

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.189 OF 2008

Forest Department,
Government of Goa, represented by its
Deputy Conservator of Forests,
Margao, South Goa. ...Appellant.

Versus

1. The Administrator of Comunidades
South Goa, Margao.
2. Comunidade of Naquerim,
Taluka Quepem, Goa. ...Respondents.

**Mr. D. J. Pangam, Advocate General with Ms. Susan Linhares,
Addl. Govt. Advocate *for the Appellant.***

None for Respondent No.1.

**Mr. A.D. Bhobe, with Mr. Pavithran A.V., Ms. K. Govekar,
and Ms. A. Fernandes, Advocates *for Respondent No.2.***

CORAM: M. S. SONAK, J.

Reserved on : 13th October 2021

Pronounced on 14th October 2021

JUDGMENT :

1. Heard Mr. D. Pangam, learned Advocate General who
appears along with Ms. Susan Linhares, Addl. Govt. Advocate for

the appellant and Mr. A.D. Bhobe, who appears along with Mr. Pavithran for respondent No.2.

2. This appeal is directed against the judgment and decree dated 17th March 2006, made by the Additional District Judge, Fast Track Court – II, South Goa, at Margao (Trial Court), dismissing the appellant's Civil Suit No.126/2004 (new). The appellant-Forest Department had applied for the following reliefs in the suit :

“(a). For declaration that the plaintiff is the owner in possession of suit property bearing Survey No.150, having an area of 1,05,000 Sq. Mtrs., situated in village Naquerim of Quepem Taluka and further declaration that the name of the defendant No.2 has been wrongly recorded in suit property.

(b) For direction to the Mamlatdar of Quepem/Talathi or to the authorised Officer, under the Land Revenue Code be ordered to delete the name of the defendant No.2 from the suit property, under survey No.150 of village Naquerim of Quepem taluka; and to include the name of the Forest Department in suit property under survey No.150 of village Naquerim of Quepem taluka in occupant's column of form No. I &-XIV and other records maintained by them.

(c) For Permanent injunction restraining the defendants, their agents or any person/s acting through them, etc. from

interfering with the suit property in any manner whatsoever.

(d) For any other relief as this Hon'ble Court may deem fit and proper.

(e) For costs.”

3. In this case, defendants no.1 and 2 filed a common written statement on 15/1/2000. This written statement is signed by the Administrator of Comunidades-defendant no.1 only. There is no signature of defendant no.2. But, defendant no.2 has verified this written statement. This is the position verified from the original record and proceedings.

4. Based on the pleadings, the Trial Court framed the following issues :

(1) Whether the plaintiff proves that he is the owner in possession of the suit property bearing survey no.150, having an area of 1,05,000 square metres?

2. Whether the plaintiff proves that the name of the defendant in survey records is erroneous?

3. Whether the plaintiff proves that the defendants interfered with the suit property?

4. Whether the defendants prove that the same is barred by limitation?

5. Whether the defendants prove that the suit is bad for non-joinder of necessary parties.

5. The parties led both, oral as well as documentary evidence. The Trial Court, vide the impugned judgment and decree dated 17th March 2006, dismissed the suit, holding that the same was barred by limitation and also holding that the appellant-Forest Department had failed to prove its title and consequently, its case. Hence, the present appeal.

6. Mr. D. Pangam, the learned Advocate General submitted that the finding on limitation is *ex facie* perverse because, the Trial Court proceeded on the basis that the limitation for filing such a suit was 3 years, or at the most, 12 years. He pointed out that in terms of Article 112 of the Schedule to the Limitation Act, for any suit by or on behalf of the State Government, the period of limitation is 30 years. He submitted that even, otherwise, the suit was filed well within 3 years from the date of accrual of the cause of action and mere changes in survey records are not determinative of the accrual of the cause of action. The learned

Advocate General in this connection relied on *Daya Singh and another vs. Gurdev Singh (Dead) by LRs. and others*¹

7. The learned Advocate General submitted that the Trial Court, in this case, has failed to advert to and apply the provisions of Section 14 of the Goa Land Revenue Code, 1968 (said Code) which hold that the properties, which are not the property of any person, are hereby declared to be the property of the Government. He submits that the appellant was, therefore, not required to produce any title records. He submits that in any case, the appellant had produced evidence of title, and the same was quite incorrectly excluded from consideration by the learned Trial Judge. He submitted that in this case, the defendants failed to prove their title or for that matter, their possession and, therefore, the suit ought to have been decreed by the Trial Court.

