

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 44 OF 2017

SMT. SARASWATI SADASHIV TARI (DEC)
REP. BY THEIR LRS. AND ANR.,

... Appellants

Versus

SMT. SHANTU SAZU BHONSLE AND 4
ORS.,

... Respondents

Mr. Mahesh Amonkar, Advocate for the appellants. Mr. S. D. Lotlikar, Senior Advocate with Ms. Neelam Patil, Advocate for the respondents No.1, 3, 4 & 5.

Coram:- F. M. REIS, J.

Date:- 20th July, 2017

P.C.:

Heard Mr. Mahesh Amonkar, learned Counsel appearing for the appellants and Mr. S. D. Lotlikar, learned Senior Advocate appearing for the respondents No.1, 3, 4 and 5.

2. The challenge in the above appeal is to the Judgment passed by the Lower Appellate Court dated 9/2/2016 whereby the appeal preferred by the respondents came to be allowed and consequently, the suit filed by the appellant came to be dismissed.

3. Mr. Mahesh Amonkar, learned Counsel appearing for the appellant has pointed out that the subject-property surveyed under Nos. 40/3, 40/7 and 40/8 of Village Penha da Franca, came

to be purchased by Pandurang, who according to the appellant, is her father. It is further pointed out that Pandurang had a brother by name Dharma whose children are the respondents herein. It is further pointed out that as the respondents were interfering with the possession of the subject property, the appellant filed the suit, inter alia, seeking for a permanent injunction to protect the possession of the appellant. The learned Counsel further submits that the learned Trial Judge by Judgment dated 16/02/2002 decreed the suit filed by the appellant. It is further pointed out that the respondents preferred an appeal before the Lower Appellate Court, which came to be dismissed and the Second Appeal No. 22/2009 came to be disposed of by this Court whereby the matter was remanded to the Lower Appellate Court to decide the appeal fresh in terms of the observations therein. The learned Counsel further pointed out that while disposing of the second appeal, this Court had clearly observed that apart from examining whether the appellant is the daughter of the said Pandurang and consequently the exclusive owner of the subject property, the issue of possession would have to be considered by the Lower Appellate Court while deciding the appeal preferred by the respondents. The learned Counsel has taken me through the points for determination framed by the Lower Appellate Court to point out that there is no point for determination therein as to whether the respondents have proved their possession over the subject property. The learned Counsel further pointed out

that the name of the appellant figures in the survey records which draws a presumption in favour of the appellant as far as possession of the subject property is concerned. The learned Counsel further submits that the Lower Appellate Court has failed to comply with the directions of this Court to decide the aspect of possession and, as such, there is a substantial question of law which would arise in this second appeal for consideration.

4. On the other hand, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the respondents, has submitted that while remanding the matter, it was clearly observed by this Court that the entitlement to the possession of the subject-property by the appellant would rest upon the fact as to whether the subject-property exclusively belongs to the appellant. The learned Senior Counsel further submits that this aspect has been decided in favour of the respondents as, according to him, the Lower Appellate Court, upon appreciating the material on record has come to the conclusion that the appellant is not the daughter of said Pandurang. The learned Senior Counsel further submits that there is no substantial question of law proposed by the appellant on this count and consequently, there is no case made out for interference in the Judgment of the Lower Appellate Court.

5. I have considered the rival contentions and I have also gone through the records. The appellant approached the Court on the premise that she is the exclusive owner of the property being the only daughter of the said Pandurang. This case put forward by the appellant has not been accepted by the Lower Appellate Court as, on the basis of appreciation of the evidence on record, the Lower Appellate Court has come to the conclusion that the appellant was not a daughter of the deceased Pandurang. It was not disputed during the course of the hearing that Pandurang and his wife had expired without leaving any disposition. The case of the respondents was that the appellant was the daughter of said Dharma and naturally the sister of the respondents herein. In such circumstances, in terms of the relevant provisions of law dealing with succession, the subject property would devolve upon the appellant and the other children of said Dharma, considering that it is not in dispute that there is no testamentary disposition either by said Pandurang or his wife.

6. In the background of this factual aspect, I find that once the Lower Appellate Court has come to the conclusion that the appellant was not the daughter of the said Pandurang, the consequences in law would follow and, as such, the occupation of the subject property by one co-owner would also be on behalf of the other co-owners unless partition of the property is established. In such circumstances, the question of granting any

permanent injunction in favour of the appellant would not at all arise. Needless to say that merely recording the name of one co-owner in the survey records would not by itself mean that such occupier is the exclusive owner of the property as it is well settled that entries in the survey records inhere to the benefit of all other co-heirs, unless partition is established between them.

7. In view of the above, I find that there is no substantial question of law which arises in the present second appeal for consideration. The appeal stand, accordingly, rejected.

F. M. REIS, J.

ssm.