

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 106 OF 2015

SHRI.VITHAL ANANT SAUNTO (SINCE
DECEASED) THROUGH HIS LRS., ... Appellant
Versus
SHRI BALU SHAMBA SAUNTO (DECEASED)
AND 6 ORS., ... Respondents

Mr. M. B. D' Costa, Senior Advocate with Ms. K. Betquekar,
Advocate for the Appellants.
Mr. Ryan Menezes and Mr. C. Rebeiro, Advocate for the
Respondents.

Coram:- F. M. REIS, J.

Date:- 30th September, 2016

ORAL ORDER

Heard Mr. M. B. D'Costa, learned Senior Advocate appearing
for the Appellants and Mr. Ryan Menezes, learned Counsel
appearing for the Respondents.

2. The above Appeal challenges the Judgments passed by the
Courts below whereby the suit filed by the Appellant, inter alia,
to declare that the Appellants together with the original
Defendant nos. 8 and 9, are the owners of the suit property and
that the Appellants have regained the possession of the suit
property upon the death of the original Defendant no. 1 and, as
such, they are entitled to continue and hold such property and
further in the alternative to direct the Respondents to vacate the

suit property and the possession thereof be handed over to the Appellants and the original Defendant no.8 and for payment of mesne profits as well as for permanent injunction came to be dismissed.

3. Briefly, it is the case of the Appellants that Special Civil Suit no. 16/1983 was filed by the Appellants in the Court of the Adhoc Senior Judge at Ponda for a declaration, permanent injunction and mandatory injunction, inter alia, from interfering in any manner with the possession of the Appellants in respect of the suit property. The Respondents filed their written statements disputing the claim put forward by the Appellants. By Judgment dated 21.04.2007, the learned Judge dismissed that Suit. Aggrieved by the said Judgment, the Appellants preferred Regular Civil Appeal no. 325 of 2010 before the learned District Judge and by Judgment dated 31.01.2011, the learned partly allowed the Appeal of the Appellants thereby directing the learned Senior Judge to re-hear the arguments and pass a Judgment. The Respondents preferred an Appeal from Order bearing no. 15/2011 before this Court and by Order dated 09.04.2012, such Appeal was partly allowed and the learned Senior Judge was directed to decide the suit afresh in the light of the observations made therein. Thereafter, by Judgment dated 21.09.2013, the suit was dismissed by the learned Trial Judge. An appeal was preferred before the Lower Appellate Court

which also came to be dismissed by Judgment dated 20.08.2015. Being aggrieved by the said Judgment, the Appellants have preferred the present Appeal.

4. On perusal of the Judgment of the learned Trial Judge dated 21.09.2013, it is to be noted that the learned Judge framed issues and whilst considering issue no.1, found that it is the case of the Appellants that they are the owners of 1/5th of the property known as "Madlem Poiguim" belonging to Shri Vitola and Sorospoti. It is further their case that the Appellants derived their right based on Inventory Proceedings. Upon appreciating the material on record, the learned Judge came to the conclusion that the identity of the property has not been established not that the Appellants have proved that they are the owners of the suit property to the exclusion of the Respondents. The learned Judge also noted that whilst deciding issue no. 5, that all survey numbers claimed by the Appellants show the name of the Respondents therein. Whilst examining issue no. 8 with regard to the claim of the Respondents that the suit is barred by the principles of res-judicata, the learned Judge found that the issues raised in the earlier suit bearing no. 24/69 and the present suit are substantially the same. The learned Judge noted that in the suit there were findings to the effect that the Appellants were co-owners along with the Respondents in respect of the suit property and, consequently, found that the suit was barred by

principles of res-judicata. The learned Judge also noted that the documents referred to in the earlier suit and the present suit were the same and decided issue no. 9 in the affirmative. Consequently, the suit came to be dismissed.

5. Whilst deciding the First Appeal preferred by the Appellants, the Lower Appellate Court framed six points for determination and held that the suit was barred by the principles of res-judicata. The learned Judge noted the claim of the Appellants on the basis of the rights which have devolved in the Inventory Proceedings of Vitola and Sororpoti to the extent of 1/5th but, however, the description in the said Inventory Proceedings and the allotment therein at exhibit Pw.1/F show that only 1/10th part of the property "Babrem Batta" is described at item no. 1 and 1/10th part of the property "Borod Raswad" is described at item no. 2 and, as such, the learned Judge found that the claim of the Appellants that they are entitled to 1/5th share of the property cannot be accepted. The learned Judge further found that the description of the property in the Land Registration Office, does not tally with the description in the Inventory Proceedings. The learned Judge further noted that the Land Registration document at exhibit Pw.1/A, Pw.1/B and Pw.1/C were created subsequently and were contrary to the share described in the said Inventory Proceedings. The Lower Appellate Court consequently upon re-appreciating the evidence on record has dismissed the Appeal

filed by the Appellants.