8. The learned Advocate General submitted that a specific defense was raised by the defendants about ownership, but this defense was never made good by the defendants, having regard to the provisions of Section 14 of the said Code and law laid down by the Hon'ble Supreme Court in *R. Hanumaiah and another*

1. (2010) 2 SCC 194

*vs. Secretary to Government of Karnataka, Revenue Department and others*² the suit ought to have been decreed.

9. The learned Advocate General also relied on the decision of the Hon'ble Supreme Court in *State of Goa vs. Narayan V. Gaonkar and others*³ to submit that mere record of names as co-owners in survey records is never sufficient to establish the title. The learned Advocate General submitted that this decision upholds the position that even matríz documents are not title documents, but rather only documents for fiscal purposes.

10. The learned Advocate General also relied on the Judgment and Order dated 12/1/2012 passed by the learned Single Judge of this Court in *Comunidade of Balli vs. Vithoba Mahadev Dessai and others*⁴ to submit that since the defendant-Comunidade, in this case, had failed to produce 'tombo' book, adverse inference about its claim to be drawn in this matters, as well.

11. The learned Advocate General submitted that the appellant had produced in evidence old Forest records, in which the suit property has been recorded as a national park or government

2. (2010) 5 SCC 203

3. (2020) 15 SCC 233

4. First Appeal No. 133/2005

forest. He submits that there was no dispute about identification as such and the boundaries of the suit property as pleaded, were substantially established by the appellant. He submitted that the evidence led by the parties has not been appreciated or evaluated by the Trial Court, properly.

12. The learned Advocate General submitted that there was no non-joinder of necessary or proper parties. He submitted that the claims of so-called tenants, are pending before the Mamlatdar and are not disposed of. He submits that the Comunidade cannot create any oral lease and further, the provisions of the Tenancy Act do not apply against government lands. He submits that issue no.5 was incorrectly answered by the learned Trial Judge.

13. The learned Advocate General also submitted that the findings on possession, are perverse. He submitted that the possession over only a portion of the suit property is sought to be proved through the possession of some third parties who claim to be tenants. He submits that Comunidades cannot create oral tenancy and, in any case, such issue is pending before the appropriate authority.

14. The learned Advocate General submitted that the impugned judgment and decree is liable to be set aside for all the

aforesaid reasons and the suit of the appellant-plaintiff is liable to be decreed in its entirety.

15. Mr. Bhobe, the learned Counsel for respondent No.2- Comunidade of Naquerim, submitted that the contention based on Section 14 of the said Code, was never raised before the Trial Court. He submitted that Section 14 is a self-contained Code and if the appellant wished to benefit from the presumption under Section 14 of the said Code, then, the appellant was required to take out proceedings before the Collector under Section 14(3) of the said Code. He submits that though a suit may not be expressly or implicitly barred under the provisions of Section 14 of the said Code, there was no question of taking the benefit of the presumption under Section 14 in the proceedings before the Civil Court, in the first instance. He relies on the decision in *Vasudev Vasant Gaonkar vs. The Bicholim Municipal Council and others*⁵ in support of this contention.

16. Mr. Bhobe, without prejudice to the aforesaid, submitted that in this case, there is no identification of the suit property and, in any case, the boundaries of the suit property bear no correlation whatsoever with the so-called title documents produced by the appellant. He pointed out that in the plaint as

5. Writ Petition No.493/2017 decided on 6th March 2018

originally instituted, one set of boundaries were pleaded. He pointed out that thereafter, the plaint was amended and the boundaries pleaded were given up and substituted with a different set of boundaries. He pointed out that the witnesses on behalf of the appellant, however, miserably failed to correlate the boundaries pleaded, with the boundaries indicated in the so-called title documents produced by the appellant. He relied on the provisions of Section 101 of the Evidence Act to submit that the burden lies on the party asserting a particular fact. He submits that since this burden was never discharged by the appellant, the onus never shifted on the defendant. He submits that the Trial Court was, therefore, justified in dismissing the suit. He relies on *Rangammal vs. Kuppuswami and another*⁶ in support of his contention.

