

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 92 OF 2011**

1. Dr. Shradha U. Singbal
Major of age,
wife of Dr. Uday L. Singbal,
r/o. Singbal Hospital,
Khadpaband, Ponda-Goa.
2. Dr. Uday L. Singbal,
Major of age,
Son of L. singbal,
r/o Singbal Hospital,
Khadpaband, Ponda, Goa.

..... Appellants/
Original Plaintiffs

V e r s u s

1. Shri Raghunath P. Sinari
Major of age,
Son of P. Sinari,
r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.
2. Smt. Harisha R. Sinari,
Major of age,
Wife of R. Sinari,
r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.
3. Shri Jagannath P. Sinari,
Major of age,
Son of R. Sinari,

r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.

4. Smt. Subhalaxmi J. Sinari,
Major of age,
Wife of J. sinari,
r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.
5. Shri Nandan P. Sinari,
Major of age,
Son of P. sinari,
r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.
6. Smt. Shilpa N. Sinari,
Major of age,
Wife of N. Sinari,
r/o. H. No. E-87,
Fondvem, Ribandar,
Tiswadi, Goa.
7. Mrs. Sima M. Kamat,
Major of age,
Wife of Moreshwar D. Kamat,
r/o 26, Sijngbal Blds.,
C/o. Navdurga Medical Stores,
Old Bus stand, Ponda, Goa.
8. Mr. Moreshwar D. Kamat,
Major of age,
Son of D. Kamat,

r/o 26, Sijngbal Blds.,
C/o. Navdurga Medical Stores,
Old Bus stand, Ponda, Goa.

9. Dr. Sushma J. Prabhudesai,
Major of age,
r/o 246, Dr. Prabhu Desai Clinic,
Thal-Shiroda, Near Kamaxi Temple,
Shiroda, Goa.

10. Dr. Subhash J. Prabhudesai,
Major of age,
Son of J. Prabhudesai,
r/o 246, Dr. Prabhu Desai Clinic,
Thal-Shiroda, Near Kamaxi Temple,
Shiroda, Goa.

11. Ms. Hema Pandurang Sinari,
Major of age,
Daughter of Pandurang Sinari,
r/o H. No. E-87, Fondvem,
Ribandar, Tiswadi, Goa.

..... Respondents/
Original Defendants

Mr. Chirag Angle, Advocate holding for Mr. A. D. Bhobe, Advocate for the Appellants.

Coram :- NITIN W. SAMBRE, J.

Date : 22nd March, 2021

JUDGMENT

This appeal is by the original Plaintiffs-Appellants.

2. The appellants initiated Regular Civil Suit No. 93/09/C in the Court of Civil Judge, Junior Division at Panaji, for permanent injunction. The suit came to be partly decreed thereby restraining the Respondents-Defendants from mortgaging, selling or creating any third party right in the property bearing chalta no. 48 of P. T. sheet No. 15 of City Survey, Panaji, admeasuring 1750 square metres, containing a residential house bearing no. E-87 having an area of about 800 square metres, till such suit property is partitioned or allotted amongst the parties to the suit. The claim of the appellants-plaintiffs for grant of similar relief in relation to the agricultural property admeasuring 98,925 square metres situated at Savoi Verem, Taluka Ponda, bearing survey no. 153/1, came to be rejected for want of territorial jurisdiction.

3. The appellants, feeling aggrieved, preferred First Appeal under Section 96 of the Code of Civil Procedure being Regular Civil Appeal No. 349 of 2010. The said appeal came to be dismissed vide impugned judgment dated 28.09.2010. As such, this Second Appeal.

4. The Appeal came to be admitted on the following substantial questions of law :

(a) Whether the Courts below had jurisdiction to grant relief as prayed for by the appellants in respect of the property bearing Survey no.153/1 of village Savoi Verem more particularly on account of the undisputed fact that the appellants had a single cause of action in respect of the suit properties (property situated at Panaji and property situated at Savoi Verem, Ponda) as mentioned in the suit?

(b) Whether the Courts below have erred and/or misinterpreted the provisions of Section 17 of C.P.C in as much as both the Courts below have failed to appreciate that the appellants were entitled to maintain the suit in the court of Civil Judge Junior Division at Panaji in respect of both the properties (property situated at Savoi Verem and property situated at Panaji)?

5. Heard learned Counsel for the Appellants. Though served, none appears for the respondents.

6. By inviting attention of this Court to the provisions of Section 16 and 17 of the Civil Procedure Code, it is claimed that even if part of the suit property is located outside the territorial jurisdiction of the Civil Court, the aforesaid provisions of law empowers the Civil Court to deal with the lis

