

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 63 OF 2007
AND
CIVIL APPLICATION NO. 167 OF 2007

- 1) Shri. Gopal Vishnu Gawdo (expired)
resident of Pissurlem, Sattari,
through legal heirs,
 - (i) Shri. Vishnu Gopal Gawade,
son,
 - (ii) Smt. Chandra Vishnu Gawade,
daughter-in-law,
 - (iii) Smt. Devle Kusta Gawade,
daughterin-law,
 - (iv) Shri. Dnyaneshwar Kusta Gawde,
grandson, bachelor

.... Appellants/
Defendants.

V e r s u s

- 1) Shri. Manikrau Amrutrao Prabhu Dessai,
- 2) Shri. Bacharam Manikrau Prabhu Dessai,
(expired), through his heirs;
 - a) Mrs. Sulochana Bacharam Prabhu Dessai, (***Since deceased***)
 - b) Shri. Prataprao Bacharam Prabhu Dessai,
 - c) Shri. Pratiksha Prataprao Prabhu Dessai,
 - d) Shri. Sambhajirao Bacharam Prabhu Dessai,
 - e) Smt. Sangita Sambhajirao Prabhu Dessai,
 - f) Shri. Dhanajirao Bacharam Prabhu Dessai,
 - g) Smt. Namarata Dhanajirao Prabhu Dessai,
 - h) Shri. Tanajirao Bacharam Prabhu DessaiAll major in age, residents of
Gauthanwada, Sankhalim-Goa.
- 3) Shri. Nanasaheb Annasaheb Prabhu Dessai
Deceased through Legal Representatives:
 - a) Mrs. Nirmala Nanasaheb Desai – Wife/Widow
 - b) Sou. Runali Ranjeet Desai – Daughter
 - c) Shri. Ranjeet Arun Desai – Son-in-law
 - d) Sou. Shashikala Vijay Desai – Daughter

- e) Shri. Vijay Satwaji Desai – Son-in-law
All resident of House No. 445, Gaonthan,
Sankhalim, Goa.
 - f) Sou. Diksha Deepak Gaonkar – Daughter
 - g) Shri. Deepak Baburao Gaonkar – Son-in-law
Both resident of House No. 296,
C/o Baburao Narayan Gaonkar, Postwado,
Honda, Sattari, Goa
 - h) Miss. Suvarnakala Nanasaheb Desai – Daughter
H. No. 445, Gaonthan, Sankhalim, Goa.
 - i) Mr. Annasaheb Nanasaheb Desai – Son
H. No. 445, Gaonthan, Sankhalim, Goa.
- 4) Shri. Madavrao Dattajirao Prabhu Dessai,
(expired) through his heirs:
- a) Mrs. Girijabai Madavrao Prabhu Dessai,
resident of Sankalim.
 - b) Mrs. Prachi Arun Sardessai,
and her husband,
 - c) Mr. Arun Dattatray Sardessai,
Both residents of Khanpur
 - d) Mrs. Bhaghyashri Balasaheb Patil,
and her husband,
 - e) Mr. Balasaheb Pandurang Patil,
Both residents of Gail Gunji
 - f) Mrs. Kalpana Rajesh Dessai,
and her husband,
 - g) Mr. Rajesh Baburao Dessai,
Both residents of Samra,
Belgaum.
 - h) Mr. Abhijit Mahadev Dessai,
 - i) Mrs. Shanti Abhijit Dessai,
Both residents of Gaunthan,
Sankhalim-Goa.
- 5) Shri. Daji Dessai (***Since deceased***)

a) Ratnaprabha Daji Dessai (***Since deceased***)

b) Shri Sakrerra Daji Dessai

Son, (***Since deceased***)

Through his legal representatives:

i) Mrs. Arthi Sarkerrao Desai,
wife, major of age,

ii) Ms. Vaishali Sarkerro Desai,
daughter, major of age,

iii) Ms. Vaibhavi Sarkerro Desai,
daughter, major of age,

iv) Mr. Vaibhav Sarkerro Desai,
son, of major age,

All residents of Gauthan,
Sankhalim, Goa.

c) Ajit Daji Dessai,
Son,

d) Ashwini Ajit Dessai,
Daughter-in-law,

e) Shruti Daji Dessai,
Daughter,

f) Babi Daji Dessai,
Daughter,

All major of age, residents of Gauthan,
Sankhalim, Goa.

Deleted vide order

dated 29.09.2015

passed in MCA/630/2015.

