

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NOS. 145 OF 2010
WITH
FIRST APPEAL NO. 20 OF 2011
AND
FIRST APPEAL NO. 21 OF 2011
FIRST APPEAL NOS. 145 OF 2010

1. Mr. Babuso Bhoma Gaude,
since deceased-victim represented by his
legal heirs

(i) Naguesh Babuso Gaude,
(ii) Manguesh B. Gaude,
Both residing at Axem,
Bethora, Ponda, Goa.

...Appellants

V e r s u s

1. Late Shanu Vassu Gaude (since deceased)
represented by his Lhs
Atma Shanu Gaude (deceased)
represented by his legal heirs.

- (i) Smt. Shobhavati Atma Gaude,
widow of Atma Gaude,
- (ii) Miss Vasanti Atma Gaude,
daughter of late Atma Gaude,
- (iii) Miss Shevanti Atma Gaude
daughter of late Atma Gaude
- (iv) Miss Sapana Atma Gaude,
daughter of late Atma Gaude
- (v) Miss Adika Atma Gaude,
daughter of late Atma Gaude,
all are major in age,
residing at Ashem, Betoda,
Ponda, Goa.
- (vi) Mrs. Sukanti Dnyaneshwar Gaonkar
daughter of late Atma Gaude
- (vii) Mr. Dnyaneshwar Dattaram Gaonkar

son in law of late Atma Gaude,
both major in age, resident of
Shignewal,
Nirankal, Ponda, Goa.

(viii) Mrs. Shaila Umakant Gaude,
daughter of late Atma Gaude,

(ix) Mr. Umakant Datta Gaude,
son in law of late Atma Gaude,
both major in age,
resident of Amadi,
Keri, Ponda, Goa.

2. Hari Babani Gaude (deceased)
represented by his legal heirs

(i) Smt. Gomati Hari Gaude,
widow of late Hari Gaude,

(ii) Mr Pundalik Hari Gaude,
son of late Hari Gaude,

(iii) Mrs. Neeta Pundalik Gaude,
daughter in law of late Hari Gaude,

(iv) Mr. Premanand Hari Gaude,
son of late Hari Gaude,

(v) Mr. Deelip Hari Gaude,
son of late Hari Gaude,

(vi) Miss Nali Hari Gaude,
daughter of late Hari Gaude,

(vii) Miss Tara Hari Gaude,
daughter of late Hari Gaude,

(viii) Mr. Pradip Hari Gaude,
son of late Hari Gaude,
all major in age, residing
at Ashem, Betoda, Ponda, Goa.

(ix) Mrs. Ujwala Mahadev Velip,
daughter of late Hari Gaude,

(x) Mr. Mahadev Nilu Velip
son in law of late Hari Gaude,
both major, residing at Paz,
Shiroda, Ponda, Goa.

3. Shri Putu Babani Gaude (deceased)
represented by his legal heirs
 - (i) Smt. Lata Putu Gaude,
widow of Putu Gaude,
 - (ii) Mr. Babani Putu Gaude,
son of late Putu Gaude
 - (iii) Miss Sunjala Putu Gaude,
daughter of late Putu Gaude
 - (iv) Mr. Uttam Putu Gaude,
son of late Putu Gaude,
 - (v) Mrs Vanita Uttam Gaude,
daughter in law of late
Putu Gaude all major in age,
resident of Ashem,
Betoda, Ponda, Goa.
 - (vi) Mrs. Kanchan Ramesh Dalkar,
daughter of late Putu Gaude,
 - (vii) Mr. Ramesh Sakhle Daikar,
son in law of late Putu Gaude,
both major in age, resident of
Panzarkhani, Cuncolim,
Salcete, Goa.
4. Late Suko (Sukdo) Bhomo Gaude,
represented by his sons
 - (i) Gurudas S. Gaude,
 - (ii) Anand S. Gaude
 - (iii) Damodar S. Gaude,
 - (iv) Kalidas S. Gaude,
all resident of Axem,
Betoda, Ponda, Goa.
5. Late Gajo Bhomo Gaude,
represented by his son
 - (i) Mangaldas G. Gaude,
resident of Axem Betoda,
Ponda, Goa.

6. Shri Pandu Laxman Gaude
resident of Axem Betoda,
Ponda, Goa.
(Appeal stands dismissed for non-
prosecution as per order dated
15.03.2012)
7. Shri Ramnath Kolo Gaude,
resident of
Axem Betoda,
Ponda, Goa.
8. Shri Tilu Satu Gaude
resident of Axem Betoda,
Ponda, Goa.

_____ ...Respondents

Shri J Godinho, Advocate for the Appellants.
Shri P. Lotlikar and Ms. Neelam Patil, Advocates for the
Respondent no.8.
Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the Respondent nos.2(i) to 2(x).

