

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 176 OF 2012

Juvenal Hermenegildo Braganza,
son of Francisco Xavier Braganza,
major in age, married,
bank employee,
residing at St. Cruz, Goa.

... Appellant
(Original plaintiff)

Versus

1. Laximibai Pandurang Kamat Mamai,
(deceased) widow, major in age,
widow, landlady, residing at 31st Janeiro road,
Panaji Goa.
(since deceased) through her legal heirs :

1(a) Vithal Pandurang Mamai Kamat,
(since deceased) through his legal heirs :

1a(i) Mr. Sandesh Vithal Naik,
Son of late Vithal Pandurang Kamat Mamai,
and his wife,

1a(ii) Mrs. Sidhu Sandesh Naik,
major in age,
R/o House No.126, Halliwaddo,
Bardez Goa.

Residing at 31st Janeiro road,
Panaji Goa.

1a(iii) Mrs. Sushma P. Sinai Priolkar,
major in age,
daughter of late Vithal Pandurang Kamat Mamai,
and her husband

1a. (iv) Mr. Prasad Sinai Priolkar,
major in age,
Residing at Ponda Goa.

1(b) Kishori Vithal Mamai Kamat,
major in age,
1(c) Shripad Pandurang Mamai Kamat,
major in age,
1(d) Manohar Pandurang Mamai Kamat,
major in age,
1(e) Mrs. Sushil Naik,
major in age,
1(f) Mr. Vishwanath Naik,
major in age,
1(g) Mrs. Suman Raikar,
major in age,
1(h) Mr. Vassant Raikar,
major in age,
1(i) Mrs. Shalini Navelkar,
major in age,
1(j) Mr. Vassant Navelkar,
major in age,
All residents of 31st January, road,
Panaji Goa.

2. Carlito Martins Joao,
son of Piedade Joao,
major in age,
Residing at Lola Portugal,
Through his attorney Dominico Dias,
Residing at Bairo, Bondir,
St. Cruz, Ilhas Goa.

3. Mrs. Lilo Martinho Joao,
major in age, housewife,
Residing at Lola Portugal,
w/o Defendant no.2,
Through Her Attorney Dominico Dias,
Residing at Bairo, Bondir,
St. Cruz, Ilhas Goa.

... Respondents
(Original defendants)

Mr. A. F. Diniz and Mr. I. Agha, Advocates for the appellant.

Mr. M. B. Da Costa, Senior Advocate with Mr. Vivek Angelo Rodrigues, Advocate for the respondent nos. 2 and 3.

Coram:- F. M. REIS, J.

Date:- 24th March, 2017

ORAL JUDGMENT

Heard Mr. A. F. Diniz, learned counsel appearing for the appellant and Mr. M. B. Da Costa, learned Senior Counsel appearing for the respondent nos. 2 and 3.

2. At the outset, Mr. Diniz, learned counsel appearing for the appellant seeks leave to delete the respondent no.1. The respondent no.1 stands deleted at the risk of the appellant.

3. The above appeal came to be admitted by order dated 14.02.2013 on the following substantial questions of law.

(i) Whether there is misconstruction of provision of Article 2309 (body) as well as of its first paragraph by the District Court ?

(ii) Whether the Appellate Court erred in law in not considering that Article 2309 along with Article 2310 were to be read together and it was necessary for the plaintiff to show what was shortest access ?

4. After hearing the matter for some time, both the learned counsel have sought time to explore the possibility of settlement with regard to the subject access through the property belonging to the respondents. When the matter was taken up today, both the learned counsel along with the appellant and the duly constituted attorney of the respondent nos. 2 and 3 who are present in Court have pointed out that the matter has been amicably settled and they have also signed the consent terms. A plan has also been attached to the said consent terms thereby depicting the access reserved for the appellant herein. The consent terms signed by the parties as well as their respective advocates are accepted and marked 'X' for

identification. The parties who are present in Court have also accepted the consent terms as well as the plan attached thereto.

5. In view of the above, I pass the following :

ORDER

(i) The impugned judgment dated 26.11.2001 passed by the learned Trial Court and the judgment dated 18.07.2012 passed by the learned Lower Appellate Court stand modified and the suit filed by the appellant stands decreed in terms of the consent terms marked 'X' for identification.

(ii) Decree to be drawn accordingly.

(iii) The appeal stands disposed of accordingly with no order as to costs.

F. M. REIS, J.

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