

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.103 OF 2017

Manuel Xavier Dias.		Appellant.
Versus		
Melinda Noronha & Ors.		Respondents.

Mr. Carlos Ferreira, Advocate for the Appellant.

Ms. Analiz Menezes, Advocate for the Respondents.

Coram : N.M. Jamdar, J.

Date : 8 December 2017.

ORAL ORDER :

By this Second Appeal, the Appellant-Plaintiff has challenged concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Margao and the District Judge, South Goa, Margao, dismissing the Suit and the Appeal filed by the Appellant. The Suit was filed by the Appellant seeking permanent injunction and a declaration.

2. Since the Suit was based on title, both the Courts framed an issue as to the title of the Appellant. The learned Civil Judge, after consideration of the evidence on record, held that the Appellant had failed to prove that he has title to the entire suit property and the

issue was held in the negative. The contention of the Respondents-Defendants that the suit is bad for non-joinder, was held in the affirmative. The learned Judge dismissed the Regular Civil Suit No.15/2009 by Judgment and Order dated 7 April 2014. Against the decision of the learned Civil Judge, the Appellant filed Regular Civil Appeal No. 11/2015 in the District Court and Cross Objections were filed by the Respondents. The learned District Judge, dismissed the Appeal and the Cross Objections, by Judgment and Order dated 31 May 2016. The Appellant-original Plaintiff has filed the present Second Appeal.

3. Heard Mr. C.A. Ferreira, learned Counsel for the Appellant and Ms. Menezes, learned Counsel for the Respondent.

4. Mr. Ferreira, learned Counsel for the Appellant firstly submitted that the Respondents, in their amended Written Statement, have taken a plea that they are owners by adverse possession which clearly shows that they have accepted the ownership and title of the Appellant. This submission cannot be accepted. In the Written Statement, the Respondents-Defendants had clearly disputed the title of the Appellants *qua* the suit property and in one line they have taken a defence of being in adverse possession. From only this one line taken as an alternate defence, it cannot be straight

away presumed that the Appellant has a title to the suit property.

5. Mr. Fereira then submitted that the sale deed relied upon by the Appellant was not disputed and the sale deed clearly showed the title of the Appellant. He also relied upon a Land Registration document. Mr. Fereira submitted that both these documents have not been properly considered by both the Courts. Mr. Fereira contended that the Land Inscription document, which has value of being considered as title deed by virtue of decision of the learned Single Judge of this Court in the case of *Smt. Josephine D'Costa (deceased) and Ors. vs. Khushali Govind Naik Desai and ors.*,¹ and by virtue of Articles 954 and 1867 of the Portuguese Civil Code, has not been considered in proper perspective. He submitted that the properties No.15406 and 15407 have been specifically mentioned under Land Inscription No.7669 which was on record. This submission also cannot be accepted. The learned District Judge has considered both, the Sale Deed, as well as the Land Registration document and has found that there is no link established by the Appellant of the property described in the Sale Deed, the Land Registration document with the suit property. If the plaint filed by the Appellant is seen, there is no reference to this particular land inscription number anywhere in the plaint. The suit property is

1. Second Appeal No.7 of 2001 dated 17 September 2004

described as Survey No.237/17. Both the Courts have held that the Appellant has failed to prove that what is in the ownership of the Appellant is this very Survey No.237/17. The Appellant may be an owner of the property specified in the Sale Deed or other documents, but for seeking an injunction based on title, he had to establish that these documents pertain to very same property which, both the Courts on assessment of evidence, found that the Appellant has failed to establish. Nothing is shown otherwise.

6. In these circumstances, there is no error in the Judgments of both the Courts. No substantial question of law arises. The Second Appeal is accordingly dismissed.

N.M. Jamdar, J.