6) Shri. Babu D. Dessai,
All residents of Gauntan,
Sankhalim-Goa.

.... Respondents/
Plaintiffs.

Mr. S. G. Dessai, Senior Advocate with Mr. V. Parsekar, Advocate for the Appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Gemini Xettigar, Advocate for the Respondent nos. 1, 2(b to h)

Coram :- F. M. REIS, J

Date : 10th February, 2017

ORAL JUDGMENT

Heard Shri S. G. Desai, learned Senior Advocate appearing for the

Appellants and Mr. S. D. Lotlikar, learned Senior Advocate appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 09.07.2010 on the following substantial question of law :

(i) Whether the Lower Appellate Court has misconstrued the Judgment passed by this Court dated 24.06.2005, in Second Appeal no. 26/1995 thereby exercising powers to decide the Regular Civil Suit no. 63/1978 on merits, thereby depriving the Appellants a substantive right of the Appeal ?

3. Briefly, it is the case as set out by the Appellants-Defendants that the Respondents/Plaintiffs claim to be owners of a property known as 'Doncol' surveyed under old Cadastral Survey no. 4 and in the Record of Rights under Survey no. 20/1, 20/2, 21/1 at Village Pissurlem, Sattari, Taluka. It was their case that deceased Appellant-Defendant was only a watchman appointed to watch and guard the coconut grove portion of the suit property but, however, the Appellants claim to be owners in possession of the suit property by virtue of his long peaceful possession and enjoyment openly and continuously against one and all for over 100 years. It is further the case of the Respondents-Plaintiffs that they were obstructed by the deceased-Appellant herein from enjoying the property and, as such, proceedings under Section 145 of Cr.P.C. commenced between the Respondents and the deceased Appellant before the Executive Magistrate, Sattari bearing no. 6/1975. By an Order dated 24.12.1975, the Executive Magistrate came to the conclusion that the deceased-Appellant was in possession of the suit

property and the Respondents were ordered not to obstruct their possession. In Criminal Revision Application no. 8/1976 challenging the said Order of the Executive Magistrate, the learned Sessions Judge by Order dated 12.08.1976, quashed the said Order and remanded the matter to decide afresh. By an Order dated 05.09.1977, the learned Executive Magistrate came to the conclusion that he was unable to decide the factum of possession between the contesting parties and appointed a Receiver which, according to the Appellant, had not entered into such possession. In the meanwhile, the Respondents filed Regular Civil Suit no. 63/1978 in the Court of the learned Civil Judge against the deceased-Appellant, inter alia, seeking for a declaration that they are entitled for the possession of the suit property and, consequently, the Appellants be restrained by a permanent injunction from disturbing their possession. In the said Civil Suit, by Judgment dated 30.04.1990, the learned Trial Judge decreed the Suit filed by the Respondents and, inter alia, declared the Respondents as owners of the property and, as such, held that they are in possession of the said property. The deceased Defendant filed an Appeal before the Lower Appellate Court being Regular Civil Suit no. 45/1990 against the Judgment and Decree passed in the said Regular Civil Suit. By Judgment dated 17.12.1994, the learned District Judge dismissed the Regular Civil Appeal filed by deceased Defendant. A Second Appeal was filed challenging the said Judgment being Second Appeal no.26/1995. By Oral Judgment dated 24.06.2005, this Court disposed of the Second Appeal by remanding the matter to the Additional District Judge for disposal afresh after framing an additional issue on the plea raised by the deceased Defendant in their written statement regarding identification of the suit property. Upon remand, the

learned Additional District Judge by Judgment dated 12.09.2006, the Regular Civil Suit filed by the Respondents came to be decreed and the Plaintiffs-Respondents are declared to be entitled to the possession of the suit property and, consequently, the Appellants have been restrained from interfering with the possession of the suit property. Being aggrieved by the said Judgment, the above Appeal came to be admitted on the aforesaid substantial question of law.

