

**IN THE HIGH COURT OF BOMBAY AT GOA**

**SECOND APPEAL NO. 66 OF 2016**

ANTONIO VICENTE SOCORRO LOBO AND  
ANR.

... Appellant

Versus

SHARMILA RAVINDRA KENKRE.

... Respondent

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the  
Appellants.

Mr. R. G. Ramani, Advocate for the Respondent.

Coram:- F. M. REIS, J.

Date:- 3rd March, 2017

**ORAL ORDER**

Heard Mr. A. F. Diniz, learned Counsel appearing for the Appellants and Mr. R. G. Ramani, learned Counsel appearing for the Respondent.

2. The challenge in the above Second Appeal is to the Orders passed by the Courts below whereby the plaint filed by the Appellants came to be rejected under Order 7 Rule 11 of the Civil Procedure Code on the ground that the Suit is barred by Law of Limitation.

3. Mr. A. F. Diniz, learned Counsel appearing for the Appellants, has pointed out that the suit filed by the Appellants is for a declaration that the Appellants have become owners of the

subject property by adverse possession as well as for a permanent injunction and other reliefs. Learned Counsel further pointed out that on perusing the pleadings in the plaint, it clearly discloses that according to the Appellants the possession became adverse in the year 1994. Learned Counsel further pointed out that the suit was filed in the year 2012 and, as such, according to him, the finding of the learned Judge that the Suit is barred by law of limitation in view of Article 65 of the Limitation Act is misplaced and cannot be sustained. Learned Counsel further pointed out that the cause of action for filing the Suit arose after the title of the Appellants got perfected by adverse possession and, as such, the learned Judge was not justified to pass the impugned Order and reject the plaint. Learned Counsel further submits that both the Courts below have erroneously examined the plea of limitation which are unsustainable and calls for interference in the present Second Appeal.

4. On the other hand, Shri R. G. Ramani, learned Counsel appearing for the Respondent, has pointed out that as per the averments of the Appellants at Para 8, it is contended by the Appellants that the cause of action arose in the year 1994. Learned Counsel further pointed out that there was previous litigations wherein the Appellants had raised similar contentions which came to be rejected. The learned Counsel further pointed out that though the learned Judge may not be justified to hold

that the Suit is barred under Article 65 of the Limitation Act, nevertheless, according to him, as the plaint has not disclosed any cause of action and averment of the Appellants on the date of cause, the learned Judge has rightly held that the Plaint stands rejected under Order 7 Rule 11 of the Civil Procedure Code. As such, according to the learned Counsel, there is no infirmity in the Orders passed by the Courts below which would call for interference in the above Second Appeal.

5. Mr. A. F. Diniz, learned Counsel, further submits that the Appellants be given leave to amend the plaint as, according to him, there are particulars to be incorporated in the plaint with regard to the cause of action in filing the Suit. Learned Counsel further submits that as such the Appellants be given leave to amend the plaint accordingly.

6. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. The Order impugned is only an Order rejecting the plaint under Order 7 Rule 11 of the Civil Procedure Code. Mere rejection of the plaint in terms of the said provisions does not preclude the Appellants-Plaintiffs to file a fresh plaint in view of Order 7 Rule 13 of the Civil Procedure Code. In such circumstances, without examining the correctness or otherwise of the allegations made by the rival parties on merits, I find that as Mr. A. F. Diniz,

learned Counsel, fairly accepts the position that the plaint has to be amended to incorporate appropriate pleadings to constitute the cause of action, I find that there is no substantial question of law which arises in the present Appeal for consideration under Section 100 of the Civil Procedure Code. For the aforesaid reasons, the finding of the learned Judge on limitation based on Article 65 of the Limitation Act, are unsustainable in law. Keeping the option of the Appellants open, if so advised, to file a fresh plaint in view of Order 7 Rule 13 of the Civil Procedure Code, I find that there is no case made out for any interference in the impugned Order. Needless to say, the rival contentions on merits of both the parties are left open.

8. Appeal stands disposed of accordingly.

F. M. REIS, J.

arp/\*