6. Mr. M. B. D'Costa, learned Senior Advocate appearing for the Appellants, has however assailed the Judgments of the Courts below on the ground that as the Appellants were not parties to the earlier Suit, the principles of res-judicata would not be applicable. It is further pointed out that the share of the Appellants in the disputed property is 1/5th part which corresponds to the whole suit property and, as such, according to the learned Senior Counsel, the claim of the Respondents that they are the co-owners of the suit property is totally erroneous. The learned Senior Advocate further pointed out that the Land Registration document clearly shows that 1/5th share of the property is inscribed in the name of the Appellants and, as such, the finding of the learned Judge that the Appellants are only co-owners of the suit property is totally erroneous and deserves to be quashed and set aside.

7. On the other hand, Shri Ryan Menezes, learned Counsel appearing for the Respondents, has pointed out that both the Courts below upon appreciating the evidence on record have concurrently found that the share of the Appellants at the most can be 1/10th part of the property. The learned Counsel further submits that both the Courts below have rightly come to the conclusion that the claim of the Appellants that they are

exclusive owners of the suit property being 1/5th part therein is erroneous and cannot be accepted.

8. I have duly considered the submissions of the learned Counsel and I have also gone through the records. It is not in dispute that in the Inventory Proceedings relied upon by the Appellants as rightly noted by learned Lower Appellate Court 1/10th part of the two subject properties were described at Item nos. 1 and 2. The Lower Appellate Court as such has rightly found that in such circumstances, the inscription in the Land Registration document is contrary to the shares as allotted in the Inventory Proceedings. The Appellants have relied upon a private document executed by the Appellants in the nature of a declaration in the year 1955 wherein it was declared that 1/5th share was allotted to the ancestors of the Appellants. It is hard to accept that based on an unilateral private declaration, the shares which were allotted way back in the year 1921 in the Inventory Proceedings of the ancestors could be altered. Admittedly, the Respondents nor their ancestors were parties to such document and, in any event, the rights of the Respondents cannot be defeated on the basis thereof. Apart from that, on perusal of the Judgment passed in the earlier Civil Suit no. 24/1969, it has been clearly held therein that the Appellants have a right to the suit property and their right is 1/10th and not to the entire 1/5th as claimed by them. These findings have been rendered upon

appreciating the same documents produced on record including a Deed of Partition dated 08.08.1956. This Judgment of the learned Civil Judge came to be confirmed by the then Addl. District Judge in Civil Appeal no. 93/1973 by Judgment dated 15.02.1977. The same documents which are relied upon by the Appellants in the present suit have been minutely examined in the earlier proceedings whilst coming to such conclusions. The claim of the Appellants that they were in exclusive possession of the subject properties was also rejected in the earlier Suit and, as such, the findings of the Courts below to that effect cannot be faulted.

9. In such circumstances, the contention of Mr. M. B. D'Costa, learned Senior Advocate appearing for the Appellants that based on the Land Registration document, the shares of the Appellants would be 1/5th part therein, cannot be accepted. Merely because all the legal heirs were not parties to the earlier suit, would not by itself show that the findings therein are erroneous. The same documents relied upon by the Appellants herein have been minutely examined in the earlier suit to come to such conclusion.

There s no other material produced by the Appellants to persuade the Court to take any contrary findings.

10. In such circumstances, I find that the substantial question of law proposed by the Appellants do not arise in the present

Appeal. The alleged admissions claimed by the Appellants cannot in any way defeat the truthfulness and the correctness of the documentary evidence which has been rightly interpreted in the earlier suit as well as by the Courts below whilst coming to the conclusion that the claim of the Appellants that they are entitled to 1/5th part of the property and, as such, to the entire property to the exclusion of the Appellants, cannot be accepted.

11. Hence, I find no substantial question of law arise in the present Appeal for consideration and, consequently, the Appeal stands rejected.

F. M. REIS, J.

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