

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 67 OF 2006**

Goa Jain Mandal, A Society registered under Societies Registration Act, 1960, represented by Secretary of the Society with its office at Gosalia Building, Margao, Goa.

.... Appellant

Versus

1. Shri Yeshwant Lakhiman Pai Raikar, r/o Bandora, Ponda, Goa.

2. Mrs. Yeshwant Lakhiman Pai Raikar, wife of defendant no. 1, r/o Bandora, Ponda, Goa.

3. Smt. Nagraj Lakshmi Raju, wife of Nagraj Rama Krishna Mohan Raju, r/o Bandora, Ponda, Goa.

Dismissed as per order dated 18.03.2007

4. Shri Nagraj Rama Krishna Mohan Raju, r/o Bandora, Ponda, Goa.

5. Shri V.M. Venkara Shiva Rama Krishna Raju, r/o Bandora, Ponda, Goa.

Deleted as per order dated 08.03.2007

.... Respondents

Shri Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat Ghanekar, Advocate for the Appellant.

Shri J.P. Mulgaonkar with Ms. Siya Dhargalkar, Advocates for the Respondent Nos. 1 and 2.

CORAM : C.V. BHADANG, J.

Reserved on : 6th June, 2018

Pronounced on : 8th June, 2018

JUDGMENT:

On 22.03.2007, the present Second Appeal was admitted on the following substantial questions of law:

1. Whether, the judgment of the Appellate Court does not conform to the mandatory requirement of Order XLI, Rule 31(a) of CPC, in as much as, it fails to frame the points for determination ?
2. Whether, there is a failure on the part of the Appellate Court to take cognizance of the notification dated 04.03.1983, under the Goa Ancient Monuments and Archeological Sites and Remains Act, 1978 and Rules, 1980 framed thereunder, on the ground that the notification is subsequent to the filing of the suit ?
3. Whether, even the notification dated 04.03.1983, issued under the Act, is a law being under delegated legislation, it was obligatory on the Court to consider it in the light of Section 57 of the Evidence Act ?

2. During the course of hearing, the following two substantial questions of law came to be framed:

4. Whether, the Courts below erred in refusing to consider the case of demarcation in accordance with Article 2342 of the Portuguese Civil Code ?
5. Whether, in the absence of any title to establish the limits or the area belonging to each owner and in the absence of the controversy being decided, based on possession or by any other means, the Court ought to have directed demarcation of the property equally ?

3. I have heard the learned Counsel for the parties on the aforesaid questions of law and the appeal is being disposed of finally.

4. The brief facts necessary for the disposal of the appeal may be stated thus:

The appellant (original plaintiff) is a Society, registered (somewhere in the year 1971) under the Societies Registration Act. The appellant filed Special Civil Suit No. 8/1981, against the respondents (defendants) for demarcation, declaration and injunction.

The subject matter of dispute happens to be a land survey no. 5/4, admeasuring 6,925 square metres, better known as 'Piramol' situated within the jurisdiction of Village Panchayat Bandora, Tehsil, Ponda, Goa. There is a sketch annexed to the plaint (Exhibit-A). The specific case made out by the appellant is that the portion shown by letters A, B, C, D, O, P, Q, R, S, T, U, V, W, X, Y and Z, from out of land survey no. 5/4 (hereinafter referred to as the suit property), belongs to the plaintiff, while the remaining portion shown by letters D, E, F, G, H, I, J, K, L, M, N and O, admeasuring 1,301 square metres belongs to the defendant no. 1. It was contended that the plaintiff is entitled to get the suit property demarcated, so as to form a separate portion from out of survey no. 5/4.