17. Mr. Bhoje submitted that the name of defendant No.2- Comunidade was also recorded in the survey conducted in the year 1972-73. He submitted that there is a presumption about such entries and the appellant has failed to rebut this presumption. He submitted that since the survey entries were promulgated in the year 1976, the suit instituted in the year 1998, was *ex facie* barred by Law of Limitation. He submitted

6. (2011) 12 SCC 220

that this was also a case of non-joinder of necessary parties and the suit was correctly dismissed on this ground as well.

18. For all the aforesaid reasons, Mr. Bhobe submits that this appeal is liable to be dismissed.

19. Having regard to the rival contentions, pleadings of the parties, and the impugned judgment and order made by the Trial Court, the following points arise for determination :

(i) Whether the Trial Court was right in holding that the suit instituted by the appellant-plaintiff was barred by limitation?

(ii) Whether the appellant failed to identify the suit property or, in any case, correlate the boundaries of the suit property as pleaded, with the title documents relied upon by it?

(iii) If, the aforesaid point is determined against the appellant, effect of the same on the reliefs applied for in the suit?

(iv) Whether the Trial Court was right in ignoring the provisions of Section 14 of the Goa Land Revenue Code, 1968 and non-suiting the appellant-plaintiff for alleged failure to prove title to the suit property?

(v) Whether the matríz documents relied upon by defendant No.2-Comunidade pertain to the suit property

and, in any case, whether they could have been regarded as documents of title?

(vi) Whether adverse inference was liable to be drawn against defendant No.2-Comunidade for failure to produce the Tombo books in evidence to prove their title to the suit property?

(vii) Whether the finding of the Trial Court that the suit was incompetent for non-joinder of necessary parties, is legal and valid?

20. In this case, the Trial Court has concluded that the suit which was instituted by the appellant, was barred by limitation because, the survey was conducted in the year 1972-73 and promulgation of survey records, was some time in the year 1976. The survey records indicate the name of the appellant as well as defendant No.2-Comunidade in the occupant's column. The Trial Court has reasoned that the suit as instituted in the year 1998 was, therefore, barred by limitation.

21. From the perusal of the impugned judgment and decree, it is quite clear that the learned Trial Judge has not even bothered to find out which article in the schedule to the Limitation Act would apply to a suit instituted by or against the government. The impugned judgment and decree refer to no article from the schedule and, therefore, there is no clarity as to whether the Trial

Court regarded the period of limitation as 3 years or 12 years or 20 years. However, it is quite clear that the Trial Court, did not even advert to the provisions of Article 112 in the schedule to the Limitation Act which provides that for any suit by or on behalf of the State Government, the period of limitation is 30 years and the time from which such period begins to run is when the period of limitation would begin to run under the said Act against a like suit by a private person.

22. The suit, in the present case, was instituted by the Government and, therefore, Article 112 in the schedule to the Limitation Act was attracted. In terms of this article, the period of limitation was 30 years. Therefore, even if the reasoning based on entries in the survey records promulgated in the year 1976, is to be accepted, the suit which was instituted in the year 1998 was well within the prescribed period of limitation. The Trial Court, therefore, clearly erred in holding that the suit was barred by law of limitation.

23. Besides, the period of limitation did not commence from the date of promulgation of the survey records. Even, the promulgated survey records, do not exclude the appellant, but only include the name of defendant No.2-Comunidade as a co-occupant in the occupant's column. It is well settled that the mere

existence of an entry in the revenue record may not give rise to a cause of action in every case. The right to sue accrues when there is a clear and unequivocal threat to infringe the right of the plaintiff.

24. In this case, the appellant-plaintiff had pleaded that such clear threat arose only on 7/8/1995, when the office of the Range Forest Officer of the concerned range, received a notice in Tenancy Case No.2/95 from the Mamlatdar of Quepem and when it was realized that an erroneous entry had been made in the survey records. This averment is to be found in paragraph 10 of the plaint. This averment is answered in paragraph 13 of the written statement, in the following terms :

“13. With reference to para 10, it is denied that the Plaintiff have any cause of action to file the suit.”