between the parties if the same is arising out of the same cause of action. The learned Counsel would invite my attention to the provisions of the General Clauses Act, 1897 particularly Section 13 so as to substantiate the said claim. According to him, the words in the singular shall include plural and vice versa which is equally applicable, while interpreting provision of Section 17 of the Code of Civil Procedure. According to him, in Schedule to plaint, even if more than one property is included, Section 17 of the Civil Procedure Code can be applied in relation to several suit properties provided one or more of it is located within the jurisdiction of the Court whether the lis is brought. According to him, even if the location of other suit properties was out of the territorial jurisdiction of the Court before whom the lis is brought, Code of Civil Procedure confers powers to decide lis in the light of aforesaid two provisions. According to him, only embargo shall be single cause of action arising in relation to the suit properties. So as to substantiate his contentions, he has drawn support from the judgment of the Apex court in the matter of *Shivnarayan By Lrs. Vs. Maniklal Thr. Lrs. & Ors.* reported in *2019 0 All SCR 663*. He would also rely on the clause containing cause of action pleaded in the suit and the fact about legal

entitlement of the Appellants in relation to the part of the suit property, which was not questioned by the respondents. As such, according to him, the appeal needs to be allowed thereby ordering injunction in relation to the other suit property i.e. agricultural property.

7. In the case in hand, while partly decreeing the suit to the extent of the non-agricultural property, both the Courts below had interpreted the word “portion of the property” as appeared in Section 17 of the Civil Procedure Code to mean that the different properties in the very same territorial jurisdiction of the Court taking up the lease.

8. Section 16 of the Code of Civil Procedure provides for suits to be instituted where subject matter situates. The only rider while invoking the said provision is, the pecuniary or any other express limitations prescribed by law. The word “property” as referred to in Section 17 of the Civil Procedure Code can be interpreted to mean more than one property i.e. several properties, one or more of which may be located in the different jurisdiction. As such, the word “portion of property” referred to in Section 17 needs to be read in context of more than one property i.e. one property out of lot of several properties. Apart from above, the wordings “the suit

may be instituted in any Court”, makes it permissive to initiate or not to initiate the suit with regard to immovable property situated in local jurisdiction of more than one Court.

9. In the case in hand, it is not in dispute that the entitlement of the appellant for injunction in relation to part of the ancestral property (house) was not questioned by the Respondent-defendant. Whereas injunction as prayed was not granted by misinterpreting the provisions of Section 17 of the Civil Procedure Code is questioned by the Appellant-plaintiff. Apex Court had an occasion to consider the scheme of Section 16 and 17 in the matter of ***Shivnarayan*** (supra). In Paras 11 and 28 of the aforesaid Judgment, the Apex Court has made the following observations :

“11. The word “property” under Section 17 of the Civil Procedure code may also be properties, hence, in a schedule of plaint, more than one property can be included. Section 17 can be applied in event there are several properties, one or more of which may be located in different jurisdiction of courts. The word “portion of the property” occurring in Section 17 has to be understood in context of more than one property also, meaning thereby one property out of a lot of several properties can be treated as portion of

the property as occurring in Section 17. Thus, interpretation of word “portion of the property” cannot only be understood in a limited and restrictive sense of being portion of one property situated in jurisdiction of two courts.”

...

28. Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.

(i) The word ‘property’ occurring in Section 17 although has been used in ‘singular’ but by virtue of Section 13 of the General Clauses Act it may also be read as ‘plural’, i.e., ”properties”.

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property

situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.”

10. The respondent-defendants though served in the present appeal have chosen not to appear and assist the Court in deciding the appeal on its merit. The act of the respondent-defendants in not questioning the decree of injunction passed in favour of the appellant in relation to part of the suit property demonstrates that they have accepted the right of the appellant of having share in the suit property. The fact that the order on ground of partial injunction not being questioned by the respondent apparently creates a positive case in favour of the appellant-complainant for grant of injunction.

11. It appears from the aforesaid discussion that the rejection of partial prayer for injunction in relation to agricultural property is itself on the misinterpretation of Section 17 of the CPC. In the light of the observations made herein above and also the support drawn from the judgment of the Apex Court in the matter of Shivnarayan cited supra it has

to be held that the Civil Court which has decided the suit initiated by the appellant has complete jurisdiction to try the issue canvassed before it and that being so has committed an error of law in rejecting the prayer for grant of injunction only on the ground of want of territorial jurisdiction. Both the questions of law which are framed by admitting the present Second Appeal are as such answered in favour of the appellant. The appeal in the aforesaid background needs to be allowed in terms of the prayer made in the plaint for grant of decree for injunction in relation to both the properties.

12. In the aforesaid background, the observations made by the Courts below in misinterpreting the provisions of Section 16 and 17, has caused violence to the legal right of the present Appellants. There appears to be an error apparent on the face of record in the Judgments impugned as the prayer for injunction is refused only on the ground that the property does not fall within the jurisdiction of the Court.

13. In the aforesaid background, the appeal, in my opinion, needs to be allowed.

14. In addition to the injunction ordered in the Judgments impugned before this Court, it is further ordered that the Respondents-

defendants are restrained by way of permanent injunction from mortgaging, selling or creating any third party right in the agricultural property admeasuring 98,925 square metres situated at Savoi Verem, Taluka Ponda, having survey no. 153/1.

15. Needless to clarify, the relief granted herein above, shall be in addition to the one granted by the Judgments impugned.

16. The appeal stands allowed in above terms.

NITIN W. SAMBRE, J.