

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.29 OF 2016**

**SURENDRA BALKRISHNA NAIK
PRATAPRAO SARDESSAI,**
aged 78 years, r/o. House No.426/C, Fr.
Agnelo Raod, Gogol, Margao, Goa. ... **Appellant**

~ VERSUS ~

**1 PRAKASH BALKRISHNA NAIK
PRATAPRAO SARDESSAI**
(expired), through his legal
representatives

**1a) BALKRISHNA PRAKASH NAIK
PRATAPRAO SARDESAI,**
aged 33 years, married, r/o. Naguesh
Prasad, Madda, Crotalim, Goa.

**1b) VISHVESH PRAKASH NAIK
PRATPRAO SARDESSAI,**
aged 31 years, bachelor, r/o. Naguesh
Prasad, Madda, Crotalim, Goa.

**2 JYOTI PRAKASH NAIK
PRATAPRAO SARDESSAI,**
aged 64 years, married, r/o. Naguesh
Prasad, Madda, Crotalim, Goa. ... **Respondents**

APPEARANCES

FOR THE APPELLANT Mr R G Ramani

FOR RESPONDENTS Mr Valmiki Menezes.
1(a), (b) & 2.

CORAM : G.S.Patel, J.

DATED : 18TH AUGUST 2017

ORAL JUDGMENT:

1. This is one of those rare second appeals that must be allowed immediately. Admit on the following substantial questions of law:

- I. When there was no pleading in the plaint as to the value of the suit for the purpose of pecuniary jurisdiction, whether the learned Court of District Judge -3, South Goa at Margao was legally right in dismissing the appeal for want of pecuniary jurisdiction without first directing the Appellant to amend the plaint and the memorandum of appeal with regard to the pleading as to the value of the suit for the purpose of pecuniary jurisdiction?
- II. Whether the learned Court of District Judge -3, South Goa at Margao ought to have returned the appeal to be filed in the Court of competent jurisdiction even if it really lacked pecuniary jurisdiction to try the appeal and ought not to have dismissed it?

On 14th July 2016 when notice was issued, these questions were specifically noted.

2. By consent, returnable forthwith and taken up for hearing and final disposal.

3. The facts are not in dispute. The Second Appeal is directed against a Decree of the District Court at Margao in Regular Civil Appeal No.77 of 2014 passed on 30th June 2015. That appeal itself

was against an order dated 28th March, 2013 of the Civil Judge, Sr. Division at Vasco da Gama in Regular Civil Suit No.95/2013/A. By that order, the Civil Judge, Senior Division dismissed the Plaintiff's suit on the Defendants' application under Order XII, Rule 11 of the Code of Civil Procedure, 1908 ("CPC"). The First Appellate Court dismissed the appeal and confirmed the order of the Civil Judge, Senior Division.

4. The Trial Court dismissed the suit on the ground that it did not disclose a cause of action in favour of the Plaintiff and on the ground of limitation. The only point involved in the Appeal was whether the Court had pecuniary jurisdiction. The First Appellate Court, in its impugned order, framed this as a point for determination, viz., whether the Court had the pecuniary jurisdiction to try the appeal. It held in the negative and proceeded to dismissed the appeal.

5. Mr. Ramani for the Appellant before me submits that the District Court could not and ought not to have dismissed the First Appeal for want of pecuniary jurisdiction. It could have directed the Appellant to amend the plaint and the appeal memo with regard to the pleading as to jurisdiction or, at the very least, returned the appeal for filing in a Court of competent jurisdiction if the District Court truly lacked pecuniary jurisdiction.

6. I do not think that there is any plausible answer to the Appellant's plea. An order of the kind the First Appellate Court

made (“the appeal stands dismissed for want of pecuniary jurisdiction”) could not and ought not to have been made.

7. The Second Appeal is allowed. The order of the First Appellate Court is set aside. Regular Civil Appeal No.77/2014 is restored to file. Parties will appear before the District Judge at Margao on 13th September 2017 in the morning session. The Appellant will apply for leave to amend the plaint and the memo of appeal. The District Judge will consider the amendment application on merits. All contentions are expressly left open.

8. The second appeal is disposed of in these terms. No costs.

G.S. PATEL, J