

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 89 OF 2015

MRS.LAURENCA SIQUEIRA PINTO AND
ANR.,

... Appellants

Versus

SHRI SENANATH VISHNU RIVONKAR AND
6 ORS.,

... Respondents

Mr. John Abreu Lobo, Advocate for the
Appellants.

Ms. Shradha Borker, Advocate for the Respondent nos. 1 to 4
and 6 to 7.

Coram:- F. M. REIS, J.

Date:- 19th January, 2017

ORAL ORDER

Heard Shri J. A. Lobo, learned Counsel appearing for the Appellants and Ms. Borker, learned Counsel appearing for the Respondents.

2. The above Appeal challenges the Judgments passed by the Courts below whereby the suit filed by the Appellants came to be dismissed.

3. Briefly, it is the case of the Appellants that the Appellants filed a suit against the Respondents, inter alia, for a declaration that the Appellants are the absolute owners in possession, occupation and enjoyment of the suit property. The Respondents

disputed the said claim and by Judgment and Decree dated 30.12.2013, the Suit came to be dismissed. The appellants preferred an Appeal before the Lower Appellate Court which came to be rejected by Judgment dated 06.08.2014. Being aggrieved by the said Judgment, the Appellants have preferred the present Appeal.

4. Shri J. A. Lobo, learned Counsel appearing for the Appellants, has pointed out that the evidence of the Surveyor on record has been misread by the Courts below to hold that the suit property does not fall within the matríz number stated by the Surveyor. The learned Counsel further submits that the findings of the Courts below are perverse as they have been rendered by misconstruing the evidence on record. The learned Counsel further submits that the pleadings of the parties have also been misconstrued by the learned Judge by refusing the claim of the Appellants. The learned Counsel further pointed out that the Appellants are the absolute owners in possession of the property which has been wrongly recorded in the name of the Respondents. The learned Counsel further pointed out that the Matríz records clearly stand in the name of the Appellants and the learned Judge failed to consider the extent of the property as shown in the Matríz Records which includes the disputed survey numbers.

5. On the other hand, 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 Appellants have failed to establish their claim over the suit property. Learned Counsel further pointed out that the concurrent finding of facts cannot be re-appreciated by this Court as there is no perversity in such findings. Learned Counsel further submitted that there are no substantial questions of law which arise in the present Appeal for consideration.

6. Upon perusal of the records, I find that the learned Trial Judge based on the pleadings of the parties has framed five issues. While deciding the first issue, the learned Judge noted that the case of the Appellants is that the property surveyed under no. 179/10 corresponds to the property inscribed under Matriz nos. 5732, 5737 and 5755. The learned Judge also noted that thereafter the case was changed by amending the plaint and claimed that the property surveyed under no. 179/10 of Village of Cuncolim, corresponds only to the property inscribed in the Matriz under no. 5739. The learned Judge also noted the inconsistency in the evidence of Pw.1 in the cross examination with regard to the identity of the subject property. The learned Judge also appreciated the evidence of such Surveyor and found that he was not reliable considering the inconsistent statement in the cross examination. The learned Judge also considered the

Gift Deed at exhibit 29 to note the Matriz numbers mentioned therein. Upon appreciating the material on record, the learned Judge noted that the Appellants/Plaintiffs have miserably failed to establish their claim and rebut the presumption under Section 105 of the Land Revenue Code and consequently decided the issue nos. 1 and 2 against the Appellants. The learned Judge also found that the suit was bad for not seeking a consequential relief considering the material on record.

7. In the Appeal preferred before the Lower Appellate Court by the Appellants, the learned District Judge whilst disposing of the Appeal by Judgment dated 06.08.2014, has framed two points for determination. Whilst examining whether the Appellants have established their claim that the suit property was in possession of the Appellants, the learned Judge after re-appreciating the material on record has noted that the burden of proving the ownership was on the Appellants herein being the Plaintiffs. The learned Judge found that the presumption in favour of the Respondents has remained un rebutted as the oral evidence adduced by the Appellants was not satisfactory.

8. On going through the findings arrived at by the Courts below, it is evidence that the Appellants have failed to establish their case over the property surveyed under no. 179/10. There is no cogent evidence on record to establish that the said survey

number corresponds to matríz no. 5739 as claimed by the Appellants. The evidence of Pw.2 has been concurrently discarded by the Courts below based on inconsistent replies in the cross examination. Pw.1 has also not categorically given the exact identity of the suit property. These concurrent findings of facts arrived at by the Courts below cannot be re-appreciated by this Court in a Second Appeal. There is no perversity in the findings which would call for interference of this Court in the above Appeal as there is a presumption under Section 105 of the Land Revenue Code in favour of the Respondents herein.

9. In such circumstances, there are no substantial questions of law for consideration in the present Appeal. The Appeal stands accordingly rejected.

F. M. REIS, J.

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