4. Mr. S. G. Desai, learned Senior Advocate appearing for the Appellant, has vehemently argued that by Oral Judgment passed by this Court dated 23.06.2005, the Judgments passed by the learned Trial Court in Regular Civil Suit no. 63 of 1978 dated 30.04.1990, is quashed and set aside along with the Judgment passed by the Lower Appellate Court in Regular Civil Appeal no. 45/1990 and, as such, according to him, there was no Appeal before the learned District Judge for consideration. Learned Senior Advocate further pointed out that in view of the remand by this Court, a valuable right of Appeal has been lost by the Appellant as, according to him, there was no Judgment of the Trial Court to be appreciated by the Lower Appellate Court and, as such, grave injustice have occasioned to the Appellant on account of such procedure. Learned Senior Advocate further pointed out that in fact, the matter should have been remanded to the learned Trial Court for a fresh consideration and not to the Lower Appellate Court as, according to him, on account of such exercise, the Appellant was deprived of a right of Appeal before the Lower Appellate Court. It is further pointed out that the learned Judge has erroneously come to the conclusion that the Respondents/Plaintiffs were in possession of the subject property as, according to

him, in the proceedings under Section 145 of Cr.P.C., the Defendant/ancestor of the Appellant was held to be in possession of the subject property. The learned Senior Advocate further pointed out that the Appellant has never been dispossessed of the subject property and, in fact, the ancestors of the Appellant and thereafter the Appellant have been in continuous possession of the property for the last over 100 years. Learned Senior Advocate further pointed out that the property claimed by the Respondents is not referable to the subject matter of the suit property and, as the Respondents have failed to identify the suit property, the question of holding that alleged title document produced by the Respondents are in respect of the suit property is totally misplaced and deserves to be quashed and set aside. The learned Senior Advocate has minutely taken me through the impugned Judgment as well as the findings of the Lower Appellate Court to point out that the learned Judge has misconstrue the documentary evidence produced by the Respondent to erroneously come to the conclusion that the Respondents have established their case. Learned Senior Advocate further submits that the Respondents were not in possession of the subject property and, as such, according to him, the permanent injunction could not have been granted. It is further submitted that the Lower Appellate Court has misdirected itself in appreciating the evidence on record and has arrived at a perverse finding of fact with regard to the ownership and possession of the subject property as being in favour of the Respondents herein. Learned Senior Advocate further pointed out that the substantial question of law framed by this Court be answered in favour of the Appellant and the Suit filed by the Appellant be accordingly rejected. Learned Senior Advocate further pointed out that as the possession of the subject property

continued with the ancestor of the Appellant and thereafter with the Appellants, the question of decreeing the Suit filed by the Respondents is totally misplaced. Learned Senior Advocate further pointed out that there is an admission by the Respondent that the ancestor of the Defendant was in possession of the subject property in the cross examination before the learned Executive Magistrate. Learned Senior Advocate further pointed out that on perusal of the plaint filed by the Respondents, the link between the original owner of the property as disclosed at Para 2 of the plaint with the Respondents has not been disclosed nor any material has been disclosed thereof. It is further pointed out that the Respondents have admitted that the cashew grove of the property was tendered to Govind Fadte Gaude which shows that the Respondents were not in possession of the subject property. It is further pointed out that Order 41 Rule 23 of the Civil Procedure Code has to be read with Rule 27 which gives powers to the Appellate Court to allow such further evidence and documents to be produced if a case is made out in terms thereof. It is further pointed out that the Lower Appellant Court framed issues casting the burden on the Appellant without framing any additional issue casting the burden on the Respondents herein. It is further pointed out that the Respondents have also filed a MCA no. 178/13 for speaking to the Minutes, inter alia, to clarify that the Decree dated 30.08.2013 in the Civil Suit has not been set aside. Learned Senior Advocate further pointed out that the right of Appeal is a substantive right which cannot be taken away and, as such, the question of depriving the Appellant from a right of Appeal would not be justified. In support of the said proposition, reliance is placed on the Judgment reported in **(2009) 8 SCC 646** in the case of ***Nahar Industrial Enterprises Limited vs. Hong Kong and Shanghai Banking***

Corporation. Learned Senior Advocate has extensively taken me through the Judgment passed by this Court to point out that the issue of title was directed to be examined which the Lower Appellate Court has failed to examine. Learned Senior Advocate further pointed out that the findings of the Lower Appellate Court that the boundaries in the Cadastral Survey correspond to the boundaries as shown at Para 1 of the plaint, are perverse. It is further pointed out that the learned Appellate Court has essentially rendered a finding on identity based on admission of the Appellant which is non-existent. The learned Senior Advocate as such pointed out that the impugned Judgment be quashed and set aside.