FIRST APPEAL NO. 20 OF 2011

- 1 Late Shanu Vassu Gaude
represented by his son
Atma Shanu Gaude(deceased)
represented by his legal heirs.
 - (i) Smt. Shobhavati Atma Gaude,
widow of Atma Gaude
 - (ii) Miss Vasanti Atma Gaude
daughter of late Atma Gaude
 - (iii) Miss Shevanti Atma Gaude
daughter of late Atma Gaude
 - (iv) Miss Sapana Atma Gaude,
daughter of late Atma Gaude
 - (v) Miss Advika Atma Gaude,
daughter of late Atma Gaude
all are major in age,
residing at Ashem, Betoda,
Ponda, Goa.
 - (vi) Mrs. Sukanti Dnyaneshwar Gaonkar

- daughter of late Atma Gaude
 - (vii) Mr. Dnyaneshwar Dattaram Gaonkar,
son in law of late Atma Gaude,
both major in age,
resident of Shignewal,
Nirankal, Ponda, Goa.
 - (viii) Mrs. Shaila Umakant Gaude,
daughter of late Atma Gaude,
 - (ix) Mr. Umakant Datta Gaude,
son in law of late Atma Gaude,
both major in age,
resident of Amadi, Keri,
Ponda, Goa.
- 6 Hari Babani Gaude (deceased)
represented by his legal heirs
- (i) Smt. Gomati Hari Gaude
widow of late Hari Gaude
 - (ii) Mr Pundalik Hari Gaude
son of late Hari Gaude
 - (iii) Mrs. Neeta Pundalik Gaude,
daughter in law of late Hari Gaude
 - (iv) Mr. Premanand Hari Gaude
Son of late Hari Gaude
 - (v) Mr. Deelip Hari Gaude,
son of late Hari Gaude,
 - (vi) Miss Nali Hari Gaude,
daughter of late Hari Gaude
 - (vii) Miss Tara Hari Gaude,
daughter of late Hari Gaude
 - (viii) Mr Pradip Hari Gaude,
son of late Hari Gaude,
all major in age, residing
at Ashem, Betoda, Ponda, Goa.
 - (ix) Mrs. Ujwala Mahadev Velip,
daughter of late Hari Gaude
 - (x) Mr Mahadev Nilu Velip
son in law of late Hari Gaude
both major, residing at Paz,
Shiroda, Ponda, Goa.
- 3 Shri Puto Babani Gaude (deceased)
represented by his legal heirs
- (i) Smt. Lata Putu Gaude,
widow of Putu Gaude,
 - (ii) Mr. Babani Putu Gaude

- (iii) son of late Putu Gaude
Miss Sunjala Putu Gaude,
daughter of late Putu Gaude
- (iv) Mr. Uttam Putu Gaude,
son of late Putu Gaude,
- (v) Mrs. Vanita Uttam Gaude,
daughter in law of late
Putu Gaude all major in age,
resident of Ashem,
Betoda, Ponda, Goa.
- (vi) Mrs. Kanchan Ramesh Daikar,
daughter of late Putu Gaude
- (vii) Mr Ramesh Sakhle Daikar,
son in law of late Putu Gaude,
both major in age, resident of
Panzarkhani, Cuncolim,
Salcete, Goa.

...Appellants

V e r s u s

- 1 Late Babuso Bhoma Gaude,
represented by his sons
 - (i) Naguesh Babuso Gaude
 - (ii) Pandurang B. Gaude,
 - (iii) Bombo B. Gaude,
 - (iv) Manguesh B. Gaude,
all residing at Axem,
Bethora, Ponda, Goa.
- 2 Late Suko (Sukdo) Bhombo Gaude,
represented by his sons
 - (i) Gurudas S. Gaude
 - (ii) Anand S. Gaude,
 - (iii) Damodar S. Gaude
 - (iv) Kalidas S. Gaude,
all resident of Axem
Bethoda, Ponda, Goa.
- 3 Late Gajo Bhomo Gaude,
represented by his son
 - (i) Mangaldas G. Gaude,
resident of Axem Bethoda,
Ponda, Goa.
- 4 Shri Pandu Laxman Gaude,
resident of Axem Bethoda,
Ponda, Goa.

- 5 Shri Ramnath Kolo Gaude,
resident of Axem Betoda,
Ponda, Goa.
- 6 Shri Tilu Satu Gaude,
resident of Axem Betoda,
Ponda, Goa. _____ ...Respondents

Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the Appellants.

Shri P. Lotlikar and Ms. Neelam Patil, Advocates for the
Respondent no.6.

AND

FIRST APPEAL NO. 21 OF 2011

- 1 Gurudas S Gaude
- 2 Anand S. Gaude
- 3 Domodar S. Gaude
- 4 Kalidas S. Gaude,
sons of Legal Heirs of
Late Suko (Sukdo) Bhomo Gaude,
All major in age and residing at
H. No.12, Axem, Bethora,
Ponda Goa,(Original Party no.2 before
the Reference Court)
- 5 Mangaldas G. Gaude,
Major in age,
son and legal heir late Gajo Bhomo Gaude
Residing at Axem, Bethora, Ponda Goa
(Original Party no.3 before the
Reference Court) _____ ...Respondents

V e r s u s

- 1 Late Babuso Bhomo Gaude
since deceased Represented by his sons
 - (a) Naguesh Babuso Gaude
 - (b) Pandurang B. Gaude
 - (c) Bhomo B. Gaude
 - (d) Manguesh B. GaudeAll residing at H. No. not known
Axem, Bethora,

