

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 40 OF 2014

SHRI SONU VITHOBA VELIP AND ANR., ... Appellants
Versus
SHRI BISSO ODDO VELIP AND 10 ORS., ... Respondents

Mr. Virendra R. Parshekar, Advocate for the Appellants.

Coram:- F. M. REIS, J.

Date:- 16th June, 2016

ORAL ORDER

Heard Shri Parsekar, learned Counsel appearing for the Appellants.

2. The above Appeal challenges the Judgments passed by the Courts below whereby a suit filed by the Appellants for declaration and permanent injunction came to be dismissed.

3. Shri Parsekar, learned Counsel appearing for the Appellants, has pointed out that subject matter of the suit is a property surveyed under no. 369/1(part) located in the southern side in the Village of Cola. Learned Counsel further pointed out that the property is registered in Land Registration Office under no. 12913 and inscribed under Matriz no. 632. Learned Counsel further pointed out that the Respondent nos. 6 and 7 are claiming to be tenants of the subject property though the Courts below have come to the conclusion that

the Respondent nos. 6 and 7 have failed to establish their claim of tenancy. Learned Counsel further pointed out that though the names of the Respondents appear in the Survey Records, nevertheless, according to him, the whole property belongs to the Appellants towards the southern side and the northern portion belongs to the Respondent nos. 1 and 2. Learned Counsel has thereafter taken me through the Judgments of the learned Trial Judge to point out that the documents of title produced by the Appellants have not been correctly examined and, as such, the learned Trial Judge was not justified to dismiss the suit filed by the Appellants. Learned Counsel thereafter pointed out that the Lower Appellate Court has failed to consider the title documents of the Appellants and, consequently, has rendered a perverse finding that the Appellants have failed to establish their title over the disputed property. Learned Counsel has thereafter taken me extensively through the pleadings to point out that the Appellants have pleaded that the name of the property as well as the boundary and, as such, the finding of the learned Trial Judge that the property has not been properly identified, deserves to be quashed and set aside. Learned Counsel further pointed out that both the Courts have come to the conclusion that the Respondents have failed to establish their right or title and, as such, according to him, the Courts below were not justified to pass the impugned Judgment. Learned Counsel further pointed out that the Appellants have examined a Surveyor namely, Pw.2, who had clearly identified the subject property. Learned Counsel further pointed out that on bare

perusal of the evidence of Pw.2, it would clearly reveal that the Appellants have established the identity of the property and the findings of the learned Trial Judge on that count deserves to be quashed and set aside. Learned Counsel further pointed out that non-consideration of document of title of the Appellants is itself a substantial question of law which requires consideration by this Court.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. On perusal of the plaint, the subject matter of the property is a portion of the property surveyed under no. 369 (Part) of the Cillage of Cola. On going through the Judgments of the learned Trial Judge, the learned Judge has come to the conclusion that the Appellants have failed to co-relate the boundary as shown in the Land Registration Office with the property surveyed under no. 369(part). The Lower Appellate Court while analysing the evidence on record has also taken a view that the Appellants have failed to establish the identity of the property. In fact on perusal of the plaint, I find that at Para 2 of the plaint, it is alleged that the Appellants are the owners of the property which is described in Land Registration Office and the Matriz Records and surveyed under no. 369(part). The evidence on record in fact suggests that the property admeasures more than 98000 square metres and the claim of the Appellants is restricted only to 40000 square metres. The Appellants have failed to co-relate the boundaries as

shown in the Land Registration Office with the boundaries in respect of the alleged part of the property surveyed under no. 369(Part). The Lower Appellate Court while analysing the evidence of Pw.2, has pointed out that such exercise has been carried out by Pw.2 without visiting the subject property. The learned Judge further pointed out that the Pw.2 has not even measured the actual boundaries nor was aware of the boundaries as shown in the documents produced by the Appellants. The Courts below as such have disbelieved the evidence of Pw.2 with regard to the identity of the property. The findings of the Courts below on that count cannot be faulted. Though it is sought to be contended that the whole property admeasures an area of 98000 square metres nevertheless on perusal of the boundary as shown in the Land Registration Document, the actual boundaries of the alleged claim of the Appellants are not reflected therein.

5. The Courts below have also come to the conclusion that the suit is also bad for non-joinder of necessary parties as there is a claim of declaration of title. These findings of the Courts below based on the evidence on record, cannot be re-appreciated by this Court in the present Second Appeal under Section 100 of the Civil Procedure Code. Admittedly, the name of the Appellants does not figure in the occupants column of the property surveyed under no. 369(Part). Though the Respondent no. 2 admits that the Appellants have a right to the property surveyed under no. 369 (Part), I find that such contention deserves to be disbelieved as the Survey Records show the

names of Respondent nos. 1 and 2 figures in the occupant's column and it is the case of the Respondent nos. 6 and 7 that they are the tenants of the Respondent nos. 1 and 2. As the Appellants have failed to establish the identity of the property, I find that on perusal of the findings of the Courts below, there is no perversity in such findings as claimed by the Appellants. On perusal of the substantial question of law as proposed by the Appellants, I find that a decision thereon would require a re-appreciation which cannot be carried out in a Second Appeal under Section 100 of Civil Procedure Code.

6. Hence, I find that there are no substantial questions of law for consideration in the present Second Appeal under Section 100 of the Civil Procedure Code. Hence, the Appeal stands rejected.

F. M. REIS, J.

arp/*