

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 43 OF 2011

SHRI. RATNAKANT RAMCHANDRA
SALGAONKAR,(expired)

through legal representatives:

1. SHRI. RAMAKANT RATNAKANT
SALGAONKAR, s/o late Ratnakant
Salgaonkar, major of age, married, service and
his wife,

2. SMT. VISHRANTI RAMAKANT
SALGAONKAR, major of age, married,
housewife,
Both Indian Nationals,
r/o House No.42, Nagir Wado, Paliem,
Uccassaim,Bardez-Goa.

3. SHRI PRADEEP RATNAKANT
SALGAONKAR, s/o late Shri Ratnakant
Salgaonkar, major of age, married, service and
his wife

4. SMT. SARITA PRADEEP
SALGAONKAR, major of age, married,
housewife,

Both Indian Nationals,
r/o House No.42, Nagir Wado, Paliem,
Uccassaim, Bardez-Goa.

5. SHRI DATTA RATNAKANT
SALGAONKAR, s/o late Shri Ratnakant
Salgaonkar, major of age, married, service and
his wife,

6. SMT. SHANTI DATTA SALGAONKAR
w/o. Shri Datta Ratnakant Salgaonkar, major
of age, married, housewife,

Both Indian Nationals,
r/o House No.42, Nagir Wado, Palicm,
Uccassaim, Bardez-Goa.

7. SHRI AMRUT RATNAKAR
SALGAONKAR,(expired)
s/o late Shri Ratnakant Salgaonkar,
major of age, bachelor, Indian National,
r/o House No.42, Nagir Wado, Paliem,
Uccassaim, Bardez-Goa.

8. SHRI VIJAY RATNAKANT
SALGAONKAR, s/o late Shri Ratnakant
Salgaonkar, major of age, bachelor, Indian
National, r/o House No.42, Nagir Wado, ... Appellants
Paliem, Uccassaim, Bardez-Goa.

V/s.

SHRI NAVNATH VISHNU SALGAONKAR
ALIAS SHRI RAGHUNATH

RAMCHANDRA SALGAONKAR,
s/o late Shri Vishnu Babu Salgaonkar,
aged about 70 years, widower, Indian National,
r/o. House No.40, Nagir Wado, Paliem, ... Respondent
Uccassaim, Bardez-Goa.

Mr. Sudesh Usgaonkar with Ms. R. Pereira, Advocate for the
appellant.

Mr. M.B. D'Costa, Senior Advocate with Ms. Karishma Betquecar,
Advocate for the respondents.

Coram:- SMT. BHARATI H. DANGRE, J.

Reserved on: 11th Febraury,2021

Pronounced on : 25th February,2021

JUDGMENT :

The dispute in the proceedings revolves around a property admeasuring 3000sq.mtrs. bearing Survey No.1 Sub Division No.14 of village Paliem, within jurisdiction of Village Panchayat of Paliem Taluka and Sub District Bardez, State of Goa, described in Land Registration Office Bardez, at Mapusa Goa under No.14345 at page 96 overleaf of Book B-37 New and enrolled in Taluka Revenue Office of Bardez under Matriz No.47 under Third Circumscription of Bardez bounded on the East by an access/road, on the West by property under Survey No.1/13, on the

North by Mapusa- Paliem Public Road and on the South by remaining part of the property described under Land Registration Office under No. 14345. The description of the property as above is the “suit property”.

2. The origin of the proceedings came to be traced to a case instituted in the Court of Mamlatdar of Bardez at Mapusa by one Antonio Da Costa Frias by preferring an application for declaration under Section 7 of the Agricultural Tenancy Act, 1964. The said application was filed on 11th August 1993 impleading two opponent's, namely one Ratnakant Ramchandra Salgaonkar and Raghunath R. Salgaonkar.

The applicant claimed to have inherited the property known as "Moloi" bearing Survey No.1/14 situated at Paliem, Ucassaim, Bardez, Goa and subsequent to this, the applicant and his mother who were said to be cultivating the suit paddy field. On receipt of notice from the opponents about purchase of the paddy field, when the applicant verified Form No.I and XIV, the name of the opponents were found to be recorded as 'Tenants' though the paddy field is shown to be cultivated by the owner. A negative declaration was therefore sought in respect of the suit property

bearing No.1/14. The proceedings were registered as case No.TNC/SR/28/93 in which it was averred that there was no person by name Raghunath Ramchandra Salgonkar.