25. The aforesaid means that the factual averments about the appellant obtaining knowledge about the erroneous entry in the survey record only on 7/8/1995, have not even been denied in the written statement. In paragraph 13 of the written statement, the case of the defendant is that the appellant did not have any cause of action to file the suit and not that the suit was barred by limitation.

26. In *Daya Singh* (supra), the Hon'ble Supreme Court has held that the mere existence of an adverse entry in the revenue records, does not give a cause of action for instituting a case. The right to sue accrues when there is a clear and unequivocal threat to infringe the right. In the case before the Supreme Court, a compromise was entered into between the parties in 1972 for sharing of the suit property. The revenue entries wrongly entered were discovered for the first time by the appellant-plaintiffs in the year 1990. The suit was filed in the year 1990 itself and the Hon'ble Supreme Court held that the Courts below, including the High Court, proceeded entirely on a wrong footing that the cause of action arose on the date of compromise. The Hon'ble Supreme Court held that whether or not the compromise decree was acted upon or whether delivery of possession had taken place, had to be decided by the Trial Court before it could come to a proper conclusion that the suit was barred by limitation.

27. In this case as well, the Trial Court, without even advertent to the pleadings, has gone by the partial adverse entries in the survey records and quite incorrectly concluded that the suit was barred by limitation. The Trial Court proceeded on the basis that the limitation was of 3 or 12 or 20 years without indicating it. The Trial Court, however, failed to notice Articles 112 of the schedule to the Limitation Act which is quite clear in that the

period of limitation in the suit instituted by the government is 30 years. The finding in the judgment and decree about the suit being barred by limitation is, therefore, liable to be set aside.

28. Now, the next point to be determined is, whether there was a failure on the part of the appellant to identify the suit property or, in any case, to co-relate the boundaries of the suit property as pleaded, with the title documents relied upon by the appellant.

29. From the pleadings, it is clear that the suit property has been described in the plaint, whether before its amendment or after, by reference to its name, survey number, area, and boundaries. In the plaint, as originally filed, the suit property was described as "Tembi" also known as "Tembeacho Dongor" bearing survey No.150, situated in Village Naquerim of Quepem Taluka and having an area of 1,05,000 sq. meters.

30. In the plaint, as originally filed, the suit property was described to be bounded as follows :

East : by limit of Dabem and Devasthan of Shree Saunsari of Naquerim.

West : by private property named Moslofondo of Eduardo Xavier Santan de Almeda of Velim.

North : by private property named Temlita of Pandhu Devli and other of Nquerim and also another private property.

South : by Demarcated Forest Land.

31. However, in terms of order dated 8/10/2003, the plaint was amended and, after the amendment, though there is no change to the name/s, survey number, and the area of the suit property, the boundaries have been described as follows :

East : Village boundry of Morpirlla Dabem;

West : Private property under survey No.149 & 151;

North : Private property under survey No.145,

South : Part of the Forest area under Sy.No.153 demarcated.

32. Thus, there is no failure on the part of the appellant-plaintiff in identifying the suit property as such. This is because the property has been described with its survey No.150 and its location in the Village of Naquerim of Quepem Taluka. Even, the area of the suit property is stated to be 1,05,000 sq. meters. Even the name/s of the suit property i.e. “Tembi” or “Tembeacho Dongor” have been stated. Based on all this, the appellants have identified the suit property and the contentions to the contrary raised by Mr. Bhobe cannot be accepted.

33. The question of identification of the suit property is one thing and the question as to whether the boundaries of the suit property as pleaded in the plaint tally with the boundaries of the property in the title documents relied upon by the appellant, is quite another.

34. Mr. Bhobe pointed out that there is no correlation between the boundaries reflected in the 1951 and 1949 documents relied upon by the appellant as its title documents and the boundaries of the suit property to be found in the amended plaint. He pointed out the discrepancies in the oral evidence, including, in particular, the evidence of PW.1 - Deputy Range Forest Officer, PW.2-Range Forest Officer, and PW.3-Forest Surveyor attached to the Office of the Deputy Conservator of Forests. He submitted that the evidence of these three witnesses establishes that the appellant has failed to correlate the boundaries pleaded with the boundaries in the so-called title documents relied upon by the appellants.