- Ponda, Goa.
(Original Party no.1 before
the Reference Court)
- 2 Shri Pandu Laximan Gaude
Major in age r/o Axem, Bethora,
Ponda, Goa.
(Original Party no.4 before
the Reference Court)
- 3 Late Shanu Vassu Gaude
Represented by his sons
Atma Shanu Gaude (Since deceased)
Represented by his legal heirs
- (i) Smt. Shobhavati Atma Gaude
widow of klate Atma Gaude
 - (ii) Miss Vasanti Atma Gaude,
daughter of late Atma Gaude
 - (iii) Miss Shevanti Atma Gaude
daughter of late Atma Gaude
 - (iv) Miss Sapana Atma Gaude,
daughter of late Atma Gaude
 - (v) Miss Adika Atma Gaude
daughter of late Atma Gaude
All major of age,
r/o Ashem, Betoda,
Ponda, Goa.
 - (vi) Mrs Sukanti Dnyaneshwar Gaonkar
daughter of late Atma Gaude
 - (vii) Mr Dnyaneshwar Dattaram Gaonkar,
son in law of late Atma Gaude,
both major in age,
r/o Shignewal, Nirankal, Ponda, Goa.
 - (viii) Mrs Shaila Umakant Gaude
daughter of late Atma Gaude
 - (ix) Mr Umakant Datta Gaude,
son in law of late Atma Gaude,
both major in age,
r/o Amadi, Keri, Ponda, Goa.
(Original Party no.5 before
the Reference Court)
- 4 Hari Babani Gaude (Since deceased)
Represented by his legal heirs
- (i) Smt. Gomati Hari Gaude
widow of late Hari Gaude
 - (ii) Mr Pundalik Hari Gaude

- son of late Hari Gaude
- (iii) Mrs Neeta Pundalik Gaude
daughter in law of late Hari Gaude
- (iv) Mr Premanant Hari Gaude
son of late Hari Gaude
- (v) Mr Deelip Hari Gaude
son of late Hari Gaude
- (vi) Miss Nali Hari Gaude
daughter of late Hari Gaude
- (vii) Miss Tara Hari Gaude
son of late Hari Gaude
All major in age
r/o Ashem, Betoda, Ponda, Goa.
- (viii) Mr Pradip Hari Gaude
son of late Hari Gaude
All major in age
r/o Ashem, Betoda, Ponda, Goa.
- (ix) Mrs Ujwala Mahadev Velip
daughter of late Hari Gaude
- (x) Mr Mahadev Nilu Velip
son in law of late Hari Gaude
bothmajor in age,
r/o Paz, Shiroda, Ponda, Goa.
(Original party no.6 before
the Reference Court)
- 5 Shri Ramnath Kolo Gaude,
Major in age,
r/o Ashem, Betoda, Ponda, Goa.
(Original Party no.7 before the
Reference Court)
- 6 Shri Putu Babani Gaude (since deceased)
Represented by his legal heirs
 - (i) Smt Lata Putu Gaude
widow of Putu Gaude
 - (ii) Mr Babani Putu Gaude
son of late Putu Gaude
 - (iii) Miss Sunjala Putu Gaude
daughter of late Putu Gaude
 - (iv) Mr Uttam Putu Gaude,
son of late Putu Gaude
 - (v) Mrs Vanita Uttam Gaude
Daughter in law of late Putu Gaude
All major in age,
r/o Ashem, Betoda, Ponda, Goa.

- (vi) Mrs Kanchan Ramesh Daikar
daughter of late Putu Gaude
 - (vii) Ramesh Sakhle Daikar
Son in law of late Putu Gaude,
Both r/o Panzarkhani, Cuncolim,
Salcete, Goa.
(Original Party no.8 before
the Reference Court)
- 7 Tilu Satu Gaude
major in age,
r/o Ashem, Betoda, Ponda, Goa.
(Original Party no.9 before
the Reference Court)
- ...Respondents

Shri P A Kamat, Advocate for the Appellants.
Mr. P. Lotlikar and Ms. Neelam Patil, Advocates for the
Respondent no.7.

NUTAN D. SARDESSAI, JJ

CORAM:

**Reserved for Judgment on : 7th September 2017
Judgment Pronounced on : 12th October 2017**

JUDGMENT

1. These three Appeals are disposed off by a common Judgment which challenge the Judgment dated 15.07.2010 pursuant to which the learned Reference Court while disposing off the application for apportionment under Section 30 of the Land Acquisition Act held that the entire compensation of ₹13,865/- with interest accrued thereon shall be paid to the party no.9 and that costs would be borne by the party nos.1,2,3 and 5 to 8 who are in these Appeals challenging the

apportionment of the compensation in favour of the party no.9.