5. According to the appellant, the plaintiff is having a temple namely, "Neminath" temple in land survey no. 5/3 shown

by letter "T" in the sketch, annexed to the plaint. The said temple is very old, existing for more than 700 years. It is submitted that there is one tank, which is part of survey no. 5/4. The temple maintains pujari for performing the duties and rituals in the temple. It was contended that there are fruit bearing trees in the suit property, which are being plucked by the plaintiff and their representatives for more than 30 years and the suit property is utilised by the appellant and its representatives for different religious ceremonies and other purposes. It was also contended that survey no. 5/3 (where the temple is situated), is away from the road, while the suit property is adjoining to the public road and in order to reach the temple, one has to necessarily pass, through the suit property.

6. It was contended that the suit property is shown as agricultural land, wherein construction or development is not permissible. It was contended that defendant no. 3, without any permission, started digging foundation in the suit property and on enquiry, it was learnt that defendant nos. 1 and 2, have sold a part of the suit property, admeasuring 2,000 square metres, in the south-east corner, to the defendant no. 3/respondent no. 3. It was contended that the respondent no. 3

had approached the BDO, Ponda to get sanction for erection of the poultry farm in the said 2,000 square metres of land, which is part and parcel of the suit property. It was contended that the sale deed, executed in favour of respondent no. 3, invades the rights of the appellant and the said sale deed is null and void.

7. By way of an amendment, it was further claimed that a certain part of the property was also sold to the respondent no. 4, which sale deed is null and void and is not binding on the appellant.

8. It is in these circumstances that the suit came to be filed, for the following substantive reliefs:

- a. The survey no. 5/4 be demarcated so as to separate there from a portion of 1,031 square metres area of the ownership of the defendant no. 1 and remaining of the plaintiff.
- b. The sale deed dated 06.03.1980 and conveyance registered in favour of the defendant no. 3 be declared null and void and not binding on plaintiff.
- c. The defendants, their agents, representatives and servants be permanently restrained by way of permanent injunction from:
 - i) Invading plaintiff's right,
 - ii) Interfering with the plaintiff's possession,
 - iii) Raising any construction land,
 - iv) Changing the nature of the land, in respect of suit property.

9. The respondent nos. 1 and 2, filed written statement (Exhibit-5) and an additional written statement (Exhibit-20) and resisted the suit on various grounds. It was contended that the appellant, on the basis of false and fraudulent entry in the name of "Goa Jain Mahamandal" are claiming interest in the suit property, although, neither the appellant nor the "Goa Jain Mahamandal" have any right, title or interest in the suit property. It was contended that as such, the appellant is not entitled to get the suit property demarcated as claimed. It was contended that the appellant has not shown as to how, it has become owner or is entitled to claim the suit property. It was denied that there was any entry in the record of rights in the name of the appellant.

10. The respondent nos. 1 and 2 have then set out the title history of the land in relation to the documents of description and inscription and have set out the manner, in which, they have acquired the suit property, in paragraphs 2 and 3 of the written statement.

11. It was next contended that there was an old, ruinous, abandoned and dilapidated structure, standing in the said land

in the north-west corner in the land cadastral survey no. 276. It was contended that the elder brother of the respondent no. 1, Xanum Daquia Poi Raicar, expired sometime in the year 1974, who was suffering from a terminal condition, three to four years prior to his death and was being treated at Mumbai. It was contended that the respondent no. 1 or his father were unable to attend the family matters on account of the ailment of his brother and during this time, they could not remain present before the survey officers, who surveyed the land under three sub-divisions, namely, 5/1, 5/3 and 5/4 and the father of the respondent no. 1 was shown as co-occupant of survey no. 5/4. It was contended that the "Goa Jain Mahamandal" was shown as co-occupant in survey no. 5/4 and when the respondent no. 1 first become aware of the said irregularity, he took steps to remove the name of the "Goa Jain Mahamandal" from the survey records. In short, it was denied that the appellant or "Goa Jain Mahamandal" is the owner of the suit property. All other adverse allegations about conduction of religious duties and ceremonies and plucking of fruits from the trees, in the suit property, have been denied.

