

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.295 of 2003**

1. Laxman Gopal Dessai,
(since deceased represented by Lrs)
(a) Mrs. Yamuna Laximan Dessai
and following as his only heirs;

(b) Mr. Gokuldas Laximan Dessai,
married to;

(c) Mrs. Gokuldas Laximan Dessai,

(d) Mr. Umesh Laximan Dessai,
married to;

(e) Mrs. Umesh Dessai,

(f) Mr. Srikant Laximan Dessai,
married to;

(g) Mrs. Srikant Laximan Dessai,

(h) Mr. Dilip Dessai,

(i) Mrs. Krishna L. Dessai;

(j) Mr. Vijay Kushali Teileicar,
married to;

(k) Mrs. Kushali Teileicar;
and

(l) Miss. Nalina Laximan Dessai,
All residents of Chaudi, Canacona-Goa

All represented by their Power of
Attorney, Appellant No.1(h), Mr. Dilip
Dessai, major, India National, resident
of Chaudi, Canacona-Goa.
2. Vithoba Purushottam Dessai
(since deceased, represented by
L.R's)

(a) Dr. Purushottam V. Dessai,
through his Power of Attorney holder,
Mr. Amol Umesh Faldessai,
major, resident of Chaudi,
Canacona-Goa

3. Balcrishna S. Naik Dessai,
major, married, Indian National,
resident of Chaudi,
Canacona-Goa. .. Appellants

V/s

1. Uttam Vithoba Naik Dessai,
(since deceased represented by Lrs.)
(a) Prakash Uttam Dessai;

(b) Mrs. Shakuntala Prakash Dessai;
Both residents of Mapusa,
Bardez- Goa.

(c) Ravi Uttam Dessai;

(d) Mrs. Geetanjali Ravi Dessai;
Both residents of House No.65/j/I/
Alpha Housing Complex, Bare Bhat
Arlem, Raia, Salcete- Goa

(e) Mr. Premanand Uttam Dessai;
resident of Dicarpale, Post Navelim,
Salcete-Goa.
(since deceased through Legal
representatives)

1(e)(i) Mrs. Shashikala Premanand Naik Dessai
of major age, widow of late Premanand
Uttam Dessai, Resident of Fatorda, Salcete,
Goa,

(ii) Mrs. Hema Premanand Naik Desai
of major age, married, daughter of
late Premanand Uttam Desai
Resident of Assolda, Quepem Goa,

(iii) Mr. Dnyaneshwar Raut Dessai

of major age, married,
Resident of Assolda, Quepem Goa,

(iv) Mr. Raj Premanand Naik Desai,
of major age, married, son of late
Premanand Uttam Desai
Resident of Fatorda, Salcette, Goa,

(v) Mrs. Reshma Raj Naik Dessai,
of major age, married,
Resident of Fatorda, Salcette, Goa,

(f) Mr. Uday Uttam Dessai;

(g) Mrs. Shubhidini Uday Dessai;
Both residents of LIG, 489, Rumdamal,
Near Masjid, Housing Board,
Davorlim- Goa.

(h) Mrs. Indu Vikram G. Dessai;

(i) Mr. Vikram G. Dessai
Both residents of raw House,
Mahanager, Maddel, Margao-Goa

(j) Mrs. Shashikala P. Dessai;
resident of Dicarpale, Post
Navelim Salcete- Goa.

(k) Mr. Laxman G. Fadte;

(l) Mrs. Sunanda Laxman Fadte
Both residents of House No.29,
Ward No.12, near Kamleshwar
Garage, Khorlim, Mapusa-Goa

- 2) Yesso Kalu Dessai,
(since deceased represented by Lrs.)
(a) Ulhas Kalu Dessai,
brother, resident of Chaudi,
Canacona, Goa.
- (b) Mrs. Lila Pautto Dessai,
sister,

(c) Mr. Pautto Dessai,
Both residents of Khotigao,
Canacona-Goa.

(d) Mrs. Prema Sukdo Dessai,

(e) Sukdo Dessai,
Both residents of Pan, Gaudongri,
Canacona-Goa

3) Camlabai V. Dessai,
major, Indian National,
resident of Chaudi, Canacona,
Goa.

4) Mr. Krishna L. Dessai,
major, married, Indian National,
resident of Chaudi, Canacona,
Goa

.. Respondents

Mr. V. R. Parsekar, Advocate for the appellant.

Mr. D. J. Pangam, Advocate for respondent nos.1(c) and 1(f).

CORAM :- C. V. BHADANG, J.

Reserved on : 26th April, 2018

Pronounced on : 2nd May, 2018

JUDGMENT :

This appeal arises out of a dispute under Section 30 of the Land Acquisition Act, 1894 (the Act, for short) for apportionment of compensation. The present appeal came to be admitted on 29/11/2003. During the pendency of the appeal, some of the respondents died and there are in all three Civil

Applications filed for bringing the Legal Representatives of the deceased respondents on record.