2. The Government had acquired the land bearing survey no.13/0 admeasuring 1350 square metres pursuant to the Notification dated 18.10.1999. Since disputes were raised by the parties, the same was referred to the District Court for apportionment in terms of Section 30 of the Act. It was the case of the Appellants in the First Appeal no.145 of 2010 that there was a property called "Ponos Raim" also known as "Anxenvadevoril Raimpoiquim" alias "Ponos Raepoiquim" registered under Matriz no.1064, 1067, 1068 and 1071, described in the Land Registration Office under no.12862 with distinct boundaries. The properties were surveyed under no.63, 73 and 92 during the old cadastral survey and in the recent survey they were surveyed under nos.30/0, 31 and 32 of Village Bethora. They had inherited the right to the said property in 1/5th share through their ancestors Bambo Deu Gaudo or Bhomo Deu Gaude and his wife Deuqui and which was allotted to them in the Inventory Proceedings. The Appellants with others had constructed 15 residential houses in the survey no.30/0 which was developed and cultivated by their grandfather, then by their father and now they were in cultivatory possession and enjoyment of the said property. It was the case of the Respondent no.1(i) to (ix) that they had inherited rights to the property of Omu Custam Gaude and the Respondent no.2(i) to (x) and the Respondent no.3 had inherited their right through their ancestor Babani Deu Gaude. The Respondent no.1(i) to (xi) had 1/5th right in the acquired

property and the Respondent no.2(i) to (x) and the Respondent no.3 had 1/10th undivided share in the said property surveyed under survey no.30. The Respondent no.7 had set out a case that they had inherited the rights to their property through their parents Kolo Bicaró Gaude and his wife Sundarem Kolo Gaude which originally belonged to 5 families and in the year 1913, a Deed of Dissolution was executed between the parties and the properties were distributed among five families in equal shares named as 'Anxem', 'Borodo' and 'Anxea Vodeavorim Ponos Pain Poiquim'. A suit was filed before the Civil Court at Ponda bearing no.29/79 for declaration and injunction which came to be dismissed on 27.10.86 on failure of the Respondent's mother to prove the identification of the property. Another suit came to be filed being Regular Civil Suit no.37/89/B which was dismissed and an Appeal against the said Order was pending before the High Court being Second Appeal no.36/2006. The Appeal was preferred against the Judgment and Decree passed in the Civil Suit no.21/79 before the District Court and the Appeal was dismissed and the Second Appeal filed before the High Court also came to be dismissed. They were entitled to 1/5th share in the suit property and that the Respondent no.9 was a stranger who had no right in the property.

3. The Appellant in the First Appeal no.145 of 2010 assailed the Judgment on the grounds that the District Court had failed to assess the oral as well as documentary evidence adduced by the parties. The learned District Judge had erred in holding the principles of resjudicata applicable to the facts of the case

when the learned Judge ought to have held that the Judgment and Order passed by the Civil Judge in Civil Suit no. 21/79 had not considered the issue of ownership or title and it had only decided on the basis of possession and therefore the principles of resjudicata could not be made applicable. The impugned Judgment and Order was contrary to the material on record. The learned District Court ought to have held that the documentary evidence produced by the Appellants and the Respondents were sufficient to come to the conclusion that the property did not belong to the Respondent no.9 and that he had no right to the property. The impugned Judgment and Award was therefore liable to be interfered with and the Appellants were entitled to their share of the compensation.

4. In the Appeal next in sequence being First Appeal no.20 of 2011 they claimed that they had right in the acquired land and that the learned District Judge had passed the impugned Judgment and Order which was contrary to the material on record without assessing the oral as well as documentary evidence and that the finding of the District Judge that the principles of resjudicata were applicable to the facts of the case was misplaced when the Civil Judge while dealing with the Civil Suit no.21/79 had not dealt with the case of ownership and had only dealt with the case of possession. The District Judge failed to take into consideration that the Judgment passed in the Civil Suit no.37/89 filed by the Respondent no.6 had been dismissed on the ground that he had failed to prove the ownership which property was the same property being the subject matter of the present

proceedings. The impugned Judgment was therefore liable to be quashed and set aside.

5. In the third Appeal being First Appeal no.21/2011, the Appellants assailed the Judgment and Award on the grounds that the learned District Judge had committed material irregularity in passing the order in favour of the Respondent no.9 i.e. Tilu Gaude when he had not proved that the acquired property was covered under the Judgment in Regular Civil Suit no.21/79. The learned Judge considered that the Regular Civil Suit no.21/79 was obtained by fraud and misrepresentation. The learned District Court was in error to hold that the Judgment in the Civil Suit was considered res judicata for the purpose of the Land Acquisition proceedings. For the reasons that the said Respondent Tilu himself stated that the property was described in the Land Registration no.12860 and 12862 and the same was surveyed under no.30/0, 31/0, 22/0 and 81/0 of Bethora Village. The present Appellants who were the party nos.2 and 3 before the Reference Court had also set out in their written statement that the acquired land formed a part of the same property bearing Land Registration no.12862 and 12860. The Judgment in the Civil Suit no.21/79 did not cover the present land acquisition as it did not cover the description under no.12860 and 12862. The Reference Court had wrongly applied the Judgment in the Civil Suit no.21/79 in the present case. Therefore, the Judgment obtained in that suit by fraud on the Court was a nullity and could not be considered of having the principles of res judicata. The learned Reference Court had failed to assess the evidence properly and had come

to a wrong finding and hence the impugned Judgment and Award was liable to be interfered with and quashed and set aside.

