

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.84 OF 2017

Savlo Shivram Mandrekar & Anr Appellants

Versus

Kumudini Gurudas Joshi Respondent

Mr. P. Faldessai, Advocate for the Appellants.

Mr. A. Phadte, Advocate for the Respondent.

Coram : N.M. Jamdar, J.

Date : 16 November 2017.

P.C.:

The Appellants have challenged the concurrent judgments and orders passed by the learned Civil Judge Junior Division, Pernem and the learned Principal District Judge, North Goa, Panaji decreeing the suit filed by the Respondent-Plaintiff and dismissing the appeal filed by the Appellants.

2. Regular Civil Suit No.31/2007 was filed by the Respondent-Plaintiff for permanent and mandatory injunction in

respect of the property known as '*Lagar Bag*' surveyed under No.116/40 situated at Morjim village admeasuring 2600 square metres. According to the Respondent-Plaintiff the Appellants-Defendants encroached on the area admeasuring 13 x 5 square metres covering 65 square metres by storing certain material. Since the Appellants did not remove the encroachment, the suit was filed for mandatory and permanent injunction. The Appellants appeared in the suit and contested the reliefs sought for. It was the case of the Appellants that they have not encroached in the suit property and they are in possession and enjoyment of the same for a long period of time. After the plaint was amended, the Appellants took a plea of being in adverse possession.

3. The learned Civil Judge, after considering the evidence on record, concluded that the Respondent-Plaintiff had established her ownership through the evidence of the Surveyor and established that the Appellants had encroached in the suit property. The case of the Appellants regarding ownership, both on the basis of the title deed and adverse possession, was not accepted. Accordingly, the learned Civil Judge by judgment and order dated 24 June 2016 decreed the suit filed by the Respondent-Plaintiff. In the appeal filed by the Appellants bearing Regular Civil Appeal No.76/2016, the learned District Judge confirmed the findings of the learned Civil

Judge and dismissed the appeal by judgment and order dated 19 April 2017.

4. Heard the learned counsel for the parties.

5. As far as the contention of Mr. Faldessai, the learned counsel for the Appellants that both the Courts have erred in granting a decree of injunction against the Appellants is concerned, it has to be seen that the Respondent-Plaintiff by producing the Sale Deed on record has established the ownership of the suit property. The surveyor examined by the Respondent-Plaintiff demarcated the area from which the possession of the Appellants in the suit property owned by the Respondent-Plaintiff could be ascertained. The Appellants did not examine any surveyor or seek for appointment of Court Commissioner. The claim of the Appellants that they have become the owners by virtue of the Sale Deed was rightly not accepted by both the Courts as the said Sale Deed did not have any boundaries specified therein. Though Mr. Faldessai, submitted that the theory of adverse possession was only a casual defence, it does not appear to be so as the theory appears in the written statement as well as in the evidence and has been argued in the Court. Apart from this, merely a long possession will not amount to adverse possession.

6. Mr. Faldessai, then submitted that the suit was continued by the so called legal heir on the basis of the alleged Will dated 4 December 1992 and such suit was not maintainable.

7. Mr. Phadte, the learned counsel for the Respondent pointed out that the suit which was continued through the power of attorney who had a Will executed in his favour in the year 1992 which came to the effect after the death of the testator and there is no challenge to the said Will which is valid as of date. These submissions are correct. In the circumstances, both the Courts have correctly appreciated the evidence on record and rendered the factual finding that the Appellants have encroached in the suit property. The Appellants have failed to show any title to the same. No substantial question of law arises. The Second Appeal is accordingly dismissed.

N.M. Jamdar, J.