

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.148 OF 2007**

1. Shri Ladu Ganesh Vetalkar,
since deceased represented by
his legal representatives.
- 1(a). Shri Raghunath Ladu Naik Vetalkar,
major of age, agriculturist,
- 1(b). Shri Anand Raghunath Naik Vetalkar,
major of age
- 1(c). Miss Anandi Raghunath Naik Vetalkar,
major of age,
- 1(d). Shri Eknath Ladu Naik Vetalkar,
major of age, service,
- 1(e). Smt. Shrimati Eknath Naik Vetalkar,
major of age,
housewife, Agriculturist,
- 1(f). Smt. Mali Nivratti Naik Vetalkar,
major of age, wife of late
Nivratti L. Naik,
- 1(g). Nivratti Ladu Naik,
since deceased represented by
his legal representatives
- (i) Shri Dayanand @ Daya N. Naik Vetalkar,
major of age,
r/o Assagao, Bardez-Goa
- (ii) Smt. Asha Arjun Shetye,
major of age,
married and her husband,
- (iii) Shri Arjun Sudhir Ahetyem
major of age,
both r/o Near Petrol Pump,
Naikwada, Calangute,
Bardez- Goa.

- 1(h) Shri Ganesh Ladu Naik Vetalkar
age about 46 years,
- 1(h)(a) Mr. Nilesh Ganesh Naik
- 1(h)(b) Mr. Amol Ganesh Naik
Both residing at H.No.360/2,
Katowada, Tuem, Pednem, Goa.
- 1(i) Smt. Sarojini Ganesh Naik Vetalkar
age about 40 years,
- 1(j) Shri Bhanudas @ Bhikaju Ladu Naik,
age about 42 years,
- 1(k) Smt. Mali Bhanudas Naik,
age about 39 years,
all r/o Tuem, Pernem-Goa.
- 1(l) Smt. Shakuntala Krishna Rao,
daughter of the Defendant No.1,
married, major of age and her
husband.
- 1(m) Shri Krishna @ Babu Ramchandra
Rao, major of age, Service,
both r/o Saligao, Bardez-Goa
- 2. Shri Mahadev Narayan Toraskar,
age about 50 years,
H.No. not known,
r/o Korgaon, Pernem, Goa.
- 3. Mr. Anand Tukaram Korgaonkar,
Major, married
- 4. Mrs. Anuradha alias Jyoti
Anand Korgaonkar,
major, married

Both r/o Barros Wado,
Sangolda, Bardez, Goa.
- 5. Mr. Rohidas Takaram Korgaonkar,

major, married

6. Mrs. Resha Rohidas Korgaonkar,
major, married

Both r/o Madedeus Waddo,
Sangolda, Bardez, Goa

.. Appellants

V/s

1. Shri Vishwanath Bhikaji Vetalkar,
Major, employed in police department
(deceased)
- 1(a) Shri Rajan Vishwanath Naik Vetalkar
(son)
- 1(b) Shri Ravindra Vishwanath Naik Vetalkar
(son)
Both r/o Tuem, Pernem Taluka, Goa.
2. Smt. Kalyani V. Veralkar
major, housewife,
both r/o Tuem,
Taluka Pernem.
3. Smt. Anusaya Shripad Kalangutkar
major, Housewife, residing at
Vadaval, Taluka Bicholim
(deleted)
4. Shri Shripad Mahadeo Kalangutkar
major, ex-serviceman,
residing at Vadaval,
Taluka Bicholim
5. The State Government of Goa,
through the Chief Secretary having
office at Secretariat, Panaji.
6. Smt. Parvati Mahadev Parab,
since deceased represented by her
legal representatives
the respondents nos.7 to 9
7. Shri Janardan Mahadev Parab,
age about 40 years,

H.No. not known,
r/o Mopa, Pernem, Goa.

