

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 113 OF 2011

1. Shri Boromeu do Rosario Pereira
aged 44 years,
son of Roque Inacio Pereira,
R.o. H. No.4,
"Ashirwad Housing Society",
Murida, Fatorda,
Margao, Goa.
and his wife

2. Mrs. Boromeu do Rosario Pereira
major of age,
R/o. H. No. 4,
"Ashirwad Housing Society",
Murida, Fatorda, Margao,
Goa.

3. Shri Naziazeno Antao,
aged 56 years,
service, s/o Antonio Antao,
r/o. H. No. 51, Borimol,
Quepem, Goa,
and his wife

4. Mrs. Serafina Antao,
major of age, service,
also r/o. H. No. 51,
Borimol, Quepem, Goa.

..... Appellants

V e r s u s

1. Shri Krishna Uttom Fol Dessai,
major of age,
landlord and his wife

2. Smt. Kamal Krishna Fol Dessai,
major of age, housewife,
Both r/o. H. No. 59,
Cusmane, Quepem.

3. Shri Vasant Raghunath Fol Dessai,
major of age,
businessman and his wife,

4. Smt. Minabai Vassant Fol Dessai,
major of age, housewife,
Both r/o. H. No: Cusmane,
Quepem - Goa.

5. Shri Ramdas Guno Fol Dessai,
Aged 65 years,
r/o. H. No. 3, Padi,
Khedem, Balli,
Quepem-Goa.

6. Smt. Rukminibai Ramdas Fol Dessai
Since deceased) Represented by
legal representatives:

a) Shri Xexicanta Ramadassa Follo Dessai
Major of age, and his wife

b) Smt. Suda Xexicanta Follo Dessai,
Major of age,

c) Smt. Nalinim Goculdas Follo Dessai,
Major of age, and her husband

d) Shri Goculdas Follo Dessai,
Major of age,

e) Shri Dilipa Follo Dessai,
Major of age,

f) Smt. Mina Dilipa Follo Dessai,
Major of age,

g) Shri Anil Follo Dessai,
Major of age,

h) Smt. Sureka Anil Follo Dessai
Major of age

i) Smt. Shali Kushali Follo Dessai,
Major of age,

j) Shri Kushali Prabhu Dessai,
Major of age

k) Ms. Nirmala Follo Dessai,
Major of age

l) Smt. Socu Follo Dessai,
Major of age

m) Shri Fondu Sawant Dessai,
Major of age

n) Shri Esvonta Ramadassa Follo Dessai,
Major of age and his wife

o) Shri Yogita Esvonta Follo Dessai,
Major of age,
All are residents of Dessaiwado,
Cusmane, Quepem, Goa.

7. Shri. Shrikant Yeshwant Dessai,
major of age and his wife,

8. Smt. Geeta Shrikant Dessai,
major of age,

9. Shri. Pramod Yeshwant Dessai,
major of age and his wife,

10. Smt. Meghan Pramod Dessai,
major of age,

11. Miss Anjuma Pramod Dessai,
major of age,
All residing at Kulwado,
Cuncolim, Salcete, Goa.

12. Smt. Sheela Sidharth Baukar,
major of age and her husband,

13. Shri. Sidharth Baukar,
major of age,
Both r/o Rivona, Goa,
House No: not known.

14. Smt. Nila Prakash Dhakluche,
major of age,

15. Shri. Prakash Marutiram Dhakluche,
major of age,
Both resident at 4th Cross,
Vidhyanager, Angol,

Belgaum, Karnataka,
House No: not known

16. Smt. Saraswati Raghunath Fol Dessai,
(since deceased) L.Rs are on record,
(a) Shri. Suresh Raghunath Fol dessai,
major of age,
(b) Shri. Chandrakant Raghunath Fol Dessai,
major of age,
17. Ramesh Raghunath Fol Dessai,
major of age,
All r/o. H. No: 61,
Dessaiwado, Quepem, Goa.
18. Shri. Shanker Babu Gaus Dessai,
major of age,
19. Shri. Devidas Shanker Gaus Dessai,
major of age,
Both r/at Xeldem,
Quepem, Goa (Kamnsai).
House No: not known.
20. Smt. Rekha Villas Bicholkar,
major of age,
and her husband,
21. Shri. Vilas Bicholkar,
major of age,
Both r/o Kalay,
Sanguem, Goa.
House not known.
22. Shri. Anant Uttam Gaonkar,
major of age,
and his wife;
23. Smt. Shantu Anant Gaonker,
major of age,
Both r/o Pirla,
Quepem, Goa.
24. Smt. Suman Venkatesh Dessai,
major of age, housewife,
and her husband,
25. Shri. Venkatesh Dessai,

(since deceased), by his L.Rs.
(a) Shri. Nandesh Venkatsh Dessai,
(b) Shri. Harish Venkatsh Dessai,
All r/o Collem,
Sanguem, Goa.
House No: not known.