5. On the other hand, Shri S. D. Lotlikar, learned Senior Advocate appearing for the Respondents, has submitted that though whilst disposing of the Second Appeal filed before this Court in the year 2005 by Judgment dated 24.06.2005, the matter was remanded to Lower Appellate Court by recording that Judgment of the learned Trial Court has also been set aside, nevertheless, this Court intended to direct the Lower appellate Court to decide the Appeal preferred by the Appellants afresh after giving the parties an opportunity to lead further evidence on the basis of additional issues. It is further submitted that the Appellant never raised any grievance before the Lower Appellate Court that based on the Judgment passed by this Court, they were deprived of any right of Appeal. It is further pointed out that the Appellant himself chose to contend that evidence has to be recorded before the Trial Court and remitted to the Lower Appellate Court and having accepted such position admittedly participated in the proceedings without raising any challenge thereon. It is further pointed out that the Appellants have

failed to produce any material on record to dispute the overwhelming evidence produced by the Respondents to establish the ownership and possession of the Respondents. It is further pointed out that the reliance by the learned Senior Counsel of the Appellant in the Orders passed by the Executive Magistrate under Section 145 of Cr.P.C. is totally misplaced when, admittedly, such Order of the Executive Magistrate were set aside by the Revisional Court. It is further pointed out that the final Order in such proceedings is that the learned Executive Magistrate was unable to decide the ownership and possession of the rival parties and, as such, the matter had to be decided by the Civil Court. It is further pointed out that even in the Judgment of the learned Trial Judge whilst disposing of the Suit filed by the Respondents, there are categorical admissions therein of the ownership and possession of the Respondents. The learned Senior Advocate further submits that the Appellant chose not to enter the witness box after the remand or produced any material to disapprove the documentary and oral evidence produced by the Respondents. It is further submitted that having accepted the procedure adopted by participating in the proceedings before the Lower Appellate Court, it is not open to the Appellant to now contend that any right of Appeal has been lost. Learned Senior Advocate further pointed out that even under the provisions of the Civil Procedure Code, the Appellate Court can record evidence and render findings thereon. It is further submitted that no prejudice has occasioned to the Appellant and, as such, the Appeal deserves to be rejected.

6. I have duly considered the submissions of the learned Counsel and I have also gone through the records. Whilst disposing of the said Second Appeal

no. 26 of 1995 by Judgment dated 24.06.2005, it has been observed at Para 9 thus:

“9. Considering the rival contentions in my view, it would be appropriate and in order to ensure that ends of justice are met, it would be proper to remand the matter to the lower appellate Court for deciding this issue after opportunity is given to both the parties, namely the Plaintiff and the Defendant to lead evidence on this point so that no prejudice is caused either to the Plaintiff or to the Defendant. It is no doubt true that much time has lapsed after the suit was filed and the possibility of availability of witnesses also has to be taken into consideration. However, since the question is regarding the description of the property mentioned in the suit and the description in the title deeds, if inadvertently the specific title deed is not produced by the Plaintiff he can produce the document. The Defendant also is to be entitled to give any documentary evidence and other evidence so that the lower appellate Court can decide the issue. In my view, this issue will go to the root of the matter and unless the Plaintiff conclusively brings on record either documentary or oral evidence and proves his title in respect of the property described in the plaint, he would not be entitled to ask for a declaration of ownership and possession in respect of the suit land. In this view of the matter,

the Judgment and Order of both the lower Courts is set aside. The matter is remanded to the Additional District Judge who is directed to frame an additional issue on the plea raised by the Defendant in the written statement regarding the identification of the suit property vis a vis the documents relied upon by the parties and allow both the parties to lead evidence on this point. It is clarified that the District Court may ask the trial Court or such other Court such as the adhoc Additional District Judge/Assistant Judge to record the evidence and after the process of recording of evidence is over send the recorded evidence to the District Court and thereafter decide the issue on merits and in accordance with law. The District Court is expected to complete this process within a period of six months and finally decide the Appeal on this issue and other issues which are raised by both the parties. It is further clarified that the Court recording the evidence will permit the evidence to be recorded only on the new issue as per the guidelines given by this Court. The Appeal is allowed in the above terms.”