2. Shri Pangam, the learned Counsel for the contesting respondents, however, submitted that there was a suit filed by the party no.2 Uttam Naik Dessai for declaration that he is entitled to half of $3/5^{\text{th}}$ (i.e. $3/10^{\text{th}}$ share) of the compensation. That suit was filed against all the other interested parties. He submits that the suit was dismissed, which was challenged by the party no.2 before the learned District Judge. The First Appeal came to be allowed and the suit was decreed. The said judgment and decree has been confirmed by this Court in a Second Appeal. In other words, he submits that the matter stands covered and, therefore, the appeal may be taken up for final disposal.

3. Shri Parsekar, the learned Counsel for the appellants, in all fairness, had no objection for taking up the appeal for final disposal. He, however, submitted that the controversy in the appeal cannot be said to be covered by the decision in the Civil Suit filed by the party no.2 Uttam.

4. Be that as it may, by consent of parties, the appeal was taken up for final hearing. I have, accordingly, heard Shri

Parsekar, the learned Counsel for the appellants and Shri Pangam, the learned Counsel for the respondent nos.1(c) and 1(f). Perused record.

5. The only point, which arises is as to whether the dispute is covered by the decision in the Civil Suit filed by the party no.2 Uttam. If yes, what order ?

6. The brief facts are that 15700 square metres of land from out of property better known as 'Cuncungo Xetta' bearing land registration no.4561 of village Chapoli, Canacona Taluka, came to be acquired for construction of a minor irrigation tank. The Land Acquisition Officer passed an award on 03/09/1990. As disputes and differences arose between the parties as to apportionment of compensation, the matter came to be referred to the learned District Judge under Section 30 of the Act, which was registered as LAC No.103/1991. It appears that in a subsequent survey, the land was surveyed under survey nos.72/1, 72/2 and 72/3.

7. A Perusal of the impugned judgment shows that there were six interested parties, namely Laxman Gopal Naik Dessai (party no.1), Uttam Vithoba Dessai (party no.2), Vithoba

Purushottam Dessai (party no.3) Balkrishna S. Dessai (party no.4), Yeso Kalo Dessai (party no.5) and Shashikant Uttam Naik Gaonkar (party no.6). The impugned judgment further shows that party no.6 had expired and no legal heirs came forward and as such, the learned District Judge has recorded that the reference stood abated in so far as party no.6 is concerned. Party nos.1 to 3 and 5 as aforesaid were also dead and were represented by their respective legal representatives.

8. The Reference Court passed an award on 21/07/2003, the operative portion of which reads thus :

“The reference is partly allowed. The Lrs of Party No.1 are entitled to 1/3rd of the 2/5th share in the acquired land. Parties no.3,4 and 5 are equally entitled to the remaining portion of 2/5th part. The legal heirs of Party No.2 are entitled to 3/10th share of the acquired land. The balance amount if any, be refunded back to the Land Acquisition Officer.”

9. Feeling aggrieved, the appellants (i.e. party nos.1, 3 and 4) have come up in appeal. Essentially, the dispute is with the LR of party no.2 Uttam (respondent no.1).

10. It was submitted by the learned Counsel for the appellants that the dispute cannot be said to be covered or

governed by the outcome of the civil suit filed by the party no.2 Uttam.

11. On the contrary, it is submitted by Shri Pangam, the learned Counsel for the respondent no.1 that in the reference, the appellants themselves had claimed that, as the suit filed by the party no.2 is pending, the reference cannot be proceeded with.

12. The record discloses that party no.2 Uttam had filed Special Civil Suit No.139/91 (old), which was subsequently registered as Special Civil Suit No.79/2000 (new) *inter alia*, for a declaration that the plaintiff (party no.2) is entitled to half of 3/5th of the compensation awarded by LAO on 03/09/1990 in respect of Survey No.72/2 and for some consequential reliefs. The Trial Court dismissed the suit on 31/12/2001, which was challenged by party no.2 before the learned District Judge at Margao in Regular Civil Appeal No.50/2002. The appeal came to be partly allowed granting a declaration that the plaintiff (party no.2) is entitled to half of 3/5th share of the compensation. That was challenged by the appellants herein in Second Appeal No.93/2004, which has been dismissed on 12/04/2010. It can, thus, be seen that the claim of the party no.2 of having a share to the extent of half of 3/5th has attained finality.

13. The reference Court has also held that party no.2 is entitled to $3/10^{\text{th}}$ share of the acquired land, which is same as half of $3/5^{\text{th}}$.

14. It can, thus, be seen that the order of the Reference Court is in consonance with the outcome of the suit, which has attained finality. In that view of the matter, the solitary point is answered in the affirmative. The appeal is hereby dismissed, with no order as to costs. Decree be drawn accordingly.

C. V. BHADANG, J.

SMA