

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 14 OF 2017

SHRI. PRABHAKAR PURUSHOTTAM MALIK
AND ANR.,

... Appellants

Versus

SHRI. HARISCHANDRA PURUSHOTTAM
MALIK AND ANR.,

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. P. S. Lotlikar,
Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 17th February, 2017

P.C.:

Heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the appellants. The challenge in the above appeal is to the Judgments passed by the Courts below whereby the suit filed by the appellants to vacate the respondents from the suit room, came to be dismissed.

2. Mr. Lotlikar, learned Senior Counsel appearing for the appellants has pointed out that the appellants are the owners of the property pursuant to a sale deed executed on 18th March, 1968 and, as such, according to the appellants it is well settled that possession follows title. The learned Counsel further submits that as such, once ownership of the appellants has been proved, there is no reason for the Courts below to refuse the

relief sought by the appellants for eviction of the respondents from the suit room. The learned Senior Counsel further points out that it is the case of the respondents that the property was purchased by his father, but, however, there is no material on record produced by the respondents to substantiate such contention. The learned Senior Counsel further submits that the Courts below have erroneously dismissed the suit filed by the appellants on the ground that the appellants have failed to establish their exclusive ownership of the subject property, according to him, the sale deed produced on record would clearly establish that the appellants are exclusive owners of the subject property. The learned Senior Counsel further points out that the respondents have illegally encroached into the suit room and, as such, there was no reason for the Courts below to refuse the relief sought by the appellants. The learned Senior Counsel has extensively taken me through the impugned Judgments, plaint in the suit and the written statement filed by the respondents to point out that the defence of the respondents is farfetched and, as such, according to him, the Courts below have erroneously refused the relief sought by the appellants. The learned Senior Counsel further submits that the promulgated survey records in respect of Survey No.202/22 of Village Cudnem clearly stand in the name of the appellants and, as such, the presumption is in favour of the appellants that the appellants are in exclusive possession of the subject-property. The learned

Senior Counsel further submits that the appellants had, in fact, filed an application to produce additional document/evidence before the Lower Appellate Court which has not been examined whilst disposing of the appeal preferred by the appellants and, as such, submits that there are substantial questions of law which arise for consideration in the present appeal.

3. I have considered the submissions of the learned Counsel and I have also gone through the records. Though it is contended by the appellants that the appellants, pursuant to the sale deed executed on 18th March, 1968 have become owners of the subject property, on perusal of the plaint filed by the appellants, it is seen that there are no pleadings to that effect in the plaint. Apart from that, the Courts below have concurrently found that the respondent No.1 who is the brother of the appellant No.1, has a residential house situated in the subject property. Admittedly, there is no relief sought by the appellants with that regard nor legal proceedings filed by the appellants to vacate the respondents therefrom on the ground that the respondents have trespassed therein. The only relief sought in the suit is with regard to the suit room, claiming that the respondents have trespassed into the subject room. The Courts below have also noted that the appellants and the respondents have ancestral properties which are jointly owned and possessed by the appellants and the respondents. The Courts below have

also noted that some of the properties standing in the name of the appellant No.1, were admittedly enjoyed by the appellants, as well as by the respondents. On this basis, the Courts below have drawn inference that the claim of the appellants that they are exclusive owners of the subject property has not been established by any material evidence. Apart from that, the Courts below have also noted that the appellants failed to state the survey numbers of the paddy field, as the Courts below noted that the subject-matter of the sale deed are four different paddy fields and the appellants are not in a position to show correlation between the subject matter of the sale deed and the disputed property. These concurrent findings of fact cannot be interfered with by this Court in the present Second Appeal. It is well settled that evidence without pleadings cannot be examined. In the present case, admittedly, there are no averments in the plaint to claim that pursuant to the said sale deed, the appellants have become owners of the suit property. In any event, even on the basis of the said sale deed, the Courts below have concurrently found that there was no correlation between the subject matter of the sale deed with the disputed property.

4. As far as the contention of the learned Senior Counsel appearing for the appellants that the survey records stand in the name of the appellants, I find that the respondents also have their residential house in the subject property and, as such, any

presumption of possession as claimed by the appellants stands rebutted. Apart from that, the Courts below have also noted, as pointed out herein above, that though some properties stand in the name of the appellants, they are jointly owned by the appellants and the respondents. In such circumstances, I find that there are no substantial questions of law which would arise for consideration in the present Second Appeal. The substantial questions of law proposed by the appellants would essentially entail reappreciation of evidence which exercise cannot be carried out by this Court in the present second appeal under Section 100 of the C.P.C. as there is no perversity in the findings of fact arrived at by the Courts below.

5. The appeal stands rejected accordingly.

F. M. REIS, J.

ssm.