12. On the basis of the rival pleadings, the learned Trial Court framed the following issues:-

1. Does the plaintiff proves that he is the owner in possession of the suit property covered by letters "A, B, C, D, O, P, Q, R, S, T, U, V, W, X, Y, Z" ?
2. Does the plaintiff proves that Goa Jain Mandal and Goa Jain Mahamandal is one and the same ?
3. Does the plaintiff proves that he is entitled to get a demarcation of the land so as to separate from survey no. 5/4 the portion of the ownership of defendant no. 1 from that ownership of the plaintiff in the manner shown in Exhibit "A" and described in paras ?
4. Does the plaintiff proves that the sale deed and conveyance is null and void and not binding on the plaintiffs ?
5. Does the plaintiffs proves that the construction done by the defendants invades right of the plaintiff ?
6. Does the plaintiff proves that he is entitled for the reliefs claimed ?
7. Does the defendant proves that entry of the plaintiffs name is wrongly done in record of rights in respect of survey no. 5/4 ?

13. The parties went to trial. On behalf of the appellant Pukraj Bumb was examined as PW-1 along with Rajaram Gaunekar (PW-2), Devidas Kondalkar (PW-3), Balchandra Kerkar (PW-4), Gurudatt Sadgiri (PW-5), Mangesh Deshpande (PW-6), while the respondent no. 1 examined himself as DW-1 along with Datta Tilve (DW-2), Manoj Bandodkar (DW-3) and Vijaykant Namshikar (DW-4). The parties also produced documents.

14. The learned Trial Court by a judgment and decree dated 22.11.2000, dismissed the suit. Feeling aggrieved, the appellant challenged the same before the learned District Judge in Regular Civil Appeal No. 6/2001. The learned District Judge, dismissed the appeal by judgment and decree dated 23.12.2005. Feeling aggrieved, the appellant is before this Court.

15. I have heard Shri Usgaonkar, the learned Senior Counsel for the appellant and Shri Mulgaonkar, the learned Counsel for the respondent nos. 1 and 2. With the assistance of the learned Counsel for the parties, I have gone through the record.

16. It is submitted by Shri Usgaonkar, the learned Senior Counsel for the appellant that the first Appellate Court, being a final fact finding Court, ought to have framed proper points for determination. It is submitted that it is also the requirement of Order XLI, Rule 31 of CPC. The learned Senior Counsel has submitted that the Appellate Court having failed to comply with the mandatory requirements of Order XLI, Rule 31 of CPC, has the effect of vitiating the judgment of the Appellate Court. It is

submitted that framing of issues/points is not an empty formality and is required for appreciating the rival contentions in the context of the findings recorded by the Trial Court and that, not having been done, has rendered the judgment of the Appellate Court susceptible to challenge.

17. It is next submitted that the Appellate Court failed to take cognizance of the notification dated 04.03.1983, under the Goa Ancient Monuments and Archaeological Sites and Remains Act, 1978 (Act, for short) and the Rules framed thereunder, on an erroneous ground that the notification is subsequent to the filing of the suit. It is submitted that the notification has been issued during the pendency of the suit and therefore, the Trial Court as well as the Appellate Court, ought to have taken cognizance of the notification. The learned Senior Counsel pointed out that the said notification is issued by the State Government, in exercise of the powers conferred under the Act and the notification being in the form of delegated legislation, it was obligatory on the Courts to consider the same in the light of Section 57 of the Evidence Act. It is submitted that the first Appellate Court has brushed aside the notification for the reasons that are not acceptable.

18. The learned Senior Counsel has then placed reliance on Article 2342 of the Portuguese Civil Code (Code, for short) in order to submit that where the title or possession does not establish the actual limits, the demarcation can be ordered, distributing the land equally. It is submitted that although, specific ground based on Article 2342 of the Code was raised before the Appellate Court, the same has neither been considered nor given effect to.

