

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 126 OF 2017**

Shri Chandrakant Kudtarkar,
son of Shri Khema Kudtarkar,
major of age, r/o Khaskil Wada,
Taluka-Sawantwadi,
District Sindhadurga,
Maharashtra.

.... Appellant.

V e r s u s

1. Shri Laxman Shiva Parab,
son of Shiva Parab, major of age,
H. No.47/11, Ward no.3,
Near Gawas Flour Mill,
Headland Sada, Mormugao, Goa,
represented herein by his
Next friend Mr. Rajendra Laxman Parab,
son of Shri Laxman Parab,
aged 45 years, married,
resident of H. No.47/11, Ward no.3,
Near Gawas Flour Mill, Headland Sada,
Mormugao, Goa (since deceased through legal heirs)

1a. Ms. Laxmi Laxman Parab (wife)
widow of Laxman Parab, major of age

2. Mr. Chandrashekar L. Parab (son)
son of Laxman Parab, major of age, married
and 15 others

... Respondents

Coram:- C. V. BHADANG, J.
Date:- 22nd June 2018.

Adv. Abhijeet Kamat for the Appellant.
Adv. Abhay Nachinolkar for Respondent nos.1 to 6 (b).

Oral Order:

This second appeal is against the concurrent findings of both the courts below decreeing the suit filed by the respondents.

2. I have heard the learned counsel for the appellant and the learned counsel appearing for the respondents nos. 1 to 6 (b). Perused record.

3. The appellant has framed the following draft substantial questions of law:

A. Whether the learned District Court erred in holding that the facts were undisputed when the appellant had raised a specific challenge in the appeal to the order discarding his written statement?

B. Whether the suit had abated in the absence of the legal heir of the defendant no.5 in the suit having not been brought on record after her death?

C. Whether the Courts below acted with material irregularity in not relying on the report submitted by the Court Commissioner?.

4. Admittedly, the written statement filed by the appellant was not taken

on record as it was filed beyond time. That order was not challenged during the pendency of the suit by the appellant. That apart even the appellant did not lead any evidence. Although the appellant cross examined the respondent PW1, has failed to cross examine the surveyor. No independent evidence was also led on behalf of the appellant. In so far as the substantial question of law at (c) above, the record discloses that it was the appellant who had objected to the report of the Court Commissioner. Thus the appellant cannot now contend that the Courts below have acted with material irregularity in not relying on the report submitted by the Court Commissioner. It is apparent that the appellant cannot be allowed to appropriate and reprobate. In so far as the substantial question of law at (b) is concerned, the appellant being the husband of the original defendant no.5 and as her legal representative was already there on record. Thus it is not possible to accept that the suit had abated. On carefully going through the order passed by the learned trial court and the first appellate court, I do not find that the second appeal raises any substantial question of law. The appeal is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

Ap/-