3. One Mr. Navnath Vishnu Salgaonkar filed an application in the said proceedings claiming to be interested party. He claimed that he is a tenant in possession of the suit paddy field bearing No.1 Sub-Division No.14 along with Mr Ratnakar Salgaonkar for last more than 40 years and that he is personally cultivating half of the suit paddy field for last more than 40 years and both the tenants are in possession of the suit property. The application dated 28th October, 1993 sought an intervention, which was allowed. Consequently, the proceedings of Mr. Antonio Da Costa were against three opponent's.

In the said proceedings, Ratnakar Salgaonkar filed his written statement denying the claim of the landlord. He admitted that Raghunath Salgaonkar and Navnath is one and the same person and in fact the application has already been brought before the Mamlatdar for effecting necessary changes. The opponent claimed that they were cultivating the paddy field and their position

was not interfered in whatsoever manner. Navnath Vishnu Salgaonkar also filed his written statement opposing the claim of the landlord and he specifically pleaded that along with opponent No.1 he is the absolute tenant in possession of the paddy field for last more than 40 years and half portion of the paddy field is cultivated by Ratnakar Salgaonkar and the remaining half is cultivated by Navnath for last 40 years. The written statement also maintained that the name of Raghunath Ramachandra Salgaonkar is included in the tenant column but there is no such person in village Paleim and instead the name ought to have been Navnath Vishnu Salgaonkar but wrongly written as Raghunath Ramachandra Salgaonkar and he was not aware of the said fact until recently during the course of the proceeding he became aware of the said fact. The entry in the crop column recording the name of the owner was alleged to be false one and it was asserted that the opponent No.1 along with the deponent, Navnath were cultivating the paddy field and they are absolute tenants in possession of the property, which do not call for any interference.

4. The record of the paper book consist of a document at page No.266 which is Form II A under Rule 4 and is captioned as

"Notice under Section 18C of Goa, Daman and Diu Agricultural Tenancy Act, 1964". By referring to the provision contained in Section 188 of the Act of 1964, where every tenant is deemed to have purchased the land held by him as tenant and where the Mamlatdar is required by Sub Section (5) of Section 18C to ascertain whether the tenant is willing to purchase the land and if so to fix a price, notice came to be issued directing the interested parties to appear before the Mamlatdar of Bardez, Mapusa on the date and time reflecting in the schedule, in case of any interest is being expressed. The schedule referred to the property under Survey No. 1 Sub Division No.40 that an area of 70.50 and the name of the tenants were notified as Raghunath Ramchandra Salgaonkar, Ramakant Ramachandra Salgaonkar. This notice is signed by the Mamlatdar of Bardez and is dated 01/06/1993. Neither the parties have thrown any light about the progress of the said proceedings nor anything to that effect could be discerned from the record. But this document surely bears a relevance in the nature of the controversy.

5. In the proceeding before the Mamlatdar, terms of compromise were filed on 06/11/1996, since the applicant and the

opponent arrived at a compromise. It was recorded in the following terms:.

“1. That the applicant has sold an area of 3000sq.mtrs of the suit property i.e. of survey No.1 Sub.Div.No.14 (Part), situated at Uccassaim- Paliem to the opponents which the opponents are in possession and enjoyment for past 40 years till today. This portion is marked in red colour in the sketch attached to these terms.

2. That the applicant shall possess and enjoy the remaining part of the property i.e. survey No.1 Sub.Div. No.14(Part). This portion is marked in blue colour in the sketch attached to these terms.

3. That the applicant has reserved an access of 6 mts. Wide through survey No.1/14 on the eastern side of the said property for use of applicant and opponents which is shown in the plan attached to these terms and marked in yellow colour.

4. That the applicant hereby declare that he shall not have any kind of right, title, interest claims and demands of whatsoever nature in the portion of the

plot sold to the opponents having an area of 3000sq.mtrs. Also he will not interfere with the same. So also the other parties will neither interfere nor shall claims any right over the same.

