

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO.6 OF 2010
WITH
FIRST APPEAL NO. 8 OF 2010**

FIRST APPEAL NO.6 OF 2010

1 SHRI KANTU SHANKAR DESSAI,

Son of Shankar Dessai, major in age,
businessman and his wife, residing at
H.No.168, Ward Veroda, Cuncolim,
Salcete, Goa.

2 SMT. SHAILA KANTU DESSAI,

wife of Shri Kantu Dessai, major in
age, housewife, residing at H.No.168,
Ward Veroda, Cuncolim, Salcete, Goa. ...

Appellants/
Orig.
Defendants
No.1 &2.

V/s.

1 SOCIEDADE AGRICOLA DOS
GAUNCARES DE CUNCOLIM E VERODA

having its office at Ward No.9, in front
of Our Lady of Health Church,
Cuncolim, Salcete, Goa, Herein
represented by its President,
Moducora B.N. Dessai, major in age,
Resident of Flat No.5, 1stFloor, Var-
Mahalaxmi Apts., Comba, Margao, ...
Salcete , Goa.

Respondent/
Original Plaintiff

WITH

FIRST APPEAL NO. 8 OF 2010

1 SHRI KANTU SHANKAR DESSAI,

Son of Shankar Dessai, major in age,
businessman and his wife, residing at
H.No.168, Ward Veroda, Cuncolim,

Salcete, Goa.

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| 2 | SMT. SHAILA KANTU DESSAI,

wife of Shri Kantu Dessai, major in age, housewife, residing at H.No.168, Ward Veroda, Cuncolim, Salcete, Goa. ... | Appellants/
Orig.
Defendnats
No.1 &2. |
| V/s. | | |
| 1 | SOCIEDADE AGRICOLA DOS
GAUNCARES DE CUNCOLIM E VERODA

having its office at Ward No.9, infront of Our Lady of Health Church, Cuncolim, Salcete, Goa, Herein represented by its President, Moducora B.N. Dessai, major in age, Resident of Flat No.5, 1 st Floor, Var-Mahalaxmi Apts., Comba, Margao, ...
Salcete , Goa. | Respondent/
Original Plaintiff |
| 2 | RUKMINIRAMA STEEL ROLLINGS
PVT.LTD.

(Melting Division), a company registered under the Companies Act, 1956, with its office at Plot No.L-17, Cuncolim, Industrial Estate, Cuncolim, ...
Salcete, Goa. | Respondent/
Orig. Defendant
No.3. |

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira, Advocate for the petitioners.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Keny, Advocate for respondent No.1.

**Coram:- S. C. GUPTE &
PRITHVIRAJ K. CHAVAN, JJ.**

Date:- 20th June 2019

ORAL JUDGMENT: (Per S.C. Gupte,J.)**First Appeal No.6 of 2010**

First Appeal No.6 of 2010 challenges a judgment and decree passed by Adhoc District Judge-I, Fast Track Court-I, South Goa at Margao. The decree is passed in a Special Civil Suit filed by the respondent herein (original plaintiff) seeking a declaration of invalidity of a Lease Deed executed on its behalf by its erstwhile President in favour of the appellants (original defendants).

2. The burden of the plaint is that the Lease Deed was purportedly executed by the President of the plaintiff-society without any authority. It is submitted that the object of the society, contained in its bye-laws, provides for acquisition by purchase or lease of immovable properties and their cultivation directly or by agreement by auction as established in the internal statute of the society. It is submitted that the present lease granted in favour of the defendants was for development of the property and not for agricultural use and was opposed to the object of the plaintiff-society.

3. The defendants in their written statement have contested this claim of the plaintiff. The defendants do not admit that the bye-laws

of the society did not permit the President of the society or any other person to create a lease. The defendants deny that the lease in question was either illegal or contrary to the object of the plaintiff-society.