19. It is submitted that admittedly, there is a temple standing in survey no. 5/3, which is not in dispute. The learned Senior Counsel was at pains to point out that the temple cannot be without its own precincts, which in the present case, were situated in the suit property. The learned Senior Counsel has pointed out that there is a platform (chabutara) and also a tank in survey no. 5/4, which indicates the fact that the temple was associated with its own precincts. It is submitted that there are inscriptions carved on the stone, which have been deposed to by an expert witness, which shows that there was a grant in favour of the temple. It is submitted that this evidence and the other evidence of title and possession, could not have been brushed aside.

20. It is submitted that the Trial Court has also observed that the possibility of “Neminath” temple having some area in survey no. 5/4, cannot be ruled out. It is submitted that a similar observation has also been made while answering issue no. 6, where the Trial Court has observed that “Neminath” temple may have some right to survey no. 5/4. It is thus submitted that the Trial Court was in error in dismissing the suit. The Appellate Court, without framing any points for determination and without considering the evidence, has confirmed the judgment and order of the Trial Court.

21. The learned Senior Counsel also pointed out that the suit is primarily for demarcation and not for declaration of the title. It is submitted that insofar as the nexus of the appellant with the temple is concerned, it is submitted that “Neminath” temple is of the persons belonging to the Jain community and the appellant can protect the temple. The learned Senior Counsel submitted that there is no other body or society, which has come forward to stake the claim of ownership or otherwise and therefore, the suit deserves to be decreed.

22. On the contrary, it is submitted by Shri Mulgaonkar, the learned Counsel for the respondent nos. 1 and 2 that the

suit is essentially for declaration of title and the appellant has failed to establish any title to “Neminath” temple and the suit property and has also not established as to how, the appellant has any nexus with “Neminath” temple or the suit property. It is submitted that the reliance placed on the notification of the year 1983, under the Act, is misplaced and the notification cannot support the claim of title. It is submitted that the Trial Court after threadbare consideration of the evidence led by the appellant, as well as the respondents, has recorded the various findings of fact, which have attained finality and which are not amenable to challenge in a second appeal. It is submitted that the said finding is not affected by the notification, under the Act, which has come subsequent to the filing of the suit. The learned Counsel submitted that in fact, the notification takes away the substratum of the plaintiff's case. It is submitted that insofar as the entry in the occupant's column in Form I & XIV of the suit property is concerned, it is contended that the said entry, raises a rebuttable presumption, which is otherwise subject to the decision of the competent Court. It is submitted that the Courts below have rightly held that the appellant has failed to establish its title to the suit property and the nexus with “Neminath” temple. The learned Counsel was at pains to point out that the suit filed by the appellant is not in

representative capacity and is not filed on behalf of the members of the Jain community.

23. I have carefully considered the rival circumstances and submissions made and I do not find that any case for interference is made out.

24. I would first propose to deal with the questions at serial nos. 2 and 3. Strong reliance has been placed on behalf of the appellant on the notification dated 04.03.1983, issued under the Act. The object of the Act is to provide for the preservation of ancient monuments and archaeological sites and remains (other than those declared by or under any law made by the Parliament to be of national importance), for the regulation of archaeological excavations and for the protection of sculptures, carving and other objects, which are antiquities. Section 3 of the Act confers power on the Government to declare certain monuments etc. as protected monuments.

25. Section 4 of the Act provides for acquisition of rights in the protected monument, under which, the Director may, with the sanction of the Government, purchase or take a lease of, or accept a gift or bequest of, any protected monument.

Similarly, where the protected monument is without the owner, the Director may, by notification assume the guardianship thereof. Sub-section 5 of Section 4 of the Act provides that this shall not affect the use of any protected monument for customary religious observances. The Act also provides for acquisition of the protected monuments, where the Government apprehends that a protected monument is in danger of being destroyed, injured, misused or allowed to fall into decay.

26. By a notification dated 04.03.1983, the State Government, in exercise of the powers under Section 3 of the Act, has notified in all 42 archaeological monuments, which require protection under the Act. At serial no. 40, the following entry can be found in Schedule-I.