35. On the other hand, the learned Advocate General submitted that preference must be given to the documentary evidence and not to the oral evidence of the officers. He submitted that the appellant cannot be non-suited based on some confusing answers given by its witnesses. He submits that some

confusions arise because earlier there was a reference made to the property owners to describe the boundaries and at a later stage, reference was made to the survey numbers to describe the boundaries. He submits that survey records are produced on record and from the same, it is evident that the boundaries, at least on three sides, tally. He submits that in the facts of the present case, and having regard to the legal provisions in Section 14 of the said Code, such correlation is quite irrelevant. He submits that there is a presumption about the suit property being the Government property. He submits that defendant No.2 took up a specific plea of ownership based on two matriz documents. He submits that the boundaries in these matriz documents, also do not correlate with the boundaries of the suit property and, in any case, matriz documents are not even documents of title.

36. Based on the evaluation of the oral and documentary evidence on record, it is true that some confusion arose on account of the testimonies of the appellant's witnesses. They have given confusing answers or on some occasions, accepted that they are not too familiar with the position on the ground. However, if the boundaries described in Boletim Official dated 11/1/1951 and the Reparticao de Fomento dated 20/10/1949 are perused, then, there is merit in the contention of the learned Advocate General that there is a correlation on at least three sides i.e. three

boundaries. As regards the fourth boundary, there is nothing unreasonable in the explanation offered by the learned Advocate General that over the years properties change hand and, therefore, there is difficulty in correlating names of the property-holders bounding the suit property. Therefore, this is not a case where the appellant has failed miserably to correlate the bounded as pleaded, with the boundaries in the title documents relied upon by the appellants. At the highest, this is a case where there can be said to be some confusion about the correlation of the boundaries pleaded and the boundaries reflected in the title documents relied upon by the appellant.

37. The next point for determination is, whether the confusion in correlation is to impact the grant of reliefs in the suit. This point will have to be considered along with the issue of the impact of the provisions of Section 14 of the said Code. In this matter, having regard to the provisions of Section 14 of the said Code, it will have to be held that there is a presumption in favor of the Appellant about the ownership of the suit property. Since defendant No.2 took a specific defense of ownership, defendant No.2 had to establish its title, failing which the presumption under Section 14 of the said Code would operate.

38. The learned Advocate General pointed out that in this case, the provisions of Section 103 of the Evidence Act would apply and not the provisions of Section 101 of the Evidence Act. He pointed out that the burden of proof as to particular facts lies on the person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person. He submitted that the burden would lie on defendant No.2 in the present case, having regard to the provisions of Section 14 of the said Code and the presumption that is created by it.

39. *Rangammal* (supra) holds that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The Court has to examine as to whether the person upon whom the burden lies has been able to discharge such burden. Until he arrives at such a conclusion, the Court cannot proceed based on the weakness of the other party. This principle will not apply to the present case, having regard to the provisions of Section 14 of the said Code which raise a presumption that all properties are government properties unless the person who claims a title to such property can prove and establish the same. The contention of the learned Advocate General will, therefore, have to be upheld in the facts of the

present case, having regard to the provisions of Section 14 of the said Code.

40. The next point which arises for determination, concerns the impact of Section 14 of the said Code, on this case. In this case, the Trial Court has held that the appellant failed to prove its title to the suit property and, therefore, the suit ought to be dismissed. The Trial Court did not even go into the defense of title set up by the defendant no.2-Comunidade or to find out whether the title was established by the defendant No.2-Comunidade or not. The Trial Court, perhaps, based its decision on the normal rule that the plaintiff in a suit has to stand or fall by its own case and such plaintiff cannot take any advantage of the weakness of the defense.

41. The approach of the Trial Court, in this case, was erroneous because the Trial Court completely missed adverting to and examining the effect of the provisions of Section 14 of the said Code. Section 14 of the said Code, reads as follows :

14. Title of Government to lands, etc.— (1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all

rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the 7 [] Government subject to right of way, and all other rights, public and individual, legally subsisting.

Explanation:– *In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.*

(2) Unless it is otherwise expressly provided in any law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the 8 [] Government and it shall have all the powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the 9 [] Government or by any person as against the 10[] Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or 11[an officer authorised by the Government in this behalf].

(4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application

has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

(6) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Government.”