8. Smt. Kunda Janardan Parab
age about 35 years,
H.No. not known,
r/o. Mopa, Pernem, Goa
9. Smt. Nirabai Mahadev Toraskar,
age about 45 years,
H.No. not known,
r/o Korgao, Pernem, Goa.
10. Smt. Vatsala Nandaji Naik,
age about 30 years,
H. No. not known,
r/o Arose, District Sindhudurg,
Maharashtra.
- (a) Amit Nandaji Naik
Major of Age,
R/o H. No. Not known
Mavoli Wadi, Near Mavoli
temple, Arose, Dist.Sindhudurg,
Maharashtra
11. Shri Nandaji Babali Naik,
(deceased)
age about 35 years,
H. No. not known,
r/o Arose, District Sindhudurg,
Maharashtra.
12. Shri Aba Gopal Palyekar,
since deceased represented
by his legal representatives
- 12(a) Janaki A. Palyekar,
age about 80 years,
(deleted in terms of order
dated 09/7/2010)
- 12(b) Kashinath A. Palyekar,
age about 55 years,
mason,

12(c) Rajeshri K. Palyekar,
age about 50 years,

12(d) Vijay A. Palyekar,
age about 51 years,
mason,

12(e) Nirmala V. Palyekar,
age about 47 years,
mason,

12(f) Eknath A. Palyekar,
age about 48 years,
mason,

12(g) Manda A. Paleykar,
age about 46 years,
mason,
(deleted as per order
dated 15/01/2009 in
MCA 894/08)

All r/o H. No. not known,
Korgaon, Sukale, Pernem,

12(h) Narayan Gad,
age about 50 years,
Agriculturist,

12(i) Vimal Narayan Gad,
age about 40 years,

both r/o H.No.not known,
Parra, Mapusa.

12(j) Uday Shetgaonkar,
age about 48 years,
Police Constable,
(deceased)

12(j)(a) Ms. Rakhi Uday Shetgaonkar,
r/o H.No.not known, Morjim,
Pernem, Goa.

- 12(k) Manda Uday Shetgaonkar
age about 35 years,
Both r/o H. No. Not Known,
Morjim, Pernem, Goa.
13. Smt. Janaki Aba Palyekar
age about 80 years,
H.No. Not known,
r/o Kargaon, Sukale,
Pernem,
since deceased represented
by her legal representatives
the defendant nos.12(a) to (k)
14. Shri Tukaram Kadu Koragaonkar
(since deceased through legal heirs)
- 14(a) Mr. Ulhas Tukaram Korgaonkar,
major, married
- 14(b) Mrs. Vasanti Ulhas Korgaonkar
major, married both r/o Boros Wado,
H. No.47, Sangolda, Bardez, Goa.
15. Smt. Gangavati (Leelavati)
Tukaram Korgaonkar (since deceased)
age about 60 years,
H.No. Not known,
r/o Sangolda, Mapusa, Goa
16. Smt. Tulshi Sitaram Raut (deleted)
(Amendment carried out as per order
dated 15 Dec 2015)
age about 65 years,
H.No. not known,
r/o Bastora, Mapusa, Goa.
17. Shri Santosh Sitaram Raut,
age about 40 years,
Service, H. No. not known,
r/o H. No. Not Known, Bastora,
Mapusa, Goa
18. Smt. Vishaya Santosh Raut,
age about 30 years,

H.No. Not known,
r/o Bastora, Mapusa, Goa

19. Shri Prakash Sitaram Raut,
age about 30 years,
H. No. Not Known,
r/o Bastora, Mapusa, Goa
20. Smt. Revati Prakash Raut,
age about 65 years,
H. No. Not Known,
r/o Bastora, Mapusa, Goa
21. Smt. Vinanti Manohar Naik, (deleted)
(Amendment as per order dated
15/12/15)
age about 35 years,
H. No. Not Known,
r/o Bastora, Mapusa, Goa
22. Shri Manohar Tukaram Naik,
age about 40 years,
H. No. Not Known,
Bastora, Mapusa, Goa
23. Shri Sitaram (Nana) Sukdo Kotkar,
(deceased) (Amendment carried
out as per the order dated 2/7/2010)
age about 50 years,
Agriculturist,
H.No. not known,
r/o Amerem, Pernem, Goa.
24. Smt. Sitabai Sitaram Kotkar,
age about 45 years,
H.No. not known,
r/o Amerem, Pernem, Goa.
25. Shri Jairam Sukdo Kotkar,
age about 46 years,
H. No. not known,
r/o Amerem, Pernem, Goa.
26. Smt. Jayanti Jairam Kotkar,
age about 40 years,