<i>Sr. No.</i>	<i>Name of the Monument</i>	<i>Village</i>	<i>Taluka</i>	<i>Survey No.</i>	<i>Sub. Div.</i>	<i>Ownership of Monument</i>
40	<i>Ruins of Jaina Basti</i>	<i>Bandora</i>	<i>Ponda</i>	5	1, 2, 3 & 4	<i>Private</i>

27. It appears that prior to the issuance of the said notification, a draft of the notification was published on 18.08.1982, under sub-section 1 Section 3 of the Act, inviting objections or suggestions to the finalisation of the notification. There is nothing on record to suggest that any of the parties

herein, lodged any objections or suggestions to the competent authority. Be that as it may, all that the said entry mentions is that there are some “Ruins of Jain Basti” in survey nos. 5/1 to 5/4 and the ownership of the monument is shown to be “private”. It can thus be seen that the notification neither refers to any particular temple nor to the ownership of any particular individual or a body. The notification also does not indicate the extent of the area, in which the “Ruins of Jain Basti” are comprised and at any rate, does not show, the appellant or any other public body, to be the owner, except saying that the ownership is “private”. It would now be necessary to consider the effect of sub-section 4 of Section 3 of the Act, which may be reproduced as under:

“3. Power of Government to declare certain monuments, etc. to be protected monuments or areas.—

(1)

(2)

(3)

(4) A notification published under sub-section (3) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the ancient monument or the archaeological site and remains, to which it relates, is a protected monument or a protected area for the purposes of this Act.”

It can thus be seen that a notification published under sub-section 4 of Section 3 of the Act, shall unless and until it is withdrawn, be “conclusive evidence”, of the fact that the ancient monument or the archaeological site remains, to which it relates, is a protected monument or a protected area for the purposes of the Act. It can thus be seen that the notification can only be conclusive evidence of the “Ruins of the Jain Basti” being an archaeological monument or an archaeological site and nothing more. It is difficult to see as to how, the said notification can support the claim of title of any individual or Society, to the suit property. Even otherwise, the notification cannot be the conclusive evidence of title, of any individual or entity, as the notification, does not set out the name of any individual or body. At the cost of repetition, it needs to be emphasized that all that the notification states is that the ownership is “private”. Thus, the notification by itself would not support the claim the ownership of any of the parties. It can neither help the appellant nor the respondents, except being conclusive evidence of the existence of the monument at the site.

28. Reliance placed on Section 57 of the Evidence Act on behalf of the appellant, in my considered view, is equally

misplaced. Section 57 of the Evidence Act provides for the facts of which the Court must take judicial notice and it sets out in all 13 categories of which the Court shall take judicial notice. It is submitted that the notification of the year 1983 is in the exercise of delegated legislative powers. In my considered view, the notification cannot be said to be issued in the exercise of delegated legislative powers, akin to the rule making power conferred on the State. The notification is issued in the exercise of the powers conferred under Section 3(1) of the Act. That apart, even as noticed earlier, the notification does not lend support to the claim of the appellant. All that the notification states and establishes is that there is a protected archaeological monument, under the Act, in the form of "Ruins of Jain Basti". It is however true that the notification could not have been brushed aside, on the ground that it has come subsequent to the filing of the suit. It is trite that any subsequent development can be taken note of and can be acted upon. However, for this reason alone, no interference is required, in as much as, even on consideration of the notification, no different conclusion can arise in the matter.

29. I would now propose to deal with the question nos. 4 and 5. Articles 2341 and 2342, which fall in Chapter I of Title

VII of the Code, read thus:

Article 2341

The demarcation shall be done in conformity of the titles of each of them, and, in the absence of sufficient titles required for the purpose, as per the limits established by possession of bordering properties.

Article 2342

Where the titles do not establish limits, or the area belonging to each owner, and the controversy cannot be decided based on possession, or by any other means before the Court, the demarcation shall be done distributing the land subject of dispute, equally.