42. In ***R. Hanumaiah*** (supra), the Hon'ble Supreme Court has considered an almost identical provision i.e. Section 67 of the Karnataka Land Revenue Act, 1964, which read as follows :

“ 67. Public roads, etc., and all lands which are not the property of other belong to the Government.— (1) All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high watermark and of rivers, streams, nallas, lakes and tanks and all canals and watercourses and all standing and flowing waters, and all lands wherever situated which are not the property of individuals or of aggregate of persons legally capable of a holding property, and except insofar as any rights of such persons may be established, in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be with all rights in or over the, same or appertaining thereto, the property of the State Government.”

43. In the context of the aforesaid provisions and based on the reasoning as to the nature of the proof for declaration of title against the Government, the Hon'ble Supreme Court has held that Section 67 declares that all lands, which are not the property of any person, are the property of the State Government and, therefore, weakness of the Government's defense or absence of contest, are not sufficient to take declaratory suits against the Government. It is for the private parties to establish their title to the suit properties. If the private parties fail to establish their title, then, applying the provisions of Section 67 quoted above, the suit property will have to be held to be the Government property.

44. The Hon'ble Supreme Court in paragraphs 19 to 23, has also discussed the nature of proof required in a suit for declaration of title against the Government. The same are quoted verbatim for convenience of reference :

19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government unless any person can establish his right or title to any such land. This presumption available to the Government is not available

to any person or individual. The second difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as a limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the Government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against the Government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against the Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not, before a suit for declaration of title against a Government is decreed, the plaintiff should establish,

either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the Government: whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the Government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession— authorised or unauthorised; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the Government, a claimant has to establish a clear title which is superior to or better than the title of the Government or establish

perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds, etc. or based upon actual verification of physical possession by an authority authorised to recognise such possession and make appropriate entries can be used against the Government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government. Be that as it may.”

45. The principles laid down in ***R. Hanumaiah*** (supra) were attracted in the present case, which was instituted by the government against the Comunidade. The fact that the suit in *R Hunmaiah* (supra) had been instituted by a private party against the Government will make no significant difference and based on the same, the principles explained therein cannot be said

to be inapplicable to a suit instituted by the Government against a private party.

46. Therefore, the Trial Court ought to have assessed and evaluated the evidence on record, having regard to the nature of proof that is required in suits for declaration of title by or against the Government. The Trial Court should have had regard to the provisions of Section 14 of the said Code, which are almost identical to the provisions of Section 67 of the Karnataka Land Revenue Code that was interpreted by Hon'ble Supreme Court in ***R. Hanumaiah*** (supra). The approach of the Trial Court in the present case is quite contrary to the law laid down in ***R. Hanumaiah*** (supra), as well as the provisions of Section 14 of the said Code. These are good grounds to set aside the impugned judgment and decree.

47. In this case, the defendant No.2-Comunidade, in its written statement, took the specific defense that the suit property bearing Survey No.150/0 of Village Naquerim of Quepem Taluka is its exclusive property bearing Matriz no.1 of Village Naquerim of Quepem Taluka and Matriz No.2 of Village Quitol of Quepem Taluka. Defendant No.2, however, did not plead as to how it acquired exclusive ownership of the suit property. Having regard to the law laid down in ***R. Hanumaiah*** (supra), the

defendant No.2-Comunidade was bound to plead how it acquired the suit property and what was the basis of its claim to exclusive ownership and title of the suit property.

48. Besides, in this case, the Comunidade did not even bother to produce on record the 'Tombo' book in which the properties owned by the Comunidades are required to be registered. In *Comunidade of Bali* (supra), the learned Single Judge of this Court has considered the provisions of Article 549 of the Code of Comunidades that requires a book known as “Tombo 1” to be used for the inscription of the rural, urban, and barren lands of the Comunidades, their measurements and landmarks, for the description of the sources of income of the Comunidade other than from private lands and for the registration of the deeds of identification, description, and demarcation of the marginal lands of the roads and the paddy fields, exclusively reserved for the constructions and of the lands capable of being brought under the plough at the cost of the Comunidade. This book has to be accompanied by plans. Under Article 551 of the Code of Comunidade, a book called “Tombo 2” should be used for the description of the tributary lands of the Comunidade or those subject to any definite contribution. These are the title documents of the Comunidade.