4. In the impugned judgment the learned District Judge, whilst ruling on issue No.1, which was the main and pivotal issue in the Special Civil Suit, held that on perusal of the Lease Deed, it was seen that there was no mention by the President of the plaintiff-society in the Lease Deed that he was authorised by any resolution of the administrative committee of the plaintiff to enter into the subject Lease Deed with the defendants. The learned Judge held that fixation of lease rent of ₹500/- per year for such a huge area of land given for development itself proved that the act of the President was contrary to the interest of the plaintiff. The learned Judge held that the evidence produced on record suggested that the Lease Deed executed in favour of the defendants was in contravention of rules and regulations of the plaintiff-society and had caused irreparable loss to the plaintiff and was an abuse of authority by the President. The learned Judge, accordingly, held that the plaintiff had proved its case of nullity and invalidity of the subject Lease Deed. The other issues framed in the suit merely followed the decision of the Court on

issue No.1, since they concerned the reliefs to be granted to the plaintiff-society based on the decision on that issue.

5. Learned Counsel for the appellants (defendants) submits that the act of the plaintiff-society in creating a lease in favour of the defendants cannot be termed as an ultra vires act. Learned Counsel submits that it has come in evidence that the plaintiff society had created a number of such leases in favour of residents of the village. Learned Counsel submits that so far as the authority of the President is concerned, the bye-laws or charter of the society authorised him to represent the society both within and outside the Court in all matters save and except those which involved important steps and which were prescribed in the internal statute of the society. Learned Counsel submits that the doctrine of indoor management requires that onus to prove want of authority and vitiation of the act of the society or a corporate body on account of such want, is clearly on the plaintiff who approaches the Court for impugning the subject act. The learned Counsel relies on the authority of **Lakshmi Ratan Cotton Mills Co. Ltd. V/s. J.K. Jute Mills Co. Ltd.** [AIR 1957 Allahabad 311 (V 44 C 96 May)] in support of his submissions.

6. Mr. Lotlikar, learned Senior Counsel appearing for the respondents (plaintiffs), submits that firstly there is no contest so far

as the defendants are concerned that there was in fact no resolution of the administrative body of the plaintiff-society or conferment of any particular power by any resolution of the society on the President for execution of the subject lease. Learned Counsel submits that the plaintiff in this case cannot be asked to prove the negative, that is to say, that there did not exist any authority in the President to execute the Lease Deed on behalf of the society. Learned Counsel submits that no particular provision has been pointed out by the defendants that the President could act on behalf of the society in a matter such as this. Learned Counsel submits that if it was the case of the defendants that the internal statute of the plaintiff-society did not contain any restriction for execution of a lease on behalf of the society by its President, it was for the defendants to seek production of that document at the trial. Learned Counsel submits that when a property is to be transferred, there must be a specific authority for such transfer. Learned Counsel also relies upon the objects of the society and submits that these objects militate against the defendants' case of a duly authorized Lease Deed in their favour. Learned Counsel lastly submits that the very fact that the Lease Deed of a period of 99 years, which can be termed as nothing but conveyance of title, was executed for a meagre consideration of

₹500/-per annum as lease rent, suggests the fraudulent nature of the transaction.

7. At the very root of the controversy in the present case are the matters of execution of the subject Lease Deed and the authority of the person to execute the Deed on behalf of the owner, namely, the society. The charter of the society, which is on record, suggests clearly that the society shall be represented by a Manager acting as the President of the Administrative Committee in all cases, whether in Court or outside and whether actively or passively. The only restriction against such Manager or President is that he shall not take any initiative on important subjects prescribed in the internal statute of the society without the resolution of the Administrative Body. There is indeed nothing in the charter or otherwise to show that the society is forbidden by law or as a matter of contract from creating a lease of its property in favour of any villager. In fact, if anything, the evidence on record suggests that there were a number of other leases created by the society in favour of villagers of properties owned by it. Once it is held that the act of the society in creating the lease in favour of the defendants is not ultra vires, the question of authority of any particular office bearer of the society to act on its behalf in that respect, is really a matter of its internal management.

