plaintiffs have claimed their title through the predecessor in title but however, there is no material on record to establish that the plaintiffs/ respondents were the owners in possession of the subject property surveyed under No.14/2. The learned Senior Counsel has taken me through the judgments passed by the learned Trial Court as well as the learned Lower Appellate Court to point out that the learned Judge has misconstrued the evidence as well as the documents produced by the plaintiffs to erroneously come to the conclusion that the plaintiffs are the owners of the subject property. The learned Senior Counsel further pointed out that the burden is on the plaintiffs to establish their title and as the plaintiffs have failed to establish their title, the question of examining the claim of title of the defendants/appellants herein would not arise at all. The learned Senior Counsel further pointed out that pursuant to the sale deed the defendants have purchased the property surveyed under No.14/1 wherein the defendants have put up a construction and as the plaintiffs have failed to establish their title over the disputed portion, or in the property surveyed under no.14/2, the question of getting any relief against the defendants would not at all arise. The learned Senior Counsel has

thereafter minutely taken me through the impugned judgments passed by the Courts below to point out that both the Courts have misconstrued the documents to erroneously come to the conclusion that the plaintiffs are the owners of the subject property.

6. On the other hand, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the plaintiffs/respondents herein has disputed the said contention. The learned Senior Counsel pointed out that it is not disputed that the defendants have purchased the property from the predecessor in title of the plaintiffs herein and as such the question of contending that the plaintiffs have no title to the property is totally fallacious. It is further pointed out that the Deed of Partition as well as the survey records clearly point out that the subject property was allotted to the predecessor in title of the plaintiffs. It is further submitted that in the Inventory Proceedings initiated upon the death of the predecessor in title of the plaintiffs, the subject property surveyed under no.14/2 was enlisted and thereafter allotted to the plaintiffs. The learned Senior Counsel as such submits that the substantial question of law framed by this Court has to be answered in favour of the plaintiffs considering that both the Courts have concurrently come to the conclusion that the plaintiffs have established their title over the subject property. The learned Senior Counsel as such points out that the Courts below have construed the documents produced by the plaintiffs

to concurrently come to the conclusion that the title over the subject property has been duly proved by the plaintiffs. The learned Senior Counsel as such submits that the appeals be accordingly rejected.

7. I have considered the submissions of the learned Senior Counsels and I have also gone through the records. On going through the judgment passed by the learned Trial Judge dated 23.03.2005, the learned Judge framed four issues. While dealing with the first issue as to whether the plaintiffs prove that the subject property surveyed under No.14/2 is owned and possessed by the plaintiffs, the learned Judge has taken note of the evidence of PW1 Mr. Narendra Chatim. The learned Judge took note of the judgment and decree dated 05.07.2003 passed by the learned Civil Judge Junior Division, Mapusa declaring the plaintiffs as owners in possession of the suit property surveyed under No.14/2 as against Martha Viegas and Datta Shet. The learned Judge also took note of the evidence of DW1 Vasant Bhosle who had deposed that two properties bearing survey nos.14/1 and 14/2 are separated by a wall of rubble stones starting from northern side and going further direction which is four and half metres from his house. The learned Judge also noted that DW1 has deposed that in the year 1985, he made an application to the Land Survey Department after calling all the parties namely Martha Viegas, Velho, Kalokhe for demarcating the property and putting boundary stones. The

learned Judge also noted that DW1 has stated that he has put up a construction of a house in his property and did not encroach in the suit property. He has also pointed out that the house is located in the property surveyed under No.14/2 but there is a mistake in the survey plan. He has also admitted in his cross examination that he has no right to the suit property and his property is surveyed under No.14/1. The learned Judge accordingly found from the survey records at Form I and XIV which have been duly promulgated that the property surveyed under no.14/2 does not show the name of the defendants in the occupants column. The learned Judge as such on the basis of the material on record has come to the conclusion that the property surveyed under No.14/2 belongs to the plaintiffs.

8. With regard to the second issue as to whether the defendants had encroached into the property of the plaintiffs, the learned Judge has noted that the defendants have admitted that they have no right to the suit property bearing survey No.14/2. The learned Judge also took note of the licence produced on record at Exhibit DW1/C for constructing a katcha house. The learned Judge also noted that DW3 Mahadev Tuenkar had deposed that he has measured the property at loco and found that the construction of house was done 20 years ago and he has carefully verified the survey records of survey Nos. 14/1 and 14/2 which shows an error

towards the northern and by the side of the drain. The learned Judge also noted that DW1 has clearly admitted that there was an error in survey No.14/2 and he drew a rough sketch to show it to the defendants. The learned Judge also noted that the boundaries shown in the affidavit of the said witness are not in accordance with the boundaries shown in the sale deed produced by DW3 and on the survey plan which clearly show that there is an encroachment in the property surveyed under No.14/2. The learned Judge as such came to the conclusion that there was an encroachment in the property of the plaintiffs and accordingly answered the said issue in affirmative.