49. In the aforesaid decision, a statement was made by the attorney of the Comunidade that the Tombo book was illegible or had become wet due to rains, and, therefore, the same was not produced to establish that the Comunidade was indeed the owner of the suit properties. The learned Single Judge, however, ruled that since the Comunidade did not produce copies of the old and wet records to show that the same was indeed illegible, an adverse inference was bound to be drawn against the Comunidade to the effect that the Comunidade did not have any title documents and, therefore, could not produce them.

50. In the present case as well, the witnesses on behalf of the defendants, including the attorney of the Comunidade did not even bother to produce the Tombo book. Therefore, it would be legitimate to draw an adverse inference against the Comunidade that there was no reference to the suit property in the Tombo book or that the suit property was never listed as the property owned and possessed by the Comunidade in the Tombo book. Since this aspect has not even been considered by the learned Trial Judge while evaluating the evidence on record, there is a clear error and the impugned Judgment and Decree is quite contrary to the law laid down in the case of *Comunidade of Bali* (supra).

51. In this case, the appellant-plaintiff had produced on record documentary evidence, including Boletim Official 11/1/1951 and Reparticao de Fomento dated 20/10/1949. The appellant had also produced on record Government Gazette dated 5/2/1965. All these documents indicate that the suit property described in the plaint as “Tembeacho Dongor” was not only situated in the village of Naquerim of Quepem Taluka but further, the same was already declared as the Government Forest in terms of Portuguese Legislation governing the forest, as were then applicable. There was no good ground for the learned Trial Judge to have discarded this documentary evidence by simply observing that there were some slight discrepancies in the boundaries pleaded and the boundaries as reflected in the documentary evidence.

52. The Reparticao de Fomento and other documentary evidence produced on record are sufficient to tally the boundaries pleaded at least on three sides with sufficient clarity. At the highest, there is some ambiguity on the fourth side, but such ambiguity does not go to the root of the matter or constitute any serious impediment to the identification of the suit property. Besides, in this case, the appellant-plaintiff is quite clear that the suit property bears the name "Tembi" or "Tembeacho Dongor" and further, the suit property is surveyed under No.150 of Village Naquerim in Quepem Taluka and further that the suit property is

about 1,05,000 sq. meters. The findings of any lapses in identification are, therefore, vulnerable. No dispute was even raised in the written statement about the identification of the suit property and the learned Trial Judge has not looked into or evaluated the documentary evidence on record, properly.

53. There is nothing in Section 14 of the said Code to suggest that the presumption which arises therefrom will apply only in proceedings before the Collector or rather, when the proceedings are taken out under Section 14 of the said Code. Even, Mr. Bhobe admitted that the provisions of Section 14 of the said Code neither expressly nor impliedly bar the institution of a suit by or against the Government.

54. The observations in *Vasudev Vasant Gaonkar* (supra), are that Section 14 lays down a self-contained mechanism for resolution of the dispute where the Government claims the title, is followed by the observation that a civil suit has also been provided for under Section 14. Besides, the observations were made in the context of the availability of an alternate remedy. Such observations, therefore, cannot be read out of the context in which they appear. Therefore, in this case, the appellant was entitled to claim the benefit of the presumption arising out of Section 14(1) of the said Code even before the Civil Court.

55. The next issue which arises for determination is, whether the matriz documents relied upon by the defendant No.2- Comunidade pertained to the suit property and, in any case, whether they could have been regarded as the documents of title.

56. Now, the boundaries in the matriz documents, relied upon by defendant No.2, do not tally with the boundaries of the suit property. The burden was clearly upon defendant No.2- Comunidade to establish this fact and, defendant No.2 has failed to establish the same. That apart, it is well settled that matriz documents are not documents of title. In *Fabrica da Igreja de N.S. De Milagres vs. Union of India*⁷, the learned Single Judge of this Court, dealing with matriz documents, has laid down the following :

“14. ... It is a settled position that a Matriz document is neither an instrument of title nor a source of possession and that the organization of the “matriz predial” is a mere administrative exercise aimed at collecting tax revenues from the land. As such no legal evidentiary value can be attributed also the said registration for the purpose of establishing ownership title or presuming possession on the land.”

