

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 109 OF 2016

MR. FRANCIS BRITTO., ... Appellant
Versus
MR. ASSIS ALEX BRITTO AND ANR., ... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the Appellant.

Coram:- F. M. REIS, J.

Date:- 5th January, 2017

ORAL ORDER

Heard Mr. Sudin Usgaonkar, learned Senior Advocate
appearing for the Appellant.

2. The challenge in the above Appeal is to the Judgments
passed by the Courts below whereby a suit filed by the Appellant
for permanent injunction, inter alia, to restrain the Respondents
from carrying out any construction activity in the subject
property came to be dismissed.

3. Mr. Sudin Usgaonkar, learned Senior Advocate appearing for
the Appellant submits that pursuant to a Sale Deed dated
15.10.1996 the appellant purchased an area of 1765 square
metres from a property belonging to the original owners
surveyed under no. 224/1-B (part) at Village Mandrem of

Pernem Taluka. The learned Senior Advocate further pointed out that the Appellant and the Respondent no. 1 are brothers and, according to him, the Respondent no. 1 was allowed to occupy a structure existing in a portion of the property and, as the Respondent no. 1 was putting up a new structure therein, the Appellant filed the suit for permanent injunction. Learned Senior Advocate further submits that both the Courts below have erroneously come to the conclusion that the said Sale Deed stands vitiated without there being any counter claim filed by the Respondents to that effect. Learned Senior Advocate further submits that though the Respondent no. 1 is claiming that the father of the Appellant and the Respondent no. 1 was the tenant of the subject property and in fact tenancy proceedings were initiated to that effect, there is no declaration of tenancy in favour of the father of the Respondent no. 1. Learned Senior Advocate further pointed out that both the Courts below have found that the Sale Deed stands vitiated by fraud though there was no counter claim to that effect nor any particulars pleaded about any fraud committed by the Appellant. Learned Senior Advocate further pointed out that the Courts below have erroneously dismissed the suit filed by the Appellant on the ground of suppression of material facts when, according to him, this is irrelevant for deciding the suit for permanent injunction. Learned Senior Advocate has thereafter taken me through the Sale Deed as well as the Judgments passed by the Courts below

to point out that the Lower Appellate Court has without appreciating the material on record erroneously come to the conclusion that the Appellant is not entitled for the relief of permanent injunction. It is further pointed out by the learned Senior Advocate that once the Sale Deed has not been declared as null and void, the question of the Appellant not enjoying the property which is the subject matter of such Sale Deed is totally erroneous and, as such, there are substantial questions of law which arise in the present Appeal for consideration of this Court.

4. I have carefully considered the submissions of the learned Senior Advocate and I have also gone through the records. On perusal of the impugned Judgments, the Courts have found that the Appellant himself had admitted that the father of the Appellant and the Respondent no. 1 was a tenant of the subject property. It is also pertinent to note that in the deposition of Pw.1/Appellant herein, his deposition before Tenancy Proceedings was shown to the said witness who had categorically admitted all the averments and the statements made therein. On perusal of the said statement in the deposition, the fact that the father of the Appellant no. 1 was a tenant of the subject property, has not been disputed. No doubt, the Appellant could have explained such admissions which they have failed to do either in the pleadings or in the deposition before the Court.

5. In such circumstances, the findings of the learned Judge that the said Sale Deed stands vitiated in view of the admission on the part of the Appellant to the effect that the father was the tenant of the subject property, cannot be said to be perverse or based on no material on record. Both the Courts below upon appreciating the evidence on record, have concurrently come to the conclusion that the Sale Deed relied upon by the Appellant, cannot create any right of exclusive possession to the Appellant. The admission of the Appellant that the father was the tenant of the subject property and the other evidence on record cannot be re-appreciated by this Court in a Second Appeal under Section 100 of the Civil Procedure Code.

6. On perusal of the substantial questions of law proposed by the Appellants, I find that basically such substantial questions of law are to challenge the findings of the learned Judge that there is a claim of tenancy of the Respondent no. 1 over the subject property. As already pointed out herein above, such findings have been arrived at on the basis of the admission on the part of the Appellant in the pleadings/collateral proceedings before the learned Mamlatdar and the deposition therein. In such circumstances, the proposed substantial questions of law would be in the realm of re-appreciating the evidence on record which exercise cannot be done in a Second Appeal under Section 100 of the Civil Procedure Code.

7. In such circumstances, I find that there are no substantial questions of law which arise in the present Appeal for consideration. The Appeal stands accordingly rejected.

F. M. REIS, J.

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