5. That the opponents shall not interfere in the remaining portion of the property of the applicant nor shall claim any right over the same.”

The compromise terms are signed by Ramakant Ramachandra Salgaonkar and Navnath Vishnu Salgaonkar.

6. The Compromise Terms in clause No 9 record that the applicant has executed the Sale Deed on the basis of the Compromise Terms on 14/11/1996 under Serial No.2148/1996. Based on the said Compromise Terms, the proceedings initiated on the application dated 11/08/1998 were dropped by recording that the opponent's shall be absolute owners in possession of an area of 3000 square metre of Survey No.1/14 of village Paliem and they have no objection if their name shall be deleted from the tenant column of Survey No.1/ 14 and name of the opponent shall be included in occupant's column of the said Survey number for an area of 3000 square metres. It was also recorded that the applicant

and the opponents shall file an application for partition to separate their respective portions in order to have separate Survey numbers to be allotted to the respective portions. The Sale Deed executed and recorded in the compromise dated 31/10/1996 is placed on record, which is reflective of the sale of the property identified in schedule appended to the Sale Deed, between the applicants/owners before the Mamlatdar and between Ratnakant Ramachandra Salgaonkar and Raghunath Ramachandra Salgaonkar @ Navnath Vishnu Salgaonkar @ Naunath Vishnu Salgaonkar, for purchase of the property comprising of an area of 3000 square metres for consideration of ₹60,000/-, at the market value. The vendors acknowledged the receipt of entire payment and conveyed, transferred all the estate, rights, title and interest, claim and demand whatsoever of the vendors to the purchasers, his heirs, administrator, assignee from the date of the sale deed. The said document make a reference to compromise terms by which the vendors agreed to sale/ convey portion of the property known as "Moloi" bearing Survey No.1 Sub-Division 14 comprising an area of 3000 square metres in favour of the purchasers, as the purchasers are in absolute possession of the said area for last more than 40 years. With this round of proceedings being over, there appears to

be a quietus till the squall, in form of second round of proceedings, landed in the Court of law.

7. On 21/1/2004 Navnath Vishnu Salgaonkar @ Raghunath Ramchandra Salgaonkar @ Naunath Vishnu Salgaonkar filed a suit for partition of the 3000 sq.metres area of village Paliem which exclusively vest in him and Ratnakant Ramchandra Salgaonkar pursuant to the Deed of Sale dated 31/10/1996 claiming the Northern portion of the said area. Judgment and order was sought from the Civil Judge, Senior Division at Mapusa by partitioning the property by metes and bounds into two equal halves, each half admesuring 1500 sq.mettres. The suit was filed on 21/10/2004 and in the verification, the discrepancy as regards the name of the tenant recorded in the earlier document was clarified and it is declared that Navnath Vishnu Salgaonkar is the same person as Raghunath Ramchandra Salgaonkar and even in the Sale Deed which was executed between the parties the purchaser Raghunath Ramachandra Salgaonkar was named in his alternative names. Ratnakant Ramchandra Salgaonkar came to be impleaded as defendant along with his five sons and their respective wives.

Two set of written statements came to be filed in the Regular Civil Suit No.187/2004/B instituted by Navnath. Ratnakant in his written statement claimed to be the lawful tenant of the property surveyed under Survey No.1/14 with an original area of 7050 square metres along with his wife who died 9 years ago and after her death the defendant nos.2 to 9 i.e. the children of the defendant No.1 are in possession and cultivating the said property was a specific stand. Objection is raised to the jurisdiction of the Court to try the suit since the defendants and others are tenants. For the first time a stand is taken that the Sale Deed under which the plaintiff is claiming half right is false and bogus. It is also pleaded that the suit is bad in law for non-joinder of necessary parties. A specific stand put forth in the proceedings is that the landlord Antonio with an ulterior motive filed a tenancy case and after an order filed Compromise Terms to deprive the defendant and since the defendant do not know how to read and write the English, plaintiff took advantage of the situation and got the Sale Deed executed contrary to the interest of the defendant. The defendant being a tenant his rights are protected under the Goa Agricultural Tenancy Act, 1964 was also pleaded. Another written statement was filed by the remaining defendants along with the

counterclaim. The defendant Nos.2 to 7 and 9 raised the following objections: a) jurisdiction of the Court to decide the suit since defendants are tenants in physical possession and enjoyment of an immovable property and measuring 7050 square metres b) locus standi of the plaintiff to file the suits since the alleged sale deed is bogus, sham and fabricated. 3) suit is bad in law for non-joinder of necessary parties as daughters of defendant no.1 have not been joined as parties. A counterclaim was also filed and following reliefs were sought:

“a) This Hon'ble Court be pleased to declare tat the sale deed dated 31/10/1996 to be null and void, bad in law and not binding on the plaintiffs and the same be ordered to be delivered up and cancel and consequently the mutation as well as the partition done by the landlords/defendant No.3 to 15 be declared null and void and bad in law.

b) This Hon'ble Court be pleased to restrain defendant No.1 and defendant No.3 to 15 their agents, servants, family members acting on their behalf from interfering with the possession of the plaintiff in respect of the

property under Survey No.1/14 admeasuring 7050 sq.mtrs. stated herein above.”

8. Synchronously, on 27/07/2007 the defendants filed appeal no. 5 of 2007 under section 49 of the Goa Daman and Diu Agricultural Tenancy Act before the collector of North Goa at Mapusa calling in question the judgment passed by the erstwhile Mamlatdar in case no.TNC/28/1993. Pertinent to note that this appeal is instituted after a lapse of more than a decade. An application for stay was also filed in the proceedings on 30/03/2007 along with an application for condonation of delay. It is being informed that the said proceedings are pending. Apart from this the record also revealed that the defendants instituted tenancy case by preferring an application under Section 7 read with Section 14 of the Agricultural Tenancy Act,1964 against the owners of the land, seeking a relief that the applicant be declared as Tenants and deemed purchasers of the suit field admeasuring area of 7050 square. This application was filed on 19th March 2009 by Ramakant Ratnakar Salgaonkar and the learned Counsel for the appellant make a statement at the bar that the said proceedings are pending.

9. Reverting back to the proceedings before the Civil Judge Senior Division for partition between Navnath and Ratnakant and his heirs, it has come on record that Smt. Satyavati Salgaonkar wife of Ratnakant and mother of defendant Nos.2 to 9 expired on 12th July 1995 i.e. even before the date of compromise or the judgment of the Mamlatdar based on the compromise arrived at between the owner and the two tenants whose names were recorded in the relevant column of record. Pertinent to note that the counterclaim filed by the defendant Nos.2 to 7 and 9 was permitted to be withdrawn by order dated 14th August 2006. The Civil Judge Junior Division holding that the plaintiff and defendant No. 1 had jointly purchased an area of 3000 square metres of the property under Survey No.1/14 referred to as a suit plot and held in joint possession and enjoyment, since the date of purchase, decreed the suit by directing that the suit property to be partitioned into equal parts from the North South directions and the Northern part of the suit plot of portion to be allotted to the plaintiff.

10. The judgment dated 31/07/2009 was questioned in appeal before the Ad-hoc District Judge at Mapusa in Regular Civil Appeal No.84 of 2009 filed by Ratnakant Ramachandra Salgaonkar

and since during the pendency of the appeal he expired, his legal heirs prosecuted the appeal. On 20/10//2010 the Appellate Court dismissed the appeal recording that the conduct of the appellants estopped them from denying the Compromise Terms and the Sale Deed dated 31/10/1996 was held to be lawfully executed and valid.

11. On the dismissal of the appeal the appellant is before this Court in the Second appeal. The detailed narration of the proceeding/events was necessitated before dealing with the substantial questions of law on which the appeal was admitted on 28/09/2011 and the question of law framed is to the following effect "*whether the decree passed by the Courts below to partition the suit property stands vitiated for non-joinder of the necessary parties namely heirs of the deceased wife of the defendant no.1 Satyavati Salgaonkar.?*"