57. In *Narayan V. Gaonkar* (supra), the aforesaid position in law was upheld and applied in somewhat similar circumstances to

7. 1994 SCC OnLine Bom 245: (1995) Bom CR 588

sustain a decree in favor of the Forest Department, Government of Goa. In this case, the Hon'ble Supreme Court also took into account the position of forest records, as well the position reflected in *Maria Teresa Philomena D'Rocha Pegado vs. State of Goa*, 2013 SCC OnLine Bom 1563: (2014) 2 Mah LJ 653 in which it has been held that the State is the proprietor of all minerals beneath the land and there can be no dispute about such proposition. Based on this, amongst other matters, the Hon'ble Supreme Court opined that the name of the Forest Department recorded in Survey No.11/1 deletion of which has been refused and the name of the respondent-plaintiff in the record in the manner and circumstances in which it came on the record of rights, does not establish any counterclaim of the respondent-plaintiff and the defendant has clearly made out a case for allowing the counterclaim. Accordingly, the counterclaim filed by the State was allowed and the name of the plaintiffs was ordered to be deleted from the occupant's column in Survey no.11/1 of Sulcorna Village of Quepem Taluka. This decision greatly assists the case of the appellant-plaintiff in this matter, as well.

58. The finding on possession recorded by the Trial Court also warrants interference. This finding is based only on a claim of tenancy made by 2 or 3 persons, not to the entire suit property, but hardly about 20 to 25% of the suit property. Besides, this

claim is yet to be adjudicated and the claim is based on "oral tenancy", allegedly created by defendant No.2-Comunidade. The Comunidade has produced no record whatsoever concerning such tenancy. The position as to whether tenancy can be created by the Comunidade by "oral lease" or not, is itself arguable. Be that as it may, the Comunidade had, not itself claimed any possession, but its case was of constructive possession, based on the claim made by 2 or 3 persons as tenants. The Trial Court was not at all justified to hold that it is the defendant No.2-Comunidade that is in possession of the suit property or that the persons claiming tenancy from the Comunidade, are in possession of the suit property.

59. A normal rule is that possession follows the title and the onus is on the party claiming to be in possession, to establish such possession even though such party may not have proved its title. On the evaluation of the evidence on record, therefore, the finding of possession, qua the Comunidade, is liable to be interfered with. The issue as to whether the persons who have claimed tenancy are in possession of the part of the suit property or not is yet to be adjudicated. Therefore, no observations are made on this aspect.

60. However, suffice to state that in this case, defendant No.2-Communidade had not established its possession qua the plaintiff. Therefore, following the normal rule that possession follows the title, the Trial Court should not have recorded adverse findings against the appellant-plaintiff on the ground of non-joinder of necessary parties. At the highest, the Trial Court could have clarified that this judgment and decree will not affect the rights if any, of the claimants since such claimants were not parties to this suit. The declaration in this suit is qua the defendant No.2-Communidade. Similarly, the reliefs in this suit, are also qua the defendant No.2-Communidade and this position could have as well been clarified by the Trial Court. But, there was no justification for dismissing the suit. This point is also determined accordingly.

61. For all the aforesaid reasons, this appeal is allowed. The impugned Judgment and Decree is set aside. The suit is decreed, by declaring that the appellant is the owner in possession of the suit property as described in the plaint. Based on this declaration, it will be open to the appellants to correct the survey records. The defendant No.2-Communidade, their agents, or any person acting through them, etc. are restrained from interfering with the suit property in any manner whatsoever.

62. As noted earlier, it is clarified that nothing in this decree is intended to affect the rights of the so-called claimants of tenancy rights to the portions of the suit property. The proceedings initiated by such persons will have to be decided on their own merits and in accord with the law. No costs.

M. S. SONAK, J.

63. At this stage, Mr. S. Keny holding for Mr. A.D. Bhobe, Advocate for respondent No.2-Communidade requests for a stay on the execution of this Judgment and Decree. He submits that based on this Judgment and Decree, the name of the Comunidade might be deleted from the survey records. According to me, based on this apprehension, no case is made out for stay of this Judgment and Decree. Accordingly, the application seeking stay, is declined.

M. S. SONAK, J.

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