6. Shri Sudin Usgaonkar, learned Senior Advocate came to be heard in the First Appeal no.20 of 2011 being the lead Appeal. It was his contention that the names of the Appellants were recorded in the Survey Records as also that of Tilu Gaude being the main opponent. He submitted that the property in question was located at Bethora which was registered in the Land Registration Office under no.12860 and 12862 and bearing distinct Matriz numbers. The Appellants had claimed title to the said property "Anxem Bhat" at Bethora unlike the claim of Tilu that it was the middle portion of the said property. The defence case was singularly of possession and no plea of counter claim was raised by the said Tilu. He adverted to the Judgment, the Survey Records and the title documents of the property and submitted that a superficial exercise was done by the District Judge while apportioning the compensation in favour of the said Tilu. The Reference Court had misconstrued the Judgment and gave findings in favour of the said Tilu. There was a patent infirmity in the Judgment of the learned Reference Court and therefore the impugned Judgment and Award had to be quashed and set aside and compensation had to be apportioned in favour of the present Appellants and the other Appellants but not Tilu.

7. Shri J. Godinho, learned Advocate for the Appellants in the First Appeal no.145 of 2010, adopted the arguments of

Shri Sudin Usgaonkar, learned Senior Advocate and otherwise submitted that the Reference Court had not framed the issues nor put the parties to notice. Ms. A. Kamat, learned Advocate holding for Shri P. A. Kamat in the First Appeal no.21 of 2011 adopted the arguments of learned Senior Advocate Shri Sudin Usgaonkar and prayed for the grant of compensation in the Appellants' favour.

8. Shri P. Lotlikar, learned Advocate for the said Tilu adverted to the Judgment of the learned Senior Civil Judge, Ponda wherein an issue was framed casting the burden on the Defendant no.1 i.e. the said Tilu to prove whether he was the owner in possession of the property "Ghorbhat Anxem" or "Ponos Raim" of the Plaintiff nos.13, 22, 29, 31, 35, 48 and 51. The learned Civil Court had clearly held against the Plaintiffs in that Suit and against the Defendant nos.3, 4 and 9 to 24 that they were not entitled to the counter claim and which finding was confirmed by the Appellate Court. The Reference Court had rightly awarded the compensation totally in favour of the said Tilu. The title of the said Tilu was fortified by the three Judgments and therefore there was no scope for interference with the impugned Judgment.

9. Shri Sudin Usgaonkar, learned Senior Advocate, in reply submitted that the acquired land was admeasuring 1350 square metres from the survey no.30/0 which was totally admeasuring 21,400 square metres. The claim of Tilu was not of the entire survey holding no.30/0 but part of the property surveyed of Bhombo. He had not claimed any specific area

and therefore there was no declaration of title to 1360 square metres. There was also no basis to co-relate the property claimed by the Respondents to survey no.30 described under Land Registration no.12860. The Judgment of the Civil Court even otherwise did not make any reference to the survey numbers as none existed at the relevant time. There was no finding that the acquired land was situated in the disputed portion. There was a gross failure by the Reference Court to ascertain the acquired land from the suit land. Therefore, it was a fit case to interfere with impugned Judgment in Appeal.

10. i would consider their submissions in the light of the material on record and hence proceed to decide the Appeal appropriately.

11. Each set of the Appellants had taken a plea that they were the co-owners in possession of the property bearing survey no.30/0 of Village Bethora forming a part of the old Cadastral Survey no.76 named as "Anxenvadevoril Raimpoiقيم" alias "Ponos Raepoiقيم" and described in the Land Registration Office of Ilhas under no.12860 and inscribed in the Matriz Records in the name of late Bombo under nos.1063, 1064, 1067, 1068 and 1071. They had claimed distinct rights having acquired the same pursuant to their shares through the late Bombo Gaude and asked for the distribution of the compensation accordingly between them. The main contesting Respondent-Tilu Gaude for brevity's sake hereinafter had claimed that the acquired land was a part of the property known as "Ashem Ghorbat' or "Ghorbat Ashem",

situated in Village Bethora and described in the Land Registration Office under no.12860 and 12862 bearing the same Matriz numbers and the old Cadastral Survey number as claimed by the Appellants. He however carved a case that his late father was in possession of the property as owner and upon his death, it was allotted to him in the Inventory Proceedings no.5/65. One Sundarem Colo Gaude and others including the Appellants had filed a Civil Suit before the Court of the Senior Civil Judge bearing no.140/76 which was later on transferred to Ponda and bearing Civil Suit no.21/1979 for declaring them as owners/co-owners of the property. This suit was dismissed by the Court holding the said Tilu Gaude as the owner in possession of the said property. The First Appeal before the District Judge, Panaji bearing no.85/86 and the Second Appeal before the High Court bearing no.25/1999 were also dismissed and he was declared as the owner of the said property. Besides, one Shantu Vitu Gaude and Sita Bhiku Gaude had filed an application before the Aval Karkun for deleting his name from the Survey Records and which came to be disposed off and kept in abeyance since it was brought to the notice of the concerned that a Civil Suit was pending in respect of the declaration of title. In short, it was the case of the said Tilu Gaude that the property "Anshem Ghorbat" bearing old Cadastral Survey no.76 and surveyed under no.30/0 amongst others was of his ownership and that no other person had any right thereto and therefore the compensation had to be totally allotted in his favour. On the basis of these pleadings, the parties had gone to trial before the District Court who had to accordingly assess the evidence

and come to a finding as to whether each of the Appellants were entitled to the apportionment of the compensation or whether the entire compensation was to be awarded in favour of the said Tilu Gaude alone.