- H.No. not known,
r/o Amerem, Pernem, Goa.
27. Shri Suryakant Sukdo Kotkar,
age about 42 years,
H.No. not known,
r/o Amerem, Pernem, Goa.
28. Smt. Lalita Suryakant Kotkar,
age about 38 years,
H. No. not known,
r/o Amerem, Pernem, Goa.
29. Shri Ramdas Sukdo Kotkar,
age about 39 years,
Security Guard,
H. No not known,
r/o Amerem, Pernem, Goa.
30. Smt. Shubhangi Ramdas Kotkar,
age about 35 years,
H. No. not known,
r/o Amerem, Pernem, Goa.
31. Shri Mohan Sukdo Kotkar,
age about 32 years,
Govt. Servant,
H. No. not known,
r/o. Amerem, Pernem, Goa
32. Smt. Mohini Mohan Kotkar,
age about 26 years,
H.No. not known,
r/o Amerem, Pernem, Goa.
- 33 Smt. Sumati Rama Desai,
age about 40 years,
H. No. not known,
r/o Ibrampur, Pernem, Goa.
- 34 Shri Rama alias Uttam Desai,
age about 47 years,
H.No. not known,
r/o Ibhrampur, Pernem, Goa. .. Respondents

Mr. Nitin Sardesai, Senior Advocate with Ms. N. Shirodkar, Advocate for the appellants.

Mr. A. D. Bhobe and Ms. S.Bhobe, Advocates for the respondent nos.1(a), 1(b) and 2.

Mr. V. Sardesai, Additional Government Advocate for respondent no.5.

CORAM :- C. V. BHADANG, J.

DATE : 10th January, 2018

ORAL JUDGMENT :

The challenge in this Appeal is to the judgment and decree dated 22/03/2007, passed by the learned Trial Court in Civil Suit No.283/2004 (old RCS No.117/1981). That was a suit filed by the respondent nos.1 to 4 for correction of the Survey records and for perpetual injunction. The suit was initially filed against the sole defendant (since deceased), now represented by some of the private respondents, who are the legal heirs. Subsequently, the Government and defendant nos.3 to 32 were arrayed as party defendants to the suit. For the sake of convenience, the parties are referred to in their original capacity.

2. It is the case of the plaintiffs that the father/ father-in-law of the plaintiffs i.e. late Bhikaji Ladu Vetalkar was granted a plot of land by the Government as an 'Alwara No.416' on

25/09/1929 and since then, Bhikaji Vetalkar was in occupation and possession of the said plot, which is now surveyed under No.65/0 of village Tuem. It was submitted that the original defendant had no right in the suit property and his name is wrongly recorded in the survey records. Some time in the month of December, 1980, the plaintiff no.1 and his brother Jairam came to know that the name of the defendant no.1 is appearing in the survey records and on the basis of the said entry, the defendant no.1 had forcibly entered into the suit property. The matter was reported to the police and subsequently, the suit came to be filed for following reliefs :

- "i) declare that there shall be entries of only two names, viz. of Plaintiff No.1 and of K Jairam Bhikaji Vetalkar in the record of rights in respect of survey No.65/0;*
- ii) order that the name of the Defendant be deleted from the said record of rights;*
- iii) pass an order of Perpetual Injunction, thereby restraining perpetually the Defendant, his agent, sons, servants, person or persons on his behalf from interfering in any manner with the suit property;*
- iv) pass any other order as may be deemed fit and proper in the circumstances of the case."*

3. The original defendant no.1 filed his Written Statement and claimed that he is the son of late Bhikaji Vetalkar, who was

given in adoption to late Ganesh Vetalkar, who is the brother of late Bhikaji. It was contended that late Bhikaji and late Ganesh were staying together as a joint family, of which Bhikaji was the Manager. It was contended that the suit property was asset of the joint family and the suit property was jointly developed by late Bhikaji as well as the defendant no.1 and his sons. The learned Trial Court framed issues (which were subsequently re-framed) as under :

- “(1) Whether the plaintiffs prove that they are in exclusive possession of the suit property ?*
- (2) Whether the plaintiffs prove that they are entitled for the relief claimed by them ?*
- (3) What relief ? What order ?”*

4. The parties led evidence. The learned Trial Court answered the issue no.1 in the affirmative and found that the issue no.2 is partly proved. In that view of the matter, the suit came to be decreed in terms of prayer clauses (ii) and (iii) of the plaint. Feeling aggrieved, the appellants are before this Court.