A person who deals with a society or corporate body must no doubt familiarize himself with the constitution of the society or corporate body(in case of a company, it would be its Memorandum and Articles of Association), but once it is found that there is no restriction on the authority of the person to execute the act in such constitution, there is no further duty on the person to enquire into the internal management of the society or the corporate body and assess whether or not due procedure has been followed for executing the act in accordance with the rules of management applicable to the society or corporate body, as the case may be.

8. Our Courts have ruled on the subject, which is broadly described as the doctrine of indoor management, in a number of cases. The case of Lakshmi Ratan Cotton Mills Co. Ltd.(supra), cited by learned Counsel for the appellants, is a case in point. The Allahabad High Court in that case has held that a creditor dealing with a trading company is required by law to be conversant with the terms of its Memorandum and Articles of Association and no more. If it is found that the transaction of loan into which the creditor is entering is not barred by the charter of the Company or its Articles of Association, and could be entered into on its behalf by the person executing it, he is entitled to presume that whatever formalities are

required to be complied in connection therewith, have been duly complied with. A bona fide creditor, in the absence of any suspicious circumstances, is entitled to presume that such formalities such as passing of a resolution, etc., have been duly complied with. A transaction entered into by the borrowing company under such circumstances cannot be defeated merely on the ground that no resolution was in fact passed. The passing of such resolution is a mere matter of indoor or internal management of the company and its absence, under such circumstances, could not be used to defeat the just claim of a bona fide creditor; such creditor being an outsider or a third party and an innocent stranger is entitled to proceed on the assumption of its existence; he is not expected to know what happens within the doors that are closed to him. Where the act is not "ultra vires" the statute or the company, such creditor would be entitled to assume the apparent or ostensible authority of the agent to be a real or genuine one. He could assume that such person had the power to represent the company and if he proceeds on that basis, he would be protected by the doctrine of indoor management.

9. In the present case, as we have noted above, the charter of the plaintiff-society clearly authorises its President to represent it in and out of Court in any matter, whether actively or passively, save

and except those important subjects which are prescribed in the internal statute of the society. In respect of these latter subjects, the President cannot act except with a resolution of the administrative body of the society. This being clearly the charter of the society, the defendants were entitled to assume that the President had the requisite authority. If the defendants, acting on such assumption, entered into the subject lease, they are protected by the doctrine of indoor management.

10. If it is the plaintiff's case that the President in fact did not have such authority because the subject was one which was prescribed in the internal statute of the society, it was indeed for the plaintiff to produce and prove such internal statute. Neither in the Trial Court nor in this Court is there any attempt made by the plaintiff to produce or prove any such internal statute. In the premises, it must be assumed that such internal statute entailing restrictions on the President to act or take initiative in the matter does not exist.

11. Learned Counsel for the respondent-plaintiff is not right in submitting that the onus in such a case is upon the defendants, who assert the existence of such authority in the President. The lease is an executed act here; it has been a registered Lease Deed. If it is the case of the plaintiff that this Lease Deed was executed on its

behalf by someone who did not have the authority to do so, it is for the plaintiff to prove such a case at the trial. The question of burden of proof really goes by this primary consideration: If no evidence were to be led before the Court at the trial, who would lose? It is a foregone conclusion that in our case, if there were no evidence before the Court, it is the plaintiff who would fail. The onus to show lack of authority and vitiation of the subject Lease Deed on that account was, in that case, clearly on the plaintiff as someone who questioned the execution of that deed.

12. There is one more reason why the onus was on the plaintiff in the present case. Under Section 106 of the Evidence Act, the burden of proving any fact which is especially within the knowledge of any person is upon that person. Its own internal statute was a matter which was clearly within the special knowledge of the plaintiff. If it was its case that having regard to this internal statute, the executant of the deed could be said to be lacking in authority to do so, it was indeed for it to prove such fact. The plaintiff, as we have noted above, has made no such attempt. The internal statute has, in fact, till date, not seen the light of the day.