In support of the Second Appeal the learned counsel Mr. Usgaonkar submitted that in the whole gamut of the factual events, the precise question which arises in the appeal is completely overlooked. He would submit that the case of the appellant is to the effect that he was the tenant in the suit property and on the tiller's day being 14/12/1976 the suit property vest in him free from all

encumbrances as he is deemed to have purchased the same from his landlord. Since he was a deemed tenant, as per Shri Usgaonkar the Sale Deed executed on 14/11/1996 is null and void and neither the original owner nor the defendant Navnath had a right to deal with the property, which vest in the appellant and it is deemed to have purchased the same on the tiller's day. Cloud is also sought to be created on the identity of the defendant, but in my view the said submission is just referred to the rejected since in the Sale Deed itself Navnath had clarified that he is Raghunath Ramchandra Salgaonkar and even the original owner in the application filed before the Mamlatdar had averred that there is no person by name Raghunath Salgaonkar. The Form No.I and XIV in relation to the land Survey No.1/14 admeasuring 70.50 hectares recorded the name of the applicant as Antonio Elizabeth Lobo and the tenant's column name of the Ratnakar Ramchandra Salgaonkar and Raghunath Ramchandra Salgaonkar is recorded. The notice in Form No.2 also records the aforesaid two names as the tenants. In the suit filed by the plaintiff he has captioned his name as alias and therefore I have no hesitation in holding that there is no cloud about the existence of Navnath Vishnu Salgaonkar and it is in the name of this person the decree of partition is granted. Even in the

Sale Deed, two purchasers are Ramakant Ramchandra Salgaonkar and Navnath Vishnu Sagarkar (Raghunath Vishnu Sagarkar @ Navnath Vishnu Salgaonkar and Naunath). There is no challenge to the case of the plaintiff that he is the same person as Raghunath Ramchandra Salgaonkar and the said issue therefore must be buried forever.

12. The substantial question of law which has been framed and on which Mr. Usgaonkar has advanced his submission, being whether the suit filed by the plaintiff seeking partition is bad in law because the daughters of the defendant were not made parties to the suit. The defendant No.1 has premised his claim to the entire property surveyed under No.1/14 and he claim that he and his wife Satyavati Salgaonkar were tenants of the property and upon the death of his wife in the year 1995, the defendant Nos.2 to 9 along with the daughters had inherited tenancy rights and in possession and enjoyment of the property. There is nothing brought on record by the defendant to establish that Satyavati Salgaonkar was also the tenant in the suit property. The Form No.I and XIV relating to Survey No. 1/14 do not record the name of Satyavati as tenant, nor does her name appears as a purchaser in the Sale Deed which is

questioned by the defendants. The document exhibited as C 32 brought on record by the plaintiff record only two names in the column of occupant being Ratnakar Ramchandra Salgaonkar and Raghunath Ramchandra Salgaonkar alias Navnath Vishnu Salgaonkar

Since the wife of Ratnakar who had predeceased him and to be precise on 12/07/1995 was not even the purchaser in the Sale Deed. The defendant No.1 Ratnakar Ramachandra Salgaonkar is the person whose name is recorded as tenant along with the plaintiff and his sons were implicated as defendants and in any case on the death of Ramakant Salgaonkar his legal heirs being his sons have been brought on record to prosecute the appeal. It is too late in the day to consider the submission of Mr Usgaonkar that the compromise arrived before the Mamlatdar could not have been done without the daughters being joined as parties. The suit for partition filed by the plaintiff sought partition of the property acquired through the Sale Deed and the property was sought to be partitioned between the plaintiff and defendant No.1. In a case, where the partition was sought in the property of the defendant, all the daughters would have been the necessary parties. The 3000 square metres of land which was purchased jointly by the plaintiff

and defendant No.1 is sought to be partitioned between the two, by dividing it into two equal halves, since it is only these two persons whose names were recorded as tenants in the survey record of the suit property Surveyed under No.1/14 and it is only to those individuals who are purchasers of the property admeasuring 3000 square metres from the original owners, who sought a negative declaration against them.