7. Pursuant to the said directions of this Court, an additional issue was framed by the learned Lower Appellate Court on 16.08.2005. Additional evidence was recorded on the additional issue where Pw. 1 Manikrao Prabhu Dessai was re-examined and Surveyor Polki Reddy was examined as Pw. 5 who produced

additional documents but, however, the Appellant-Defendant chose not to enter the witness box nor lead any evidence nor produce any documents in support of his stand. Thereafter, the Lower Appellate Court by Judgment dated 12.09.06, has decided the additional issue as not proved by the Appellant. The learned Judge has also re-appreciated the evidence on record before the Trial Court to come to the conclusion that the Respondents have proved that the suit property as described at Para 1 of the plaint is being peacefully enjoyed by them on behalf of all the co-heirs of the original owner. The learned Judge also found that in the year 1976, the Appellant- deceased Defendant for the first time started obstructing them from plucking the trees. The issues cast on the Defendant were held to be not proved. The Lower Appellate Court whilst examining the issue of identity of the property has minutely examined the pleadings of the Respondents-Plaintiffs as well as the Original Defendant-Appellant herein to note that the deceased Defendant himself had pointed out that a portion of the property where trees were located were subject matter of the proceedings under Section 145 of the Cr.P.C. This itself suggests that basically the identity of the property was not in issue. In fact, the Apex Court in a Judgment reported in **2015(13) SCC 25** in the case of ***Surinder Pal Kaur & anr. vs. Satpal & anr.***, has observed at paras 10 and 11 thus :

“10. We have considered the rival submissions of the parties on the above point. It is a settled position of law that the observations made in the proceedings drawn under Section 145 CrPC do not bind the competent court in a legal proceedings initiated before it. A decision given under Section 145 CrPC has relevance in evidence to show one or more of the following facts:

- (a) That there was a dispute relating to a particular property;
- (b) That the dispute was between the parties;
- (c) That such dispute led to the passing of a preliminary order under Section 145(1) CrPC or an order of attachment issued under Section 146(1) CrPC; and
- (d) That the Magistrate found particular party or parties in possession or fictional possession of the disputed property.

11. In *Shanti Kumar Panda v. Shakuntala Devi*, this Court has held, in para 15, that the reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court (except for the limited purposes enumerated above). Also, it was further held in the said case that: (SCC p. 452, para 23)

“(1) The words ‘competent court’ as used in sub-section (1) of Section 146 of the Code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming the subject-matter of proceedings before the Executive Magistrate.”

8. On perusal of the written statement filed by the deceased Defendant at Para 16 , it clearly states thus :

“The defendant and his family members have become owners of the coconut groove and the entire property 'Doncol' is enjoyed by them openly and continuously without recognising anybody as owner and without any obstruction from anybody since the ancestors viz. for more than 100 years”.

9. The fact remains that on going through the written statement filed by the deceased Defendant, it has not been disputed that the property which was subject matter of the proceedings under Section 145 of the Cr.P.C. was a property 'Doncol' or 'Doncol Molli' in the Village of Pissurlem. There is no material produced by the Appellant to suggest that there were two properties having the same name and, as such, the contention of the learned Senior Counsel appearing for the Appellant to claim that there was dispute of identity of the property as claimed by the Respondents and that which is the subject matter of the proceedings under Section 145 of the Cr.P.C. cannot be accepted. The curious aspect also to be noted is that to claim their alleged possession of the property, the Appellant himself is relying upon the Orders passed in the proceedings under Section 145 of Cr.P.C. which have otherwise been set aside by the Revisional Court. The Lower Appellate Court has found that the boundaries as disclosed in the old Cadastral Survey no. 4 and the boundaries pleaded at Para 1 of the plaint are identical. The Plan is at Pw. 1/C. As opposed to such evidence on record, the Appellant failed to enter the witness box after an opportunity was given by this Court to lead evidence nor have succeed to produce any material to disapprove the cogent evidence produced by the Respondents that the property as identified at Para 1 in the plaint belongs to the Respondents. The Lower Appellate Court has also noted that after remand, the Respondents have examined Pw. 5 Polki Reddy who has produced Form I and XIV of Survey no, 20/1, 20/2, 20/3 and 21/1 as well as Survey Plan along with blue print plan of the Village of Pissurlem which are marked at exhibit P.w. 5/A collectively. The Lower Appellate Court has minutely examined his evidence. The