26. Shri. Datta Shiva Dessai,
major of age
and his wife, (deceased)
represented by Respondent No:27.
27. Smt. Saraswati Datta Dessai,
major of age,
housewife,
Both r/o Ponsulem,
Canacona, Goa.
House No. not known.
28. Shri. Yeshwant Vithoba Dessai,
major of age,
and his wife,
29. Smt. Pushpa Yeshwant Dessai,
major of age, housewife,
30. Shri. Prabhaker Vithoba Dessai,
major of age,
and his wife,
31. Smt. Prabhavati Prabhaker Dessai,
major of age,
housewife,
32. Shri. Babusso Vithoba Dessai
major of age,
and his wife,
33. Smt. Vijaya Babusso Dessai,
major of age,
All r/o Culwado,
Cuncolim, Goa,
House No. Not known.
34. Smt. Jaya Vithal Dessai,
major of age, housewife,
35. Shri. Shriraj Vithal Dessai

- major of age,
and his wife,
36. Smt. Deepa Shriraj Dessai,
major of age, housewife,
Both r/o Bhivsa, Cuncolim, Goa.
37. Shri. Rudra Vithal Dessai
and his wife,
38. Smt. Nali Rudra Dessai,
major of age,
All r/o Talak Building,
Opp. Shanti Kuti, Comba,
Margao, Goa.
39. Chandrakant Gauns Dessai,
major of age,
and her husband,
40. Shri Chandrakant Narayan Gauns Dessai,
major of age and his wife,
41. Vimal Rauglo Dessai,
major of age, housewife,
and her husband, (Deceased)
represented by Respondent No.: 42,
42. Shri. Rouglo Dessai,
major of age,
both resident of Canacona,
Goa, (Palolem).
43. Smt. Sagune Bombi Dessai,
major of age, Housewife,
and her husband,
44. Shri. Bombi Dessai,
major of age, (Deceased)
represented by respondent no. 43.
Both r/o Veroda,
Cuncolim, Goa.
45. Smt. Shali Anand Gaonker,
major of age, housewife,
and her husband,
46. Shri. Anand Uttam Gaonker,

major of age,
Both r/o Maina, Caurem,
Quepem, Goa.

47. Smt. Usha Ramesh Dessai,
major of age,
r/o Murguem, Sancordem,
Goa. 403 406.
48. Shri Ramesh Dessai,
major of age,
r/o Murguem, Sancordem,
Goa – 403 406.
49. Smt. Muctabai Datta Gauns Dessai,
major of age,
housewife,
50. Shri Hari Datta Gauns Dessai,
major of age and his wife,
51. Smt. Kunda Hari Dessai,
major of age, housewife,
All r/o Kamnsai, Xeldem,
Quepem, Goa.
52. Smt. Meera Damji Dessai,
major of age,
housewife and her husband,
53. Shri Damji Dessai,
major of age,
both r/o Cuncolim, Goa. (Bhivsa)
54. Smt. Sita Rama Gauns Dessai,
Major of age, housewife,
r/o Xeldem, Quepem, Goa, (Kamsai).
55. Smt. Gunavati Pundalik Gauns Dessai,
major of age, housewife,
r/o Xeldem, Quepem, Goa. (Kamsai).
56. Smt. Vishaya Rama Dessai,
major of age, housewife,
and her husband,
57. Shri Rama Dessai,

major of age, (deceased)
represented by N: 56,
r/o Xeldem, Quepem, Goa.