12. The Appellants had examined one Naguesh, who had produced the Inscription and Description document, the Inventory Proceedings of 1944, the Survey Plan, Matriz Certificate with its English translation, the Survey Records, Form I and XIV and the Certificate of the Directorate of Settlement dated 02.06.2008 in support of their case. Though there have been conflicting claims by each set of the Appellant, what is relevant and material for assessment is the cross examination at the instance of the said Tilu Gaude. During such time, he admitted that the suit filed by Babuso Gaude and others was dismissed and so too the Appeal before the District Court and the Second Appeal before the High Court and on the premise that they had not produced their title documents.

13. The English translation of the Deed of Dissolution drawn on 23.06.1913 was between Bombo Gaudu with his wife, Babuni Gaudu with his wife as the 1st and 2nd parties, Kustem Gaudu with his wife as the 3rd party and Laxman Gaudu with his wife as the 4th party and Demu Gaudu unmarried, Ublo Gaudu and his wife and Colo Gaudu unmarried as 5th parties in respect of the property 'Anxem' or 'Anxem Vadivoril Ponos Rai Poiquem' situated in Village Bethora. In view of the said Dissolution, 1/5th part was allotted to the 1st parties and to

the 2nd, the other 1/5th to the third male parties, another 1/5th to the 4th, and the other 1/5th to the 5th male parties in the said proportion. The inscription of the property bearing no.12860 being a coconut garden 'Anxem' is found inscribed in favour of Bombo Gaudo and Babuni Gaudo and the transmission of the right to 1/5th part of each of the properties described under nos.12860, 12861 and 12862. The English translation of the record of legal declaration of the head of the family Devki Gaudo reveals that Bombo had expired on 20.12.1943 leaving behind Deu Gaudo with his wife, Gonga with her husband, Cormol with her husband, Caveri alongwith her husband, Abolem with her husband, Sukdo and Gozo as bachelors and that he had left behind property being 1/10th of 'Anxem' situated at Bethora, 1/10th of Borod, 1/10th of 'Anxem Vadivoril Ponos Rai Poiquem' @ 'Ponos Rai Poiquem'. The Survey Records too reveal the names of all these heirs apart from the contesting Respondent-Tilu as co-occupants in respect of the property bearing survey no.30 'Axem Ghorbhat' at Bethora, Ponda.

14. The second witness on behalf of the Appellants, Narayan Betorkar Yescho Betorkar/Pw.2 had stated that the property bearing survey no.30 of Village Bethora was the ancestral property of the party no.1 and the name of his father Babuso was recorded in the survey records Form I and XIV alongwith the other co-occupants. He had denied the case at the instance of the said Tilu that the property surveyed under no.30 was not the ancestral property of the party no.1 and no iota of his case was put to him. The third witness Damodar

had stated about the property 'Anxem' situated at Bethora bearing survey no.30 amongst others and produced the Description no.12860, the Certificate of Inscription to show that 1/5th of the said property belonged to Bombo Gaudo and that upon his death, his widow was the moiety holder while the remaining half was listed in the Inventory Proceedings at item no.1 and allotted to his heirs. He further asserted that no right accrued in favour of the said Tilu and that the said Tilu had no right to the property. He was cross examined at the instance of the said Tilu, when it was borne out that Devu Gaude was the brother of his father who was not known by any other name. He has categorically denied the case put to him that he was claiming a right to the property taking advantage of the wrong entry in the survey records. No case of Tilu was put to him despite his cross examination.

15. Pradeep, the next witness stated that his grandfather late Babuni was the co-owner of the property known as 'Anxem' @ 'Anshem Ghorbhat' bearing survey no.30 of Village Bethora among others to which his family had acquired 1/10th undivided right and was in possession and enjoyment. Thereafter, his father Hari and uncle Putu were in possession and thereafter they were in possession and enjoyment of the property as the legal heirs of late Hari and late Putu. The property bearing survey no.30 with the other properties was described in the Land Registration Office under no.12862 and inscribed in the Matriz Records under no.1063, 1064, 1067, 1068, 1071 and 1083. The said Tilu was not the co-owner of the property nor had any share and his name was erroneously

recorded in the survey records and who had raised a false claim to grab the compensation in respect of the acquired land. The said Tilu also did not have any ownership right nor was he in possession and enjoyment of the said property. To him too, no iota of the case of the said Tilu was put and all his statements were suggested to be false and that he had no right to the compensation.

16. Uttam, another witness examined by the different sets of Appellants had stated that his grandfather was late Babuni Gaude who was the co-owner of 'Anxem' alias 'Ashem Ghorbhat' bearing survey no.30 amongst others having acquired 1/10th undivided right of all the properties and was in possession and enjoyment thereof. Upon his death, his father Putu and uncle Hari were in possession and thereafter they were in possession and enjoyment of the said property paying land tax to the Government. Tilu was not a co-owner of the said property nor had any share therein and whose name was erroneously recorded in the Survey Records of survey no.30 of Village Bethora who had raised a false claim to grab the compensation without any possession or ownership thereto. Here again, there were bare suggestions to deny his case and to suggest that Tilu had a right to the said property and nothing further.