said Surveyor has also examined that the inscription of the property was carried out 18 to 19 years after the old Cadastral Survey and the names of the original owners of the properties changed as far as the eastern and southern boundaries are concerned. He has further categorically stated based on the coconut grooves found at the site that the property as shown in old Cadastral Survey no. 4 is the same as described in the Land Registration under no. 13193. Pw. 5 has also co-related the old Cadastral Survey nos. 4, 5 and 6 and corresponding new Survey numbers of this property and found that the school existing at the site is located in the property surveyed under no. 3 which is shown in the name of the Government. He has also found that Cadastral Survey no. 5 now corresponds to the property surveyed under no. 20/2. Pw. 5 also stated that Cadastral Survey no. 4 shaded in yellow, corresponds to survey no. 20/1 and survey no. 21 and in between, there is a road passing. He has also noticed the vestiges at the site to draw his conclusions that the property surveyed under old Cadastral Survey no. 4 is the property now bearing survey no. 20/1 and survey no. 21. Pw. 5 has also co-related the property shown in the description under no. 13193 and the suit property and noted that the old Cadastral survey no. 4 is the property corresponding to the property described under no. 13193. The co-relation of the boundaries have been minutely mentioned by Pw. 5. As opposed to such overwhelming evidence on record, the Defendant chose not to lead any evidence nor produced any material to rebut or disapprove the documentary evidence produced by the Respondents. In such circumstances, the Lower Appellate Court was justified to come to the conclusion that Respondents have established their case that they were the owners and entitled to the possession of the suit property as identified in the plaint.

10. The contention of Mr. Desai, learned Senior Advocate appearing for the Appellant to the effect that prejudice had occasion to the Appellant as right of Appeal has been lost, cannot be accepted. The Appellant chose not to lead any evidence before the Lower Appellate Court despite of an opportunity given by the Court and, as such, it is very difficult to accept the contention of the Appellant that the property which is the property surveyed under old Cadastral Survey no. 4 and described in the Land Registration office as claimed by the Respondents is not the subject matter of the proceedings under Section 145 of Cr.P.C. The Lower Appellate Court as such has rightly appreciated the evidence on record. Even on perusal of the Judgment passed by the learned Trial Court, similar findings were rendered by the learned Trial Judge. Even whilst advancing arguments in the present Second Appeal apart from contending that the evidence of P.w. 5 cannot be accepted as they are only on the basis of surmises and assumptions, there is no tangible or cogent material produced by the Appellants to disbelieve the categorical conclusions of Pw. 5 based on an inspection carried out by him of the suit property. The Lower Appellate Court has minutely examined the material on record and in the absence of any evidence being produced by the Appellant to disapprove such material, the question of the Appellant contending that the findings are perverse cannot be accepted.

11. In view of the findings rendered herein above, the Judgment of the Apex Court reported in **(2008) 4 SCC 594** in the case of **Anathula Sudhakar vs. P. Buchi Reddy**, is not at all applicable to the facts of the present case.

12. The suit filed by the Respondents is for declaration of title as well as consequential reliefs and the Lower Appellate court has found that the Respondents have established their title and ownership of the suit property. The Judgment of the Apex Court reported in **1990 (1) Goa Law Times (201)** in the case of **Jose Da Costa & anr. vs. Bascora Sadashiva Sinai Narcornim & anr.**, relied upon by the learned Senior Advocate appearing for the Appellant, is not at all applicable to the facts of the present case. There are no particulars or claims by the Appellants of prescription nor has the Appellant adduced any evidence to establish their alleged possession over the subject suit property. The Judgment of the Apex Court reported in **(2004) 1 SCC 438** in the case of **Shanti Kumar Panda vs. Shakuntala Devi** is not at all applicable to the facts of the present case. As pointed out herein above, the finding of possession of the learned Executive Magistrate were set aside by the Revisional Court and, as such, the question of relying upon such Order to claim possession of the subject property is without any substance.

13. In such circumstances, I find that there is no prejudice which has occasioned to the Appellant nor any such grievance raised when the matter was remanded by this Court before the Lower Appellate Court by the said Judgment dated 24.06.2005. The Lower Appellate Court has minutely examined the material on record and found that the identity of the property has been duly established by the Respondents.

14. In fact, Article 953 of the Portuguese Civil Code reads thus :

“Article 953 -Juridical or Civil Possession

The inscription in registration records of a title of transfer of property without any suspensive clause, involves independently of any other formality, the transfer of possession to the person in whose favour such inscription was made.”

The inscription of the property in the Land Registration Office would presume the ownership and possession of the property in whose name such inscription stands. In the present case, the inscription stands in the name of the Respondents and/or the Predecessors in title and not the Appellants.

15. As such, considering that the Appellants have failed to produce any material on record to show any semblance of title over the subject property nor their claim of possession has been proved by any cogent material on record, I find that there is no merit in the Appeal and the substantial question of law is to be answered against the Appellant.

16. In view of the above, the Appeal stands rejected and the Civil Application stands disposed of accordingly.

F .M. REIS, J.

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