

IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 56 OF 2018.

LAURENCA SIQUEIRA
PINTO AND ANR.,

... Appellants.

Versus

CRISPINA BORGES
AND 7 ORS.,

... Respondents.

Mr. J. Lobo, Advocate for the appellants.

Mr. Adish Halarnkar, Advocate for respondent nos.2,3 and 4.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date :-11th July 2019.

ORDER

Heard Mr. John Lobo, learned Advocate for the appellants and Mr. Adish Halarnkar, learned Advocate for the respondent nos.2,3 and 4.

2. The above appeal challenges the judgment and order passed by the Courts below whereby suit filed by the appellants came to be dismissed. It was a suit simpliciter for declaration without seeking any consequential reliefs in view of Section 34 of the Specific Relief Act.

3. The learned Civil Judge, Junior Division Margao dismissed the Regular Civil Suit No. 174 of 2016 on 20.9.2016 and the appeal came to be dismissed by the District Judge on 07.02.2018.

4. Mr. Lobo, learned Counsel appearing for the appellants pointed out that there are several survey numbers in matriz no.5739 which includes the subject matter of the suit being surveyed under No.179/7. It is the case of the defendants/respondents that survey no.179/7 falls within matriz no.5754.

5. Learned Counsel further points out that both the Courts below have failed to appreciate the evidence in the correct prospective and erroneously rejected the documents on record. It is contended that plaintiffs have discharged their burden in order to ascertain the suit property which defendants did not rebut.

6. Learned Counsel has extensively taken me through the findings of the trial Court as well as the First Appellate Court by

contending that there is perversity in the findings arrived at and therefore appeal deserves consideration.

7. I have considered the submissions of the learned Counsel and have gone through the records.

8. The suit filed by the appellants is for declaration, burden, is, therefore, on the appellants to establish whether the subject property bearing survey no.179/7 is included in the gift deed relied upon by the appellants. Both the Courts below, upon appreciation of evidence on record, have concurrently come to the conclusion that appellants have failed to establish their claim over the suit property. Apart from that, from the perusal of the survey record in respect of survey no.179/7, it cannot be disputed that property stands in the name of the respondents. That apart, perusal of the gift deed *inter alia* discloses that 2/3rd of the property known as “Anvanllem” was gifted in favour of the appellant no.1. PW2 Vaikunth Keshav Kamat, who is a surveyor has identified 2/3rd of the suit property from 1/3rd which was not gifted to the appellants. The Lower Appellate Court, while examining the appeal

preferred by the appellants has also taken note of the inconsistency in the evidence of PW2 recorded in his cross examination. Both the Courts below have upon appreciation of the evidence on record, come to the conclusion that appellants have failed to establish their claim over the suit property bearing survey no.179/7. There is no material on record produced by the appellants to disclose that the suit property was included in the gift deed. Once 2/3rd of the property has not been clearly identified by PW2, the question of claiming any declaration on the basis of such evidence in favour of the appellants does not arise. Both the trial Court as well as the Lower Appellate Court have rightly concluded that the appellants have failed to establish their claim over the subject property. Merely because the respondents have failed to establish their case would not mean that the appellants would be entitled for declaration.

9. As already stated above, it is a suit for declaration simpliciter wherein plaintiffs would not be entitled for the same under Section 34 of the Specific Relief Act without claiming any further relief in accordance with law. No consequential reliefs have been sought by the appellants.

10. In such circumstances, I find no merits in the above appeal which accordingly stands dismissed.

PRITHVIRAJ K. CHAVAN, J.

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