17. Adika Gaude stated that late Shanu Gaudu was the grandson of late Onu Gaude who was the co-owner of the property bearing survey no.30 who had acquired 1/5th undivided right in the said property. Her grandfather Shanu

was in possession and enjoyment of the property and upon his death her father Atma was in possession and thereafter acquired right of possession and enjoyment with the other heirs. The said Tilu Gaude was not a co-owner nor had any share in the property bearing survey no.30 and had raised a false claim to grab the compensation. She too maintained her case and denied the suggestion that the said Tilu had right to it. Ramnath Gaude, the party no.7 claimed that he was the co-owner and in possession of the undivided property known 'Gorbhat Anxem' or 'Ashem Ghar Bhat' bearing survey no.30 of Village Bethora having acquired right through his parents late Kolo and late Sundare. His name was recorded in the survey records and he enjoyed the property alongwith the families upon the devolution of right pursuant to the Deed of Dissolution dated 23.06.1913. Tilu Gaude had filed the Civil Suit no.37/89 against him which was dismissed on 17.03.2005 and the issue was pending before the High Court in Second Appeal no.30/2006. Tilu Gaude was not the co-owner nor had any right, title or interest in the said property whose name was erroneously recorded in the Record of Rights. Ramnath admitted that he had filed a Suit in 1975 against the said Tilu and that it came to be dismissed since he did not produce any documents. Nonetheless, he denied the suggestion that he had any right in the acquired land or that his name was erroneously recorded in the survey records.

18. Tilu had examined himself and reiterated on oath that the property 'Ashem Gorbhat' or 'Ghorbhat Ashem' or 'Ashem' was described in the Land Registration Office under no.12860

and 12862 enrolled in the Matriz Office under no.1063, 1064, 1067 and 1071 and surveyed under no.30 amongst others of Village Bethora. It was his ancestral property entirely under cultivation/plantation of Jackfruit trees, Mango trees, Coconut, Cashew Trees, Timber, etc. and he was in exclusive possession and enjoyment. One Sundaram and others had filed a Civil Suit before the CJSD, Panaji, being no.140/76 which was transferred to Ponda under Registration no.21/79. The said Sundaram had sought for a declaration that the Plaintiffs in the Suit no.21/79 be declared as owners and for consequential reliefs. The Plaintiffs sought for a declaration that the disputed portion of the land was part and parcel of the suit property which was the subject matter of the Special Suit no.29/79. The Senior Civil Judge, Ponda dismissed the suit by Judgment and Decree dated 27.10.1986 while the First Appeal was dismissed by the Addl. District Judge, Margao. The Second Appeal no.25/1999 filed against the Judgment and Decree of the District Court was dismissed by the High Court on November 30/December 1 2000. A portion of the property forming part of the survey no.30/0 was acquired and was the subject matter of the present proceedings. The third parties had raised a false claim of their right to the said property. They had no right or interest to any part of the property. The Judgment in the Civil Suit no.21/79 was confirmed in Appeal by the Appellate Court. He was the sole owner of the said property having exclusive right thereto and no other person had any right.

19. The said Tilu produced the Judgment and Decree dated 27.10.1986 in the Special Suit no.21/79, the Judgment dated 31.12.1998 passed by the District Judge in RCA no.85/1986 and that in the Second Appeal no.25/1999 dated 01.12.2000. He next produced the Inventory Proceedings no.5/1965 and no other document in support of his case. At the outset, he was not aware whether the land described under no.12860 and 12862 were inscribed in the name of Bombo Gaudo and whether the said name was recorded in the Matriz Records. He admitted that the said Bombo was not related to him and yet claimed that the property was inherited by him through his grandfather Poku. He relented that he had no other documents to show the ownership of the said land except the Inventory Proceedings and denied the suggestion to the contrary. It was also borne out that though he had made attempts to delete the names of the others from the occupants column, the said proceedings were kept pending since the matter was at large before the Court. Once again he asserted his claim to the property 'Ghorbhat Anshem' based on the Inventory document alone and denied the suggestion that it was different from the property 'Anshem'. He also did not rule out the case that 'Anshem' was also known as 'Ponos Raim' or 'Ponos Raipoquem' and tried to justify that it was a name used casually.

20. The said Tilu further admitted that the names of none of his ancestors were recorded in the Deed of Dissolution of 1913 and denied the suggestion that the party nos.2 and 3 and other heirs were having exclusive right and ownership over the

said property. At one time, he claimed want of knowledge of any person named Devu Gaude and that he knew Babuni and Bombo Gaudo. He also admitted that the names of Hari, Putu and Atma Gaude were recorded in the occupant's column of survey no.30 and did not know whether the document of 1913 was at any time challenged by his ancestors. Even to a pointed question on the identity of the suit property, he stated that the property 'Ghorbhat' was bounded on all the four sides by the property 'Ponos Rai' of Bombo Gaonkar and corrected himself that it was bounded on only two to three sides on the property of Bombo Gaonkar and on the fourth by that of Devidas Gaonkar.