13. Section 99 of the Code of Civil Procedure provide that no decree shall be reversed or substantially varied, nor any case be remanded in appeal on account of misjoinder or non-joinder of the parties with an exception that this would not be applicable in case of non-joinder of the necessary parties. Further by virtue of Order I Rule 9 it is not permissible to allow the suit to be defeated by reason of misjoinder or non-joinder of the parties and the court in every suit shall deal with the matter in controversy so far as records the rights and interests of the parties actually before it. The suit before the Court sought a decree for partition qua the plaintiff and defendant No.1 and revolved around the interest of these two in the property which was purchased by them as they were jointly named as tenants in Form No.I and XIV and subsequently jointly purchase

the property. The impleadment of the daughters of the predeceased to wife of the defendant to the suit cannot be faulted with as they are not the necessary parties and the decree of partition was not sought qua the family of Ratnakar Ramachandra Salgaonkar. The sole substantial question of law is therefore answered in the negative, by holding that the non-joinder of the heirs of wife of Ratnakar who had predeceased him in the suit for partition instituted against Ratnakar will not vitiate the decree passed in the partition suit.

14. Though Mr. Usgaonkar repeatedly argued that the omphalos of the controversy was missed by both the Courts, his opponent Mr. Costa, learned Senior Counsel relying upon the factual events would submit that the applicant is the person who has attempted to take advantage of the compromise, when certain rights were bestowed on him but when once these rights, are accorded at his leisure he turn back and question the very same deed from which the right accrued to him. Mr. Costa has rightly pointed out that never ever the defendant no.1 questioned the Sale Deed and it is his sons who stake a counterclaim, in the suit filed by the plaintiff seeking a declaration that the Sale Deed is null and

void. No separate suit was filed seeking such a declaration and apparently for the reason that it would have been barred by limitation. Realising so, even the counterclaim was withdrawn by the defendants. The compromise effected in the year 1996 is sought to be reopened by making wild allegations of fraud being played, this according to Mr. Costa is in a hope that the defendant can claim his right over the entire chunk of property that is 7050 square metres.

15. Conscious of the fact, that the Civil Court will not grant any declaration that he is a protected tenant and for that purpose he will have to approach the competent authority, in the year 2009, the defendants have rightly instituted proceedings in the Court of Mamlatdar by impleading the original owner as defendants. The Appellate Court while examining the conduct of the defendants has noted that in terms of Compromise Terms, the land admeasuring 3000 square metres came to the share of Ratnakant and Navnath jointly, sale deed was executed for sale of the land jointly in favour of the purchasers and accordingly their names have been recorded on the partition of property admeasuring 3000 square metres. If this compromise was not agreeable to the

defendant no.1 Ramakant, and if it had been the case that it was on account of fraud played, the moot question is why did he not called it in question and even when the mutation entries are affected by erasing his name from the column of tenant and is recorded as owner, why no steps are taken by him. The whole sole response to the question by learned counsel Mr. Usgaonkar, is that the Appellant is a deemed tenant and therefore protected under Chapter II A as on the tiller's day. The document to which I had made a reference above, being the Form No.2 A which is a notice under Section 18C of the Tenancy Act, 1964 reflect that the procedure undertaken by the Mamlatdar but subsequently the proceedings are compromised between the original owner on one hand and the two tenants on the other. If at all the declaration of tenancy is to be sought, it has to be against the original owner as the plaintiff also stake his claim as a tenant and therefore in any case the defendant Ratnakant can never appropriate to himself the whole suit property, since the name plaintiff was also shown as a tenant in the record of rights, making him entitled for the same rights as what the defendant's claim, to be a 'Deemed Tenant'. In any case this remedy available to the defendant is against the original land owner and rightly so in 2009 he has approached the

Court of Mamlatdar by filing an application under Section 7 r/w Section 14 of the Agricultural Tenancy Act, 1964. The attempt to declare the entire transaction as fraudulent so as to deprive him of his right is not available to the defendants since as far as the protection of tenancy is concerned both the plaintiff and defendant no.1 sail in the same boat. The proceedings for such a declaration are pending before the Mamlatdar and in no contingency I intend to foreclose this said issue qua the right of the defendant as a tenant against the original owner.

Since the solitary question of law framed has been answered in the negative, findings no legal infirmity in the concurrent findings recorded by the Courts below, no case is made out for interfering with the same. Resultantly by confirming the judgment and decree of partition, the Second Appeal is dismissed. Decree be drawn accordingly.

SMT. BHARATI H. DANGRE, J.

mv

MEENA VISHA
BHOR