

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 16 OF 2017

SHRI. JOHN SEBASTIAO FERNANDES AND
ANR., ... Appellants

Versus

MR. JOHN SANTAN D'SOUZA AND 12
ORS., ... Respondents

Mr Carlos Alvares Ferreira, Advocate for the Appellants.

Coram:- F. M. REIS, J.
Date:- 17th February, 2017

ORAL ORDER

Heard Mr. C. A. Ferreira, learned Counsel appearing for the
Appellants.

2. The challenge in the above Appeal is to the Judgments passed
by the Courts below whereby the suit filed by the Respondents was decreed
and the following reliefs came to be granted :

"Suit of the Plaintiffs is decreed with costs.

It is hereby declared the plaintiffs are the owners
in possession of the suit property.

By way of mandatory injunction the defendant
no. 1 and 2, their agents, servants and/or any

other person acting on their behalf are permanently restrained from trespassing or interfering with any part or portion of the suit property.

By way of mandatory injunction the defendant no. 1 and 2 are directed to restore the eastern boundary of the suit property and to remove the water pipeline laid by the defendants in the suit property and to remove the coconut saplings, banana plants, thorny bushes which they have illegally planted and spread by the defendant nos. 1 and 2 on the eastern side of the suit property.

The defendant nos. 1 and 2 are directed to forthwith to restore possession of the trespassed portion of the Suit property to the Plaintiffs.

The defendant nos. 1 and 2 are declare as trespassers of property bearing Survey no. 159/33 admeasuring 825 square metres.

Decree to be drawn up accordingly."

3. The Appeal preferred against the said Judgment before the Lower Appellate Court came to be dismissed.

4. Shri C. A. Ferreira, learned Counsel appearing for the Appellants, has pointed out that both the Courts below have misconstrued the title documents of the Appellants to erroneously come to the conclusion

that the Respondents have established their claim that the property has been encroached. The learned Counsel further pointed out that on the basis of the title documents produced by the Appellants, it clearly shows that the claim put forward by the Respondent is without any basis and, as such, the suit deserves to be dismissed. Learned Counsel has extensively taken me through the Judgments passed by the learned Trial Judge as well as the Lower Appellate Court to point out that both the Courts have misconstrued the facts on record to erroneously come to the conclusion that the Appellants have established their case. Learned Counsel has pointed out that the Appellants themselves have purchased one-third of the property from the Predecessor in Title of the Respondents and, as such, it was not open to the Respondents to contend that part of such property belonged to the Respondent. Learned Counsel as such submits that there are substantial questions of law arising for consideration in the above Appeal.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records. Both the Courts below have concurrently come to the conclusion that the claim of the Respondent has been duly established. The contention of the Appellants that part of the suit property belongs to the Appellants has been rejected in such concurrent finding of facts arrived at by the Courts below. There are no substantial questions of law arising out in the above Appeal.

6. The Appeal stands accordingly rejected.

F .M. REIS, J.

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