

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 58 OF 2010

1. Shri Purso Narayan Gosavi,
(since deceased)
by his legal representatives
(a) Smt. Tarabai P. Gosavi,
(b) Nikita N. Gosavi,
(c) Prakash B. Gosavi,
(d) Ashwini P. Gosavi,
(e) Srikant R. Mathkar,
(f) Sridevi S.Mathkar,
All residents of Kalashi, Cotigaon,
Canacona Taluka, Goa.
 2. Smt. Tarabai Purso Gosavi,
 3. Shri Shankar Narayan Gosavi,
major and his wife,
 4. Smt. Mayawati Shanker Gosavi,
major,
 5. Shri Mahableshwar Narayan Gosavi,
major, and his wife
 6. Smt. Mangal alias Ashabai
Mahableshwar Gosavi, major,
 7. Shri Sadanand Narayan Gosavi,
major,
 8. Shri Krishna Narayan Gosavi,
major, and his wife;
 9. Smt. Radhabai Krishna Gosavi,
all residents of Kalsi, Cotiogaon,
Canacona Taluka, Goa.
- Appellants

V e r s u s

1. Shri Ganesh Raghoba Gosavi,
major,
2. Shri Pisso alias Zorgo Gopal Gosavi,
- 2a. Smt. Parvati Pisso Gosavi,
(both since deceased by their

legal representatives):

- 2b. Smt. Vimal Pisso Gosavi,
alias Vimal Ganapato Gosavi,
wife of late Ganapati Gosavi
daughter of late Pisso Gopal Gosavi,
- 2c. Shri Dayanand Ganapati Gosavi,
son of late Ganapati Gosavi,
- 2d. Smt. Saroji Dahanand Gosavi,
wife of Dayanand Ganapati Gosavi,
- 2e. Shri Indrajit Ganapati Gosavi,
son of late Ganapati Gosavi,
- 2f. Shri Raju Ganapati Gosavi,
son of late Ganapati Gosavi,

all r/o. H. No. 1155, Kalashi,
Cotigaon, Canacona, Goa.
- 2g. Smt. Suvama G. Gosavi,
alias Suvama Umanath Mathakar,
and her husband,
- 2h. Shri Umanath Mathakar,
All residents of Kakoda,
Curchorem, Goa.
- 3. Shri Mono Vithu Gosavi,
major (expired),
- 3a. Smt. Salu alias Laxmi M. Gosavi,
widow of late Mono V. Gosavi,
- 3b. Shri Vithoba M. Gosavi,
son of Shri Mono V. Gosavi,
- 3c. Smt. Sushila alias Rukmini V. Gosavi.
- 3d. Shri Chandrakant M. Gosavi,
(since deceased by his LR 3e)
- 3e. Smt. Kanchan C. Gosavi,
wife of Shri Chandrakant M. Gosavi,
- 3f. Shri Arun M. Gosavi,

- son of Shri Mono V. Gosavi,
- 3g. Smt. Vishanti V. Gosavi
widow of Shri Vithal Gosavi,
- 3h. Smt. Sandhya R. Gosavi,
wife of Shri Ratnakar Gosavi,
daughter of Shri Vithal Gosavi,
- 3i. Kum. Baby V. Gosavi,
daughter of Shri Vithal Gosavi,
- 3j. Smt. Jayashree R. Gosavi,
wife of Shri Rajaram Gosavi,
- 3k. Shri Rajaram Gosavi,
- 3l. Smt. Urmila A. Gosavi,
wife of Shri Anand Gosavi,
- 3m. Shri Anand Gosavi,
- 3n. Kum. Kalpana Gosavi,
daughter of Shri Mono V. Gosavi,
- 3o. Kum. Savita M. Gosavi,
- All residents of H. No. 1154/B,
Kalashi Poinguinim,
Canacona, Goa.
4. Shri Pundalik Sablo Gosavi,
- 4a. Smt. Lilavati Pundalik Gosavi,
major of age, housewife,
- 4b. Miss Sulaksha Pundalik Gosavi,
- 4c. Miss Manda Pundalik Gosavi,
- 4d. Miss Vidhya Pundalik Gosavi,
- 4e. Miss Nisha Pundalik Gosavi,
- all major of age,
and residents of H. No. 1344,
Polerm, Loliem,
Canacona, Goa.

..... Respondents

Mr. A. F. Diniz, Advocate for the Appellants.

Mr. M. P. Almeida, Advocate for the Respondents.