5. I have heard Shri Nitin Sardessai, the learned Senior Counsel for the appellants, Shri Bhobe, the learned Counsel for the respondent nos.1a, 1b and 2 and Shri V. Sardessai, the learned Additional Government Advocate for the respondent no.5.

6. It was submitted by Shri Nitin Sardessai, the learned Senior Counsel for the appellants that the Trial Court ought to have accepted the case of adoption as put forth on behalf of the contesting defendant no.1 (since deceased). It is submitted that in any event, once the Trial Court had refused to grant prayer clause (i) of the plaint, the subsequent relief of deletion of the name of the defendant and perpetual injunction could not have been granted. On behalf of the appellants, reliance is placed on the decision of this Court in the case of **Evorcio Sindulfo Visitacao Da Conceicao Souza Eremita And Smt. Succorina Souza Eremita Vs. Mrs. Maria Conceicao Edilda De Souza Proenca And Mr. George De Souza Proenca**; 2005(1) Goa L. R. 47 and **Nicolau Rosario Goes Vs. Joaquim Manuel Aries Gomes**; MANU/MH/2170/2010, in order to submit that the Trial Court could not have granted decree in terms of prayer clause (ii) as has been held by this Court in the aforesaid decisions. Except this, no other contentions are raised.

7. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent nos.1a, 1b and 2 that there is no evidence produced to show that the defendant no.1 was the son of Bhikaji Vetalkar, who was given in adoption to Ganesh Vetalkar.

It is submitted that the learned Trial Court has rightly refused to accept the case of the defendant no.1 and has decreed the suit. In so far as the relief granted in terms of prayer clause (ii) is concerned, it is submitted that this Court may pass appropriate order in view of the decision in the case of **Evorcio Suza Eremita** and **Nicolau Goes** (supra).

8. I have carefully considered the rival circumstances and the submissions made.

9. The record discloses that the suit land was allotted to late Bhikaji on the basis of Alwara No.416 of 1929 for an annual grant of Rs.6.50. The record also shows that the said land is now surveyed under No.65/0 of village Tuem. Under the said Alwara, Bhikaji was the sole allottee. The defendant no.1 admitted the contents of para 2 of the plaint. The only defence, which was raised, was that Bhikaji and his brother Ganesh were staying together as a joint family and the suit property was the asset of the joint family. There is absolutely nothing on record to show that the land was jointly allotted in the name of Bhikaji and Ganesh or in the name of any other member of the joint family as claimed by the defendant no.1. There is also no evidence brought on record to show that the defendant no.1 was given in adoption to

late Ganesh, the brother of Bhikaji as late Ganesh was not having any issue. The learned Trial Court has rightly refused to accept the claim of oral adoption as put forth on behalf of the defendant no.1. There is also no evidence that the defendant no.1 was in possession of the suit property. In that view of the matter, no exception can be taken to the decree to the extent it decrees the suit in terms of prayer clause (iii). In so far as the decree in terms of prayer clause (ii) is concerned, this Court has consistently held that in view of Section 97 of the Goa Land Revenue Code, the Revenue entries made in the record of rights are required to be corrected by the Mamlatdar/ Talathi. This Court in the case of **Evorcio Souza Eremita** (supra) has held that the Civil Court should have left the issue of removing/ deleting the name of the defendant to the Talathi on the basis of an application submitted by the plaintiff. The said decision has been followed in subsequent decision of this Court in the case of **Nicolau Goes** (supra). In such circumstances, I find that the part of the impugned decree to the extent it decrees the suit in terms of prayer clause (ii), needs to be set aside.

10. In the result, the appeal is partly allowed. The impugned decree to the extent of prayer clause (ii) of the plaint is hereby set aside. The decree granting permanent prohibitory

injunction is hereby confirmed. It would be open to the respondent nos.1a, 1b and 2 to approach the Revenue Authorities for correction/ deletion of the name of the original defendant no.1 from the revenue record. In the circumstances, the parties to bear their own costs. Decree be drawn accordingly.

C. V. BHADANG, J.

SMA