

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.60 OF 2012

1. Edwin Dias e Gama (Ex-parte)
Major in age married, house wife.
Daughter of Son of late Meninno
and Pociano Dourado e Dias and
her Husband.

2. Romeo Hendenburgh Gama,
Major in age land lord,
Son of late Sylvester Gama,
Resident of 35-B, Mohamodi
House, Flat No. 19, Martins road,
Mumbai 400050,

3. Shri Prakash Dias Major in age,
married service Son of late
Meninno and Pociano Dourado e
Dias and his wife.

4. Mrs. Jenifer Dias(since deceased
survived only heir the respondent No.3).

.... Appellants.

Versus

1. Administrator of
Comunidade , South zone,
Comunidade Bldg, First floor,
Margao Salcette-Goa.

2. Comunidade de Balli, By its
attorney, Shri Shankar Phal Dessai
t/o H.No-60 years of age , Balli
Quepem Goa.

3. Crishna Fatti Phal Dessai Alias
Ganba Fati Phal Dessai, Business,
major in age and his wife

4. Mrs. Sumati Crishna Phal Dessai,
major in age, buring Balli,
Quepem, Goa.

..... Respondents.

Mr. V.A. Lawande, Advocate for the Appellants.

Mr. A. Walikar, Advocate for Respondent No.2.

Coram: M.S. Sonak, J.

Dated: 5th February 2021.

ORAL JUDGMENT :

Heard Mr. V.A. Lawande for the Appellants and Mr.
Walikar for Respondent No.2-contesting Respondent.

2. This Second Appeal was admitted on 13th July 2012, on the
following substantial question of law:

*Whether the conclusion of the First Appellate Court that
the property belonging to the Appellants does not go to the
top of hill is perverse on the face of the document of title of
the Appellants at Exhibit 56 ?*

3. The Appellants are the original Plaintiffs and the
Respondents are the original Defendants in Regular Civil Suit

No.39/2002/B, instituted in the Court of Civil Judge, Jr. Division, at Quepem. For the sake of convenience, the parties will be referred to by their original description in the plaint.

4. The Plaintiffs, in their suit, applied for the following reliefs:

(a) For a Judgment and Decree that the plaintiffs are owners in possession of the suit property as described in para 4 above, surveyed under no 9 sub division no 3 and 4 and survey no.19/1 (part) of Village Balli, Taluka Quepem and recording the name of Ganba Fatti Phal Desai in occupant's column of survey No. 9/3 of Village Bali is a mistake;

b) For a Judgment and decree for resurvey the survey number 18/1 of Village Balli thereby separating and resurveying the area of 12640 sq. metres as shown on the plan at Exh.A in the name of Plaintiffs being part and parcel of the suit property "Goticachi Fondi" of the plaintiffs.

c) For any other relief which this Honourable Court may deem fit and proper;

d) for costs of the suit.

5. As of today, the dispute about the property surveyed under No.9/3 and 4 does not survive. The dispute, which now survives,

relates to the property surveyed under Survey No.18/1(part) of Village Balli, stated to be admeasuring 12840 sq. metres. Therefore, for the purposes of the present Appeal, it is this property bearing Survey No. 18/1 (part) admeasuring 12840 sq. metres, shall be referred to as the “suit property”.

6. The Trial Court decreed the suit vide Judgment and Decree 26th March 2009. The Comunidade of Balli-Defendant No.2 appealed to the Adhoc District Judge-1, FTC-I, Margao, and this Appeal was registered as Regular Civil Appeal No.54/2009. By the impugned Judgment and Decree dated 7th January 2011, the First Appellate Court reversed the Trial Court's Decree dated 26th March 2009. Hence, the present Second Appeal on the aforesaid substantial question of law.

7. The Trial Court, in this case, apart from relying upon the oral evidence, relied upon basically two documents:

- (i) The Sale Deed dated 8th November 1970, by which the Plaintiffs purchased the suit property and in which the eastern boundary of the suit property is described as '*by top of the hill Limbajacho Dongor of the Comunidade of Bali*'; and
- (ii) Land Registration document No.7085, in which the suit property is described with its eastern boundary as 'top of the hill denominated '*Limbajacho-dongor*' of the Comunidade of Bally'.

8. Based upon the oral evidence, as also the aforesaid two title documents, the Trial Court concluded that the suit property of the Plaintiffs extended not just to the base of the hill described as '*Limbajacho-dongor*', but, rather the same is extended up to the top of the said hill.

9. The Appellate Court has reversed the Trial Court's Decree by relying excessively on the matriz document in respect of Matriz No.81, which is the suit property and in which the eastern boundary of the suit property is described as "*Gotcafondy*", *bounded on East 'Nibegem Oiteral' described under No.80*".

10. Now, there is no serious dispute that '*Nibegem Oiteral*' or '*Limbajacho Dongor*' are both the names of the same hill. Mr. Lawande pointed out that the expression '*Limbajacho*' must have had some nexus with some lemon trees. He pointed out that even '*Nibegem Oiteral*' also has nexus with nimbo, which means, lemon. He has also pointed out that '*Oiteral*' means a hill. Though there is no evidence to this effect, the submission appears to be reasonable and there is no serious dispute that to the east of the suit property, is the hill described as either '*Nibegem Oiteral*' or '*Limbajacho Dongor*'.

11. The real dispute between the parties is, whether the eastern boundary of the suit property ends at the base of the hill or whether

it extends up to the top of the hill. The Plaintiffs, based upon not only their title document of 1970, and the land registration document which was prepared much before the liberation of Goa, contend that the eastern boundary extends up to the top of the hill. Defendant No.2-Comunidade, however, contends that the eastern boundary extends only up to the base of the hill.

12. Mr. Walikar, the learned Counsel for Defendant No.2 pointed out that the matriz document was quite clear in that it did not refer to the eastern boundary extending up to the top of the hill. He pointed out several discrepancies in the deposition of the surveyor examined by the Plaintiffs. He submitted that based on the matriz document, as