58. Shri. Kushali Prabhu Dessai,
major of age,
and his wife,
59. Smt. Jayanti Kushali Prabhu Dessai,
r/o Kakoda, Goa.
60. Smt. Anandi Bhiku Gaonker,
major of age, housewife,
r/o Pirla Quepem, Goa.
61. Mr. Mohini Mahadev Khadde,
major of age, housewife,
and her husband.
62. Shri. Mahadev Khadev Khadde,
major of age,
r/o Patnem, Canacona, Goa.
63. Smt. Gokul Subhash Fol Dessai,
major of age,
housewife, and her husband.
64. Shri. Subhash Fol Dessai,
major of age,
r/o Pirla, Quepem, Goa.
65. Shri. Sadashiv Uttam Gaonkar,
major of age, and his wife,
66. Smt. Ganga Sadashiv Gaonkar,
major of age,
Both r/o Pirla, Goa.
67. Smt. Gomati Khampru Gaonkar,
major of age, housewife,
r/o Pirla, Quepem, Goa.
68. Smt. Milan Nila Dessai,
major of age, housewife,
and her husband,
69. Shri. Nila Dessai,

major of age, Both r/o Madiamol,
Fatorpa, Goa.

70. Smt. Priya Mahadev Dessai,
major of age, housewife,
and her husband,
71. Shri. Mahadev Babani Dessai,
major of age,
Both r/o Taliabhat,
Cuncolim, Goa.
72. Kum. Sulaksha Khapru Dessai,
major of age,
73. Shri. Uttam Khapru Dessai,
Both r/o Pirla,
Quepem, Goa.
74. Smt. Tara Babani Dessai,
major of age, housewife,
75. Shri. Milind Babani Dessai,
major of age and his wife
76. Smt. Malini Milind Dessai,
major of age, (deceased)
represented by Respondent No:75.
77. Shri. Audhut Babni Dessai,
All r/o Sanvordem,
Curchorem, Goa.
(Near Mahadev Temple),
78. Smt. Mohini Vithal Sawant Dessai,
major of age and her husband,
79. Shri. Vithal Sawant Dessai,
major of age,
Both r/o Khandapabandh,
Ponda, Goa.
80. Smt. Sunanda Uttam Porob Dessai,
major of age, and her husband,
81. Shri. Uttam Porob Dessai,
major of age,
Both r/o Virnoda, Pernem.

82. Adv. Hanumant Redkar,
major of age and his wife,
83. Smt. Meenaxi Hanumant Redkar,
major of age,
Both r/o Pednekar Building,
Near Maruti Temple,
Mala, Panaji, Goa.
84. Smt. Lilabai Ramnath Dessai,
major of age, housewife,
85. Shri. Satu Ramnath Dessai,
major age,
and his wife,
86. Smt. Ranjana S. Dessai,
major of age,
87. Shri. Ankush Ramnath Dessai,
major of age and his wife,
88. Smt. Kusum Ankush Dessai,
major of age,
housewife,
89. Shri. Shanker Ramnath Dessai,
major of age and his wife,
90. Smt. Rekha Shanker Dessai,
major of age,
All r/o Cuncoim, Goa.
91. Smt. Pramila Gopalkrishna Dessai,
major of age,
Both r/o Navelim, Margao,
Salcete, Goa.
92. Shri. Gopalkrishna G. Dessai,
major of age,
Both r/o Navelim, Margao,
Salcete, Goa.
93. Smt. Jyoti Suresh Dessai,
major of age, and her husband,
94. Shri. Suresh Dessai,

major, Both r/o Cuncolim,
Near Bambina Convent High School.

..... Respondents

Mr. V. Menezes, Advocate for the Petitioner.

None for the Respondents.

Coram :- F. M. REIS, J

Date : 24th February, 2017

ORAL JUDGMENT

Heard Mr. Valmiki Menezes, learned Counsel appearing for the Appellants. None for the Respondents though duly served.

2. The Appeal came to be admitted on 15.09.2011 on the following substantial questions of law :

(i) When the Plaintiff No.5 who was transposed from being Defendant No.6, had made no claim or sought relief in the Plaint, nor had he verified any pleadings, whether the Appellate Court ought to have decreed the suit at the behest of Plaintiff No.5?

(ii) Exhibit PW1/D2 (Marriage Certificate of Yeshwant) and Exhibit PW1/D3 (Death Certificate of Yeshwant), Exhibit 82 and 83 clearly having established that Yeshwant Fol Dessai was married and had children (Exhibit 82 and 83), whether the suit was bad for non-joinder of Yeshwant's successors, since the reliefs sought were declaratory in nature?

3. Mr. Valmiki Menezes, learned Counsel appearing for the Appellants, in

support of the first substantial question of law, has pointed out that the original Suit filed by the Original Plaintiffs against the Respondent nos. 1 to 5 was essentially to declare the Sale Deed executed in favour of the Defendant nos. 1 to 4 by the Defendant no. 5 as null and void. It is further pointed out that such suit was filed on the assumption that the property is belonging to Yeshwant Krishna Faldessai who, according to the Plaintiffs, was a bachelor and, consequently the inheritance of such Yeshwant had devolved upon the Plaintiffs who are stated to be nephews of such Respondents. Learned Counsel further pointed out that in fact said Yeshwant was married and upon his death, there were Inventory Proceedings initiated in the Court of Civil Judge Senior Division at Quepem, wherein the subject property was also enlisted to be partitioned. Learned Counsel further pointed out that this itself shows that no rights devolved upon the Original Plaintiffs in the suit. It is further pointed out that during the pendency of the suit, the matter was compromised between the Plaintiffs and the Defendants nos. 1 to 4 whereby the Plaintiffs withdrew their claim in the suit. Learned Counsel further submits that thereafter the Defendant no. 6, who was the husband of the Defendant no. 5, filed an application to be impleaded as Co-Plaintiff in the suit as Plaintiff no. 5. It is further pointed out that this exercise itself is erroneous as the Plaintiff no. 5 had not verified the plaint nor filed any pleadings in support of his case. It is further submitted that as said Yeshwant had issues, the question of alleging that he died a bachelor is erroneous and, as such, according to him, no right devolved upon the Plaintiff no. 5. Learned Counsel further submits that the learned Trial Judge on erroneous considerations has decreed the suit without examining the locus of the Plaintiff no. 5 to proceed in this suit. Learned Counsel further pointed out that the Lower Appellate Court has

committed a grave error in dismissing the Appeal of the Appellants as, according to him, there is no reference to the Inventory Proceedings nor marriage certificate or death certificate produced by the Appellants in support of their case that Yeshwant had issues and, as such, the Suit is bad for non-joinder of necessary parties. Learned Counsel further pointed out that in fact the Plaintiff no. 5 himself had filed an application under Order 1 Rule 10 of the Civil Procedure Code to implead the heirs of Yeshwant as parties to the Suit which itself discloses that the Plaintiff no. 5 accepted that Yeshwant had issues and, as such, the question of any right devolving upon the Plaintiff no. 5 does not arise. Learned Counsel as such submits that the substantial questions of law are to be answered in favour of the Appellants.

4. Respondents though served, failed to remain present.

5. On perusal of the record and the Judgments passed by the Courts below, I find that the Courts have failed to note the Inventory Proceedings initiated upon the death of said Yeshwant. Once it is established that in the Inventory Proceedings the subject property was enlisted and allotted to his daughter, the question of the Plaintiff no. 5 claiming any right to the suit property would not arise. It is an admitted position that in case Yeshwant was a bachelor, no rights would devolve upon the Plaintiff no. 5. In such circumstances, once the Inventory Proceedings were initiated and the original Plaintiffs as well as the Plaintiff no. 5 himself accepts that said Yeshwant had issues, the Courts below were not justified to pass the impugned Judgment at the instance of the Plaintiff no. 5. As said Yeshwant had issues, no rights devolved upon the Plaintiff no. 5. In any event, the

Plaintiff no. 5 was the husband of Defendant no. 5, who had sold her rights to the Defendant nos. 1 to 4. In such circumstances, I find that the Courts below were not justified to allow the Plaintiff no. 5 to proceed with the Suit when the Original Plaintiff nos. 1 to 4 had abandoned the suit in favour of the Defendant nos. 1 to 4. In such circumstances, the first substantial question of law framed by this Court has to be answered in favour of the Appellants.

6. Though, strictly the question of considering the second substantial question of law would not arise, nevertheless, admittedly, the heirs of Yeshwant were not made parties to the Suit. The Suit is for declaration of title on an assumption that the said property belonged to Yeshwant. Admittedly, the heirs of Yeshwant were not made parties to the Suit. When Plaintiff no. 5 has himself admitted that said Yeshwant had issues, the question of proceeding with the Suit without impleading the legal representatives of the said Yeshwant as parties to the Suit, is untenable. The second substantial question of law is also answered in favour of the Appellants herein.

7. In view of the above, I pass the following :

ORDER

(i) The impugned Judgments and Decree passed by the learned Trial Judge dated 15.10.2003 and the Lower Appellate Court dated 23.12.2010, are quashed and set aside.

(ii) The Suit filed by the Plaintiff no. 5 stands dismissed with no Order as to costs.

F .M. REIS, J.

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