

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 3 OF 2017

SHRI. PANDURANG MURARI SHETYE
(DEC) THR. HIS LRS. AND ANR., ... Appellants
Versus
SMT. SHAKUNTALA G. TALGAONKAR., ... Respondent

Mr. J. P. Mulgaonkar, Advocate for the appellants.
Mr. Prasheen Lotlikar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 20th January, 2017

P.C.:

Heard Mr. J. P. Mulgaonkar, learned Counsel appearing for the appellants and Mr. Prasheen Lotlikar, learned Counsel appearing for the respondent. The challenge in the above appeal is to the Judgments passed by the Courts below, whereby the suit for permanent injunction restraining the respondent from carrying out any construction in the subject-property came to be dismissed.

2. Mr. J.P. Mulgaonkar, learned Counsel appearing for the appellants has pointed out that both the Courts below have misconstrued the documentary evidence produced by the appellants, specially the Consent Decree wherein the Comunidade had acknowledged that a portion of the property bearing Survey No.156/1 admeasuring an area of 7525 sq. metres

was belonging to the appellants. The learned Counsel further submits that the Consent Decree was passed on 18/12/2004, whereas the allotment was purported to have been granted to the respondent only thereafter on 13/2/2005 which itself, according to him, is unlawful and untenable in law. The learned Counsel further points out that once the Comunidade has acknowledged that the portion of the said Lote No.156 was subject-matter of the grant allotted to the predecessor-in-title of the appellants, it was not open to the Comunidade to make allotment of a plot of land admeasuring 264 sq. metres in favour of the respondent. The learned Counsel further points out that the construction activity started by the respondent was based on a provisional possession granted by the Comunidade and, as such, it was not open to the respondent to defeat the claim of the appellants of the grant in favour of the predecessor-in-title of the appellants based on such provisional possession. The learned Counsel further submits that there was a Commissioner appointed by this Court to examine the location of the plot in question wherein a report was furnished to the effect that the disputed plot was located in the property surveyed under No.156/1B which stands in the name of the appellants. The learned Counsel, as such, points out that there are substantial questions of law which arise for consideration in the present appeal.

3. Mr. Prasheen Lotlikar, learned Counsel appearing for

the respondent, however, points out that both the Courts below, upon appreciation of the evidence on record have come to the conclusion that the appellants have failed to establish their claim that the subject plot forms part of the original allotted grant in favour of the predecessor-in-title of the appellants. The learned Counsel further submits that the appellants have failed to establish their plea of title in their favour as, according to him, there is nothing on record to show that there was any grant in favour of the predecessor-in-title of the appellants. It is further pointed out that both the Courts below have also found that the Consent Decree itself cannot be relied upon as such consent terms were executed contrary to the provisions of the Code of Comunidades, specially as no consent was obtained from the Administrative Tribunal. The learned Counsel, as such, points out that as the appellants have failed to establish their claim over the subject plot, both the Courts below were justified to pass the impugned Judgments.

4. I have considered the submissions of the learned Counsel and I have also gone through the records. Both the Courts below, upon appreciation of evidence, have concurrently come to the conclusion that the appellants have failed to establish their claim of title over the subject-plot. Though the appellants are claiming that there was an allotment in favour of their predecessor in title, nevertheless, neither any sale deed, nor the

original grant in favour of the predecessor-in-title of the appellants, has been produced by the appellants. Apart from that, the appellants are only relying upon the Consent Decree to claim that the title has been acknowledged in favour of the appellants herein. But, however, the fact remains that both the Courts below have concurrently found that such consent terms were filed without following the due process under the Code of Comunidades. Besides, as the suit was for injunction simpliciter, both the Courts below, upon appreciation of the evidence, have found that the respondent was in possession of the subject plot. The concurrent findings of fact on possession rendered by the Courts below cannot be reappreciated by this Court in the present appeal, unless there is perversity in such findings.

5. In the present case, in view of the fact that the appellants have failed to produce any documentary evidence on record to establish their title over the subject-property, I find that there are no substantial questions of law which arise for consideration. On perusal of the substantial questions of law as proposed, I find that such questions would entail reappreciation of the evidence on record which cannot be done by this Court in a second appeal, considering that the suit was for injunction simpliciter. Apart from that such claim of title would have to be examined by making the concerned Comunidade as party to the proceedings.

Both the Courts below have also noted that the claim of the respondent is based on an allotment by the Comunidade which has not been established as no grant is placed on record. In such circumstances, considering that the suit is for injunction simpliciter, I find that the concurrent findings of fact arrived at by both the Courts below cannot be faulted and, as such, there are no substantial questions of law which arise for consideration in the present appeal.

6. For the aforesaid reasons, I find that there is no merit in the above appeal which is accordingly dismissed. Needless to say, the issue of title claimed by the appellants is kept open. All contentions of both the parties on this aspect are kept open.

F. M. REIS, J.

ssm.