9. While dealing with the said aspect, the learned Lower Appellate Court by its judgment dated 21.09.2005 has framed three points for determination. While discussing the first point for determination the learned Appellate Court has noted that according to the defendants, the property surveyed under No.14/2 belongs to the predecessor in title of the defendants i.e. Martha Viegas. The learned Judge also noted that there was a suit pending between the plaintiffs and the said Martha Viegas and since the defendants admit that the suit property belonged to the said Martha Viegas and in view of the said Decree in Regular Civil Suit No. 52/1998 the case of the defendant nos. 1 and 2 stands disproved. The learned Judge also noted that the defendant nos. 1 and 2 purchased the property surveyed

under no.14/1 vide common sale deed dated 01.07.1988 at Exhibit DW1/A and that the description of the portion sold to the defendants clearly noted that the property was surveyed under No.14/1. The learned Judge also noted that the claim of DW2 that there was an error in the boundary line between the property surveyed under Nos.14/1 and 14/2 is clearly not reflected in the boundary shown in the sale deed of the defendant nos. 1 and 2. The learned Judge also examined the evidence of DW1 in Regular Civil suit No.50/98 and noted that the witnesses have not stated that there was any error in the boundary line between the property surveyed under Nos.14/1 and 14/2. The learned Judge also noted that DW1 in Regular Civil suit No.49/98 has also admitted that he has purchased the part of the property surveyed under No.14/1. The learned Judge has also took note of the evidence of DW1 in Regular Civil Suit No.57/98. DW1 has also stated that his house is located in the property surveyed under No.14/1 and there was no encroachment in the suit property. The learned Judge upon appreciating the material on record has come to the conclusion that the plaintiffs have established their title in respect of the property purchased by them under survey No.14/2. The learned Judge also noted that PW2 being an expert examined by the plaintiffs had deposed that he has visited the property at the request of the plaintiffs. He has also produced at Exhibit PW3/A a plan prepared by him and in the said plan the three houses constructed by the defendants in three suits are shown to have been

constructed in the entire property surveyed under No.14/2. The learned Judge also noted that the Commissioner was appointed from the Survey Department to demarcate the property at site who has been cross examined by DW1 and DW2 based on the report prepared by him. He has denied the existence of the rubble stone boundary between the two properties. The learned Judge also noted that the plan prepared by him in fact for the first house on the northern side and falls in the property surveyed under No.14/2 and other two houses to the south of the said house partly falling in the property surveyed under No.14/1 and partly in the property surveyed under No.14/2. The learned Judge also noted that there is no reason to disbelieve the evidence of the said witness and as such found that the plaintiffs have established their title over the property under survey No.14/2.

10. On going through the findings of the fact finding Court based on the documentary evidence on record, the learned Judge has come to the conclusion that the property surveyed under No.14/2 belongs to the plaintiffs. The learned Judge while coming to such conclusion has taken note of the decree wherein the predecessor in title of the defendants as well as the sellers were parties wherein it was declared that the property surveyed under No.14/2 belongs to the plaintiffs herein. Apart from that, this is concurrent by the enlistment that the property came to be allotted in

the Inventory Proceedings as well as the Deed of Partition. The Deed of Partition has also been duly registered in accordance with law. The defendants have not raised any challenge to the Deed of Partition or any person claiming any right to such property. The duly promulgated survey records in respect of the property surveyed under no.14/2 also stands in the name of the plaintiffs/respondents. The Inventory Proceedings initiated upon the death of the predecessor in title of the defendants clearly shows that the property surveyed under No.14/2 has been duly allotted to the plaintiffs herein. Article 2158 of the Portuguese Civil Code provides that the partition of the properties legally made in respect of which there has not been any objection, confers on the co-heirs exclusive ownership of the properties partitioned among them. Looking into all the documents produced by the plaintiffs, the Courts below were justified to come to the conclusion that the plaintiffs have established their title and ownership over the subject property. Besides that the defendants are claiming right only to the property surveyed under No.14/1. The documents and admission clearly suggest that the rights of the defendants are restricted to the portion of the property surveyed under No.14/1. The Court Commissioner examined has clearly stated that there is no rubble stone boundary wall as claimed by the defendants running from the north side direction and that the part of the subject house is located in the property surveyed under no.14/2 which does not form part of the property

purchased by the defendants herein. The identity of the property has not been disputed by the defendants. In such circumstances, the concurrent findings of fact arrived at by the Courts below based on the oral and documentary evidence on record cannot be faulted. There is no misconstruction of any of the document of title or evidence produced by the defendants to come to the conclusion that the defendants have established their ownership and title over the subject property surveyed under No.14/2. In such circumstances, as the defendants have failed to point out any perversity in the said findings arrived at by the Courts below, I find that the contention of the defendants that the plaintiffs have failed to establish their ownership and title of the subject property cannot be accepted. The substantial question of law is accordingly answered against the defendants.

11. For the aforesaid reasons, I find no merit in the above appeals which stand accordingly rejected.

F. M. REIS, J

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