

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 43 OF 2017

SHRI. BUDO CUSTA MOLIC AND ANR., ... Appellants
Versus
COMMUNIDADE OF MOLCORNEM,
REPRESENTED BY ITS ATT. THR. THE
ADMINISTRATOR OF COMUNIDADES., ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado,
Advocate for the appellants.

Coram:- F. M. REIS, J.

Date:- 20th April, 2017

ORAL ORDER

Heard Mr. S. D. Lotlikar, learned Senior Counsel
appearing for the appellants.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellants for declaration that they are owners in possession of the subject property by adverse possession came to be rejected.

3. Mr. S. D. Lotlikar, learned Senior Counsel appearing for the appellants has strongly disputed the manner in which the claim of the appellants of adverse possession has been rejected by the Courts below. The learned Senior Counsel further pointed out that the appellants are in possession of the subject property

and as such they are entitled for a relief to protect the possession.

The learned Senior Counsel thereafter has taken me through the judgments passed by the learned Trial Judge as well as by the learned Lower Appellate Court to point out that the suit is not maintainable as against the Comunidade based on adverse possession.

4. I have considered the submissions of the learned Senior Counsel appearing for the appellants and I have also gone through the records. Without going into the merits of the contentions raised by Mr. Lotlikar, learned Senior Counsel appearing for the appellants as to whether the appellants can claim to be in adverse possession of the property belonging to the respondent, I find that the appellants were the plaintiffs in the suit cannot seek a declaration with that regard in view of the judgment of the Apex Court reported in 2014(1) SCC 669 in the case of Gurdwara Sahib V/s Gram Panchayat Village Sirthala and Another, wherein it has been observed at para 8 thus :

" 8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is

arrayed as defendant that it can use this adverse possession as a shield/defence."

5. Taking note of the said observations, a suit for declaration of title by way of adverse possession itself is not maintainable.

6. Hence, on this ground alone, I find that there is no substantial question of law which arises in the present appeal for consideration. The issue as to whether the appellants can claim the adverse possession in the property of the respondent need not be examined in the present appeal which may be considered in appropriate proceedings in accordance with law. As such, the contention with that regard is left open. The appeal stands accordingly rejected.

F. M. REIS, J.

at*