Coram :- F. M. REIS, J

Date : 13th January, 2017

ORAL JUDGMENT

Heard Mr. A. F. Diniz, learned Counsel appearing for the Appellants and Mr. M. P. Almeida, learned Counsel appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 12.07.2011 on the following substantial questions of law :

(i) Whether both the courts below have erred in holding that the Appellants had failed to prove their title to the suit property when the Respondents had not disputed the Appellants' title thereto but had pleaded that the suit property had been acquired benami also on behalf of the respondents ?

3. Mr. A. F. Diniz, learned Counsel appearing for the Appellants has vehemently pointed out that both the Courts below have erroneously come to the conclusion that the Appellants were not the exclusive owners of the property when it was the case of the Respondents that the great grandfather of the Appellants was given a grant by the Government as a Benami holder on behalf of the family members. Learned Counsel further pointed out that this itself suggests that the title of the Appellants has been established and, as such, the Courts below were not justified to pass the impugned Order and, inter alia, come to a conclusion that the Appellants have failed to establish their title in respect of the subject property.

Learned Counsel has taken me through the plaint as well as the written statement to point out that the issue of title of the Appellants were not seriously disputed and, as such, both the Courts below have erroneously come to the conclusion that the Appellants have failed to establish their title in respect of the subject property. Learned Counsel further pointed out that the Lower Appellate Court has failed to appreciate and scrutinize the evidence on record to erroneously come to the conclusion that the Appellants have failed to establish their title as well as exclusive possession of the subject property. Learned Counsel further submits that it is well settled that possession follows title and as title of the Appellants was accepted, the findings of the learned Judge that the Appellants have failed to establish their exclusive title in respect of the subject property are erroneous and deserves to be quashed and set aside. Learned Counsel has taken me through the findings of the Lower Appellate Court to point out that the learned Judge has failed to scrutinize the material on record whilst coming to the conclusion that the Appellants had no title to the property. Learned Counsel further pointed out that the Survey Records are also standing in the name of the Appellants and, as such, the presumption in law has to be drawn in favour of the Appellants herein. It is pointed out that the challenge to such Orders by the Respondents has been rejected.

4. On the other hand, Shri M. P. Almeida, learned Counsel appearing for the Respondents, has pointed out that though the Lower Appellate Court has failed to scrutinize the material on record as expected in a substantive First Appeal but, however, according to him, there are concurrent findings of fact that the suit property is in joint possession of the Appellants and the Respondents. Learned

Counsel further pointed out that the Respondents as well as the Appellants have residential house in different portion of the property which clearly show that the contention that the Appellants are exclusive owners of the property is without any basis. Learned Counsel further pointed out that the Respondents have also claimed that since the inception of the grant, the ancestors of the Respondents were enjoying the property along with the ancestors of the Appellants and in fact had acquired a prescriptive right over the portions enjoyed by the Respondents. Learned Counsel further pointed out that as both the parties have been enjoying the property in common, the question of granting any relief of permanent injunction nor of declaration would not arise in the present Appeal. Learned Counsel further pointed out that as such the substantial question of law is to be answered in favour of the Respondents.

5. I have given a thoughtful consideration to the rival contentions and I have also gone through the records. No doubt, the Lower Appellate Court, expected to examine every piece of material whilst rendering a finding on the points raised during the course of the hearing in the Judgment but, however, on perusal of the findings therein, it is found that the Lower Appellate Court has clearly noted different portions of the evidence of the witness to come to the conclusion that the fact that the Respondents have their residential houses in different portion of the subject property has been duly accepted and not disputed by the Appellants. On the basis of such material on record, it has been held that the Appellants and Respondents are enjoying the possession of the subject property. This concurrent findings of fact arrived at by the Courts below on the basis of the evidence on

record, cannot be re-appreciated by this Court in the present Second Appeal. In such circumstances, the findings of the Courts below that the Appellants and the Respondents are in joint possession of the subject property cannot be interfered with in the present Second Appeal.

6. In such circumstances, looking into the matter on record based on which the relief has been claimed by the Appellants, I find that the question of granting any permanent injunction as sought for by the Appellants, would not be justified. But, however, Shri A. F. Diniz, learned Counsel, may be justified to contend that the Courts below have not examined the claim of title of the Appellants in its proper perspective so also the defence of the Respondents has also not been considered by the Courts below whilst coming to the conclusion that the Appellants have failed to establish their exclusive title over the subject property. Keeping the issue of title open, I find that looking into the relief sought by the Appellants which ex-facie cannot be granted considering the concurrent finding of facts arrived at by the Courts below as the suit is not for a substantive relief for restoration of possession.

7. In such circumstances, keeping the issue of title raised by the respective parties open, the substantial question of law is answered accordingly.

8. The Appeal stands disposed of accordingly.

F .M. REIS, J.

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