21. The Appellants as the original parties 1 to 8 had filed the Suit no.21/1979 against the said Tilu as the Defendant no.1 amongst others for declaration and injunction in respect of the land bearing registration no.12860 and 12862 carving a right in themselves through their ancestors under the Partition Deed of 23.06.1913. They had claimed to be owners in possession of the said property through their ancestors, that the Defendant no.1 i.e. the said Tilu had filed a false complaint at the Police Station in March 1972 alleging that he was the owner in possession of the property 'Anxem Bhat' bounded on all the sides by the property 'Ponos Rai' of Bombo Gaudo and alleging that the Plaintiffs in the Suit had interfered with his right. The police had reported the matter to the SDO, Margao, who initiated proceedings under Section 145 of Cr.P.C., directed the Mamlatdar to take a site inspection and went to the site where the Defendant no.1 i.e. the said Tilu showed a

portion of the land claimed by him which was in the middle of the suit property being the disputed portion. Tilu as the Defendant no.1 had raised a plea that the Suit was bad for non-joinder; that the Land Registration nos.12860 and 12862 did not give a correct picture; that the plaintiffs were not able to identify their properties and that he was in possession of the property 'Ghorbhat Anxem' for the last many years without any interruption and simultaneously raised a counter claim. Amongst other issues, the Civil Court framed the issue no.5 casting the burden on the said Tilu to prove that he was the owner in possession of the property known 'Ghorbhat Ansem' surrounded by the property 'Ponosraim' of the Plaintiff nos.13, 22, 29, 31, 35, 48 and 51. The Civil Court however observed that there was no property as described in para 1 of the plaint, considered the case of the said Tilu that his property 'Ghorbhat Anxem' was bounded on the three sides by the property 'Anshem Ponos Raim' of Bombo Gauda and on the fourth by that of Gaonkar and considered the certificate of the Comunidade, the Matriz Certificate, the Cadastral Plan and held that the Defendant no.1 Tilu was in possession of the property 'Ghorbhat Anxem' and dismissed the suit of the Plaintiffs. This Judgment was taken in Appeal before the District Court which by its Judgment dated 31.12.1998 held that the said Tilu had established his ownership and possession over the property 'Ghorbhat Axem' surrounded by the property 'Ponos Raim Anxem' or 'Anxem' possessed by the Plaintiffs and dismissed the Appeal. This Court in Second Appeal no.25/1999 dismissed the Appeal as no substantial question of law arose for consideration.

22. The learned Reference Court had on examining the case of the parties, was primarily influenced by the fact that the Suit 21/1979 filed by the party nos.1 to 8 was dismissed by a Decree dated 27.10.1986, the Appeal filed against the said Judgment was dismissed by the District Court vide its Judgment and Decree dated 31.12.1998 and the Second Appeal filed challenging the said Judgment too was dismissed by the High Court.. On that premise and even though the said Tilu had not produced any documents of title, the learned Reference Court hastily concluded that the said Tilu had succeeded in proving the ownership and possession of the suit property described under Land Registration Office no.12860 and 12862 and enrolled under Matriz no.1063, 1064, 1067 and 1071 although the title documents were produced by the Appellants in support of their case. For that matter, the learned Reference Court without any justification concluded that the issue in the reference was finally decided in the Second Appeal by the High Court and by applying the said principles of res judicata held that the Appellants were barred from agitating the issue in the reference. The learned Reference Court was clearly waylaid by the Respondent no.1-Tilu in believing that the issue of ownership between the parties had already been settled by the Court of competent jurisdiction even though it was incumbent on him to examine the evidence and documents and come to an independent finding on the entitlement of the parties to the compensation in the reference. The learned Reference Court misconstrued the Judgment in the Civil Suit which was upheld till the Second Appeal by the High Court and gave findings in favour of the

Respondents. There is patent infirmity in the Judgment of the learned Reference Court which held the Respondent-Tilu entitled to the entire compensation. Quite on the contrary, the Appellants who had established their right to the property had to be held entitled to the compensation. The area in question which was the subject matter of acquisition was 1350 square metres of survey no.30/0 admittedly admeasuring 21,400 square metres. The claim of the said Tilu was not to the entire property but a part in the middle surrounded by the property of Bombo. Therefore, no specific area was claimed by the said Tilu of the said property and therefore there was no basis to hold that he was entitled to the compensation in respect of the acquired area. There was a clear failure by the Reference Court to ascertain what was the acquired land from the suit land and therefore could not have apportioned the compensation in favour of the said Tilu when there was clinching material in favour of the Appellants. Therefore, on a consideration of the material on record, the learned Reference Court could not have apportioned the compensation in favour of the said Tilu and quite on the contrary ought to have apportioned the same in favour of the Appellants in their respective shares.

23. In the result, i pass the following :

ORDER

(i) The Appeals are partly allowed and the impugned Judgment awarding the compensation solely in favour of the Respondent-Tilu is quashed and set aside and the compensation is ordered to be apportioned in favour of the Appellants in their respective shares.

(ii) There shall be no orders as to costs.

NUTAN D. SARDESSAI J.