

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 42 OF 2019

GOPAL DATTA WARIK (DELETED AS PER
ORDER DTD. 1/5/16) AND 9 ORS. ... Appellants

Versus

CRUZINHO JOAQUIM D'SOUZA AND 14
ORS. ... Respondents

Shri Siddharth Samant, Advocate for the appellants.

Shri S.S. Kantak, Senior Advocate with Shri P. Talaulikar,

Advocate for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 18th November, 2019

ORAL ORDER:

Heard Shri Siddharth Samant, learned Advocate for the appellants and Shri S.S. Kantak, learned Senior Advocate for the respondents.

2. It was the contention of Shri Samant, learned Advocate for the appellants that the appellant as the original plaintiff had purchased the property pursuant to the Sale Deed dated

31/12/1953 comprising of the Survey nos.36/14(part), 36/17 and 36/10(Part) in an area of about 8100 sq.mts. The respondents/ defendants had staked claim to the Survey no.36/10 by virtue of two Sale Deeds and declaration of tenancy. His suit was dismissed and so to the appeal by the Appellate Court. He invited attention to the issues framed by the Trial Court in its judgment and submitted that despite findings in his favour the suit came to be dismissed and the appeal came to be dismissed by the Appellate Court. He invited attention to the substantial questions of law and contended that it was a fit case to admit the appeal and formulate the substantial questions of law.

3. Shri S.S. Kantak, learned Senior Advocate on behalf of the respondents submitted that the suit as filed by the appellant was for title. There had been a declaration in favour of the respondents although tenancy revision was pending at the instance of the owner against whom such tenancy claim was raised by his party. He adverted to the judgment and submitted that there were no clear findings at the instance of

the Trial Court to show that the property purchased by the appellant pursuant to the Sale Deed dated 31/12/1953 was corresponding to the Survey holding no.36/10(part) admeasuring an area of 8100 sq mts. He also invited attention to the proposed substantial questions of law and submitted that there was not a single question of law on the claim of title at the instance of the appellant and there was no case made out in the appeal of the appellant which was liable for the dismissal.

4. i have considered their submissions and besides perused the judgment under challenge which was affirmed by the First Appellate Court. Although, it has been claimed by the appellant that the suit property surveyed under Survey no.36/10(part) forms a part of the property purchased pursuant to the Sale Deed of 1953, nonetheless looking to the tenor of the judgment, there are no findings in the plaintiff's favour to show that the said property 36/10(part) corresponds to that purchased by the plaintiff/appellant pursuant to the Sale Deed of 1953. A cursory perusal of the judgment passed by the Trial

Court rather substantiates the contention of Shri Kantak, learned Senior Advocate that the plaintiff has miserably failed to establish that the property purchased pursuant to the Sale Deed in fact corresponds to one of the Survey holding 36/10 (part) which is the suit property. Moreover, looking to the tenor of the questions formulated on behalf of the appellant, no question has been formulated which reflects any claim to title of the appellant to the suit property. The appellant has not made out a case for the admission of the appeal and in view thereof, no substantial questions of law arise and the appeal accordingly stands dismissed.

NUTAN D. SARDESSAI, J.

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