13. The argument that the Lease Deed was executed for a meagre rent of ₹500/- per annum and was, therefore, clearly fraudulent, is

neither here nor there. Though this was mentioned in the plaint, the plaintiff did not have any issue framed in this regard. Anyway, there is no evidence either to show that ₹500/- in this case would be an unacceptably meagre rent. Community properties held by Comunidade's or societies of villagers are meant for the use of the villagers and not for making profits. It is not in dispute that the defendants are villagers of the same village. Anyway, these are matters of evidence and if no evidence is led in that behalf, surely no relief can be granted on that basis either.

14. In the premises, the Trial Court has clearly misapplied the law of burden of proof and has also entered findings, which are clearly contrary to the record of the case. The Trial Court could never have come to the conclusion that the plaintiff has made out a case of lack of authority in its President to execute the Lease Deed; as we have noted above, the burden of proving such lack was exclusively on the plaintiff and it woefully failed in discharging it.

15. The impugned order of the learned Ad-hoc District Judge is accordingly set aside and the suit of the plaintiff is dismissed. In the facts of the case, there shall be no order as to costs.

16. The companion appeal, namely, First Appeal No.8 of 2010, involves a similar decree and judgment passed by the Trial Court in a companion Special Civil Suit. That suit was in respect of a similar Lease Deed in favour of the defendants in respect of another piece of land. The basis, on which the suit was filed, was more or less the same as the basis on which the suit described above was filed. So also, the basis of the judgment delivered by the Trial Court is the same as the one in the case above. Mr. Lotlikar, learned Senior Counsel appearing for the respondent/ plaintiff, submits that in addition to the invalidity of the Lease Deed on account of lack of authority on the part of the executant, the plaintiff has in this case raised a plea of unlawful sub-letting by the defendants. Though the plaintiff has mentioned the case of subletting, there is no issue framed in that behalf. Learned Counsel submits that this is not a matter of contest since the sub-lease was never contested. Be that as it may, there still has to be an issue about the sub-lease and particularly, the lessor's entitlement to determine the Lease Deed on account of breach of its terms, if any such sub-letting can be said to be such a breach. In this case, as in the case discussed above, the prayer was for declaration of the Lease Deed as null and void. It did not seek any relief on the basis that the lessor was entitled to

determine the lease on the basis of a breach committed by the lessee by unlawfully sub-letting the property. That was neither what the plaintiff went before the Court with nor what the defendant was called upon to show cause to. Naturally, therefore, that was not what the Court was called upon to rule on. But, Mr. Lotlikar would submit, there was a reference to the sub-lease in the plaint coupled with a prayer for recovery of possession of the leased property. That is stretching the things a bit too far. A stray reference in the plaint to sub-letting and a prayer for recovery cannot be treated in the manner we do by adding two and two to arrive at four. It is as plain as could be that prayer for possession is but a prayer consequential upon the declaration of nullity sought in the main prayer. It has effectively no connection with the plea of unlawful sub-letting. There is no plea of determination of lease by the plaintiff of as a result of such sub-letting and a plea for recovery of possession of the property based on such determination. There is, naturally, no evidence in support of any such plea at the trial. In the premises, this additional ground has no merit and does not require us to take a view different from what we have taken in case of First Appeal No.6 of 2010. For the reasons discussed in the case of First Appeal No.6/2010, this appeal also deserves to be allowed and is allowed accordingly. The

decree passed in the suit in favour of the plaintiff is quashed and set aside and the suit is dismissed.

17. The amount deposited by the appellants as a condition of interim relief in pursuance of the order passed by this Court on 04/08/2010 deserves to be refunded with accrued interest to the appellants. It is ordered accordingly.

PRITHVIRAJ K. CHAVAN, J.

S. C. GUPTE, J.

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