It can thus be seen that under Article 2341 of the Code, the demarcation shall be done in conformity of the titles of each of the occupants and in the absence of sufficient titles, “required for the purpose”, as per the limits established by possession of bordering properties.

Under Article 2342 of the Code, where the titles do not establish the limits, or the area belonging to each owner and the controversy cannot be decided, based on possession or “by any other means”, before the Court, the demarcation shall be done distributing the land equally.

30. The alternate submission on behalf of the appellant is that, in the event, the demarcation cannot be done on the basis of the title or possession, the Court ought to have directed demarcation by dividing the property equally.

The entire survey no. 5/4 is admeasuring 6,925 square metres, out of which, the appellant is claiming an area admeasuring 5,624 square metres and according to the appellant, the respondents are entitled to an area of 1,301 square metres. The case made out in the plaint is that the demarcation should be made on the line shown by letters 'OD', in the plan annexed to the plaint. A specific query was made to the learned Senior Counsel for the appellant, as to on what basis such a claim is made. In other words, on what basis the appellant is claiming entitlement to an area of 5,624 square metres. It was submitted by the learned Senior Counsel for the appellant that, except on the basis of the claim of possession, there is no other basis for staking such a claim. In the present case, Form No. I & XIV of land survey no. 5/4 shows the name of the respondents and one "Goa Jain Mahamandal" as the owner. An issue, being issue no. 2, was framed by the Trial Court, as to whether, the appellant proves that "Goa Jain Mandal" and "Goa Jain Mahamandal", are one and the same. The Trial Court answered the issue no. 2 in the negative.

However, the First Appellate Court has found that it is merely a mistake on the part of the survey authority to add the word “Maha” and in survey records, many a times names are misspelt or some other words are added. It has further been found that there is no another entity by name “Goa Jain Mahamandal”. Thus, the finding recorded by the learned Trial Court in this regard has been reversed by the learned first Appellate Court. This finding of fact, has not been challenged on behalf of the appellant, during the course of the arguments and as such, has attained finality. Thus, we can safely proceed on the premise that Form No. I & XIV shows the name of the appellant and the respondents as occupants. It is now well settled, as has been held in the case of **State of Himachal Pradesh Vs. Keshav Ram and Others, AIR 1997 SC 2181** that the revenue records cannot form the basis for declaration of title, as they are essentially for fiscal purpose. The learned Trial Court after threadbare consideration of the evidence led by the appellant as well as the respondents has come to the conclusion that the evidence led by the appellant is not sufficient.

31. On the contrary, the respondents have set out the title history under which they have become the owners of the

land in paragraphs 2 and 3 of the written statement, with reference to the land registration record, the matriz record and the inventory proceedings of the year 1939. The learned Trial Court, while deciding the issue no. 1, has found that the said case made out by respondents along with the evidence led, is more probable and acceptable. I have carefully gone through the finding recorded on issue no. 1 and I find that the said finding properly recorded on the appreciation of evidence and confirmed by the first Appellate Court, is not susceptible to challenge in a second appeal.

32. I now come to Article 2342 of the Code. A bare perusal of the said article would show that it can apply and can be called into aid where the title or possession of the respective parties over a property are admitted or established, however, when such evidence of title or possession is not sufficient to establish the respective shares of the parties. It is only in such a case, that the Court can direct demarcation by distributing the land equally. In my considered view, Article 2342 of the Code, cannot apply to a case where one of the parties fails to establish the title or possession over the disputed land. In other words, Article 2342 of the Code, can apply where the title and/or possession is established or is not disputed, however, the

demarcation cannot be done on the basis of the evidence of such title or possession. It is only in such eventuality that the Court can direct demarcation of the land equally. It cannot be expected that Article 2342 of the Code envisages demarcation of the property in equal shares, even though, one of the parties fails to prove the title or possession over the disputed property. In the present case, as noticed earlier, the appellant has failed to establish its title or possession over the suit property and thus, cannot conceivably rely on Article 2342 of the Code to claim demarcation of land into equal proportion. Thus, in my considered view, reliance placed on Article 2342 of the Code is entirely misplaced. The points are answered accordingly.

33. On behalf of the appellant, reliance is placed on the decision of this Court in Second Appeal No. 74/2000 decided on 03.09.2010 (**Shri Dattaram Bhiku Warang & Another Vs. Shri Yeshwant Hari Warang & Others**). The said decision cannot take the case of the appellant any further. This Court after noticing the provisions of Article 2339 to 2344 of the Code has found that an “individual owner” or “usufructuary” or “possessor of the property”, has a right of demarcation of his property vis-a-vis the properties held by others (owners) adjoining his property. This Court has noticed that Article

2339, in fact, lays the foundation for Article 2340, whereas Article 2339 provides that the owner has right, which includes those of demarcation, of enclosure and of defence. All these articles presupposes that the ownership or possession is either admitted or proved and the provision cannot apply to a case where one of the parties has failed to establish the title or possession.

34. I would now propose to briefly deal with point no. 1. It is true that the first Appellate Court has not framed any points for determination, which is the requirement of Order XLI, Rule 31 of CPC. The question is what is the effect. This Court in the case of **Vatsalabai wd/o Vishwanath Nakhate & Others Vs. Madhaorao Laxmanrao Thakare & Another, 2005(1) Mh.L.J. 980** has held that failure of the first Appellate Court to formulate the questions, as required under Order XLI, Rule 31 of CPC, would indeed constitute a substantial question of law. However, when the appeal is heard on merits and the High Court is required to examine the question of reversal of the decree, on any such grounds, the Court has to examine as to whether, on account of failure of the first Appellate Court to formulate the question, as required under Order XLI, Rule 31 of CPC, has resulted into miscarriage of justice. This Court has

further found that in a situation of the present nature, the provisions of Section 99 of CPC cannot be lost sight of. Section 99 of CPC *inter alia* provides that no decree shall be reversed or substantially varied, nor shall any case be remanded in appeal on account of any error, not affecting the merits of the case or the jurisdiction of the Court. Now the question whether the failure to frame such points, has resulted into any miscarriage of justice or has affected the merits of the case, would depend upon facts and circumstances of each case. It is true that the first Appellate Court ought to have framed the points, as is required under Order XLI, Rule 31 of CPC. However, considering the findings recorded by me on point nos. 2 to 5, I do not find that any different conclusion can arise or any different result can ensue. Thus, I do not find that failure on the part of the first Appellate Court to frame the points has resulted into miscarriage of justice or has affected the merits of the case, within the meaning of Section 99 of CPC. For these reasons, failure on the part of the first Appellate Court, in this regard, in my considered view, would not affect the final outcome of the appeal.

35. This takes me to the last submission of there being no nexus of the appellant-Society with "Neminath" temple or

the suit property. The appellant-Society was formed in the year 1971. A specific query was made to the learned Senior Counsel for the appellant as to whether, the property in dispute is shown as property belonging to the appellant-Society in its record, to which the answer was in the negative. The Courts below, to my mind, have rightly come to the conclusion that the appellant has not established any nexus with “Neminath” temple or the property in dispute. Although, it was contended on behalf of the appellant that the suit was not for declaration of title, the prayer clause 33(a) belies the said contention. The said prayer clause would clearly show that the appellant is claiming “demarcation and ownership of the respondent no. 1” to the extent of 1,301 square metres and of the remaining land in the name of the appellant. In my considered view, the appellant has failed to establish the claim for demarcation, as claimed in the suit as also on the basis of Article 2342 of the Code.

In the result, the appeal is without any merit and is accordingly dismissed, with no order as to costs.

Decree be drawn accordingly.

C. V. BHADANG, J.

EV