

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 75 OF 2005**

1. Mrs. Anandibai Ramchandra Petkar, (Deceased)
age 71 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
2. Mr. Sadguru Ramchandra Petkar,
age 46 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
3. Mrs. Savita Sadguru Petkar,
age 44 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
4. Mr. Suresh Ramchandra Petkar,
age 44 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
5. Mr. Anant Ramchandra Petkar,
age 45 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
6. Mrs. Anita Anant Petkar,
age 41 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
7. Mr. Bharat Ramchandra Petkar,
age 40 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
8. Mrs. Smita Bharat Petkar,
age 39 years, residing at House No.338,
Vaidongor, Parcem, Pernem Goa.
9. Mr. Digamber Ramchandra Petkar,
age 41 years, residing at House No.338,
Housing Board Colony, Mapusa Goa.

10. Mrs. Sangita Digamber Petkar,
age 41 years, residing at House No.338,
Housing Board Colony, Mapusa Goa.
11. Mr. Kamalakar Krishna Kinalekar,
age 45 years, residing at House No.338,
Pernem Goa.
12. Mrs. Tanuja Kamalakar Kinalekar,
age 39 years, residing at House No.338,
Pernem Goa. ... Appellants
(The other appellants are represented
herein by their attorney
Mr. Digamber Petkar, the appellant no.9)

V e r s u s

1. Mr. Prakash Narayan Kandolkar,
age 45 years, residing at House No.65,
Vaidongor, Parcem, Pernem Goa.
2. Mr. Shantaram Nauso Petkar,
age 65 years, residing at
House No.338, Parcem,
Pernem Goa.
3. The Directorate of Education,
Department of Education,
Panaji Goa.
4. The Chief Secretary,
Government of Goa,
Secretariat, Panaji Goa.
5. Parcem Citizens Education Society,
Parcem Goa. ... Respondents

Mr. Arjun Naik, Advocate for the appellants.

Mr. P. S. Lotlikar, Advocate for the respondents.

Coram:- F. M. REIS, J.

Date:- 21st April, 2017

ORAL JUDGMENT

Heard Mr. A. Naik, learned counsel appearing for the appellants and Mr. P. S. Lotlikar, learned counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated 19.10.2005 on the following substantial question of law.

Whether the Appellate Court was justified in holding that the appellants (original plaintiff) lost their right to the suit property by way of adverse possession when the plea of adverse possession was neither pleaded by the defendants nor an issue to that effect was framed by the Trial Court ?

3. The appeal was disposed off by judgment dated 03.03.2016 and after hearing the learned counsel appearing for the appellants, the matter was remanded to the learned Lower Appellate

Court to decide the appeal preferred by the respondents afresh. Thereafter, an application was moved by the respondents to recall the said judgment on the ground that the learned Advocate appearing for the respondents failed to remain present as his name did not figure in the cause list. Accordingly, the judgment passed by this Court was recalled by an order dated 16.06.2016.

4. During the course of the hearing of the above appeal, Mr. Lotlikar, learned counsel appearing for the respondents has pointed out that the dispute between the parties is in connection with the structure located in the suit property bearing survey No.64/1 of Parsem Village which according to him is in their possession. The learned counsel further submits that the judgment passed by this Court remanding the matter to the learned Lower Appellate Court is unjustified as according to him as the State Government is a party to the suit filed by the appellants, the learned District Judge cannot hear the appeal as the suits filed against the State Government are to be filed before the learned District Court in view of the subsequent amendment to the Civil Code Act which

came into force during the pendency of the above appeal. The learned counsel further pointed out that the learned Trial Judge has failed to examine the cogent evidence on record produced by the respondents to establish their claim of possession and title over the subject property.

5. On the other hand, Mr. A. Naik, learned counsel appearing for the appellants submits that the appellants were in possession of the subject structure and in fact the suit was filed on the ground that the respondents had illegally interfered with the possession of the subject property. The learned counsel further submits that the learned Trial Judge has rightly decreed the suit and granted an injunction whereas the learned Lower Appellate Court has misconstrued the evidence on record to come to the conclusion that the appellants have failed to establish their claim over the subject structure and the property. The learned counsel further points out that as the occupants of the subject structure had vacated, the appellants entered into possession of the subject structure and filed an F.I.R. against the respondents when the respondents were

attempting to enter into the suit property. The learned counsel however does not dispute that the State Government is a party to the above suit filed by the appellants and that in view of the change of jurisdiction, the learned District Judge seized to have Appellate jurisdiction in matters filed against the State Government. The learned counsel further submits that this Court has rightly remanded the matter for reconsideration and as such the judgment passed by the learned Trial Court be maintained.

6. I have considered the submissions of the learned counsel and I have also gone through the records. Based on the substantial question of law framed by this Court, it was found appropriate that the matter should be remanded to the learned Lower Appellate Court for deciding the appeal afresh. But however, as rightly pointed out by Mr. Lotlikar, learned counsel appearing for the respondents the District Court which is an Appellate Court would seize to have pecuniary jurisdiction to decide appeal as the State Government is a party. Apart from that, Mr. Lotlikar, learned counsel appearing for the respondents has raised serious doubts on

the findings rendered by the learned Trial Judge essentially on the ground that the evidence adduced by the respondents has not at all be considered by the learned Trial Judge while disposing of the suit filed by the appellants. In such circumstances, I find it appropriate in the interest of justice and in peculiar facts and circumstances of the case, that the judgments passed by the learned Lower Appellate Court dated 04.08.2004 as well as the learned Trial Judge dated 28.11.2002 passed in Special Civil Suit No. 103/92 be quashed and set aside and the matter be remanded to the learned District Judge to decide the suit afresh in accordance with law. Both the learned counsel have further pointed out that the suit would have to be decided based on the pleadings and the evidence already on record. In such circumstances, considering the change of pecuniary jurisdiction as the State Government is a party to the suit, the learned Civil Judge Senior Division, Mapusa, is directed to remit the case papers of Special Civil Suit No. 103/92 to the learned District Judge to decide the suit afresh in the light of the observations made herein above.

7. At this stage, there was dispute with regard to the interim arrangement in connection with the subject structure located in the suit property. Both the parties are claiming to be in possession of such structure but the fact remains that it is not disputed that the status quo in fact has apparently been changed after the judgment passed by this Court dated 03.03.2016 which came to be recalled thereafter. In such circumstances, I find it appropriate and in the interest of justice to direct the appellants to hand over the keys of the subject structure in the safe custody of the Superintendent of the learned District Court on the date of appearance fixed in the said suit before the learned District Court. The keys shall be thereafter delivered by the learned Judge based on the findings in the civil suit filed by the appellants herein.

8. Mr. A. Naik, learned counsel appearing for the appellants however points out that the subject house require repairs. In case any such situation arises, liberty to the parties to move the learned District Judge to carry out such repairs which the learned District Judge shall examine after hearing the parties and pass

appropriate directions in accordance with law.

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

ORDER

(i) The impugned judgment dated 04.08.2004 passed by the learned Lower Appellate Court and the judgment and decree dated 28.11.2002 passed by the learned Trial Judge are quashed and set aside.

(ii) Special Civil Suit No. 103/92 is restored to the file and the learned Civil Judge Senior Division, Mapusa is directed to remit the suit to the learned District Judge in the light of the observations made herein above.

(iii) The parties are directed to appear before the learned Civil Judge Senior Division, Mapusa, on 15.06.2017 at 10.00 a.m.

(iv) The interim arrangement referred to herein above shall continue during the pendency of the suit before the Court below.

(v) The appeal stands disposed of accordingly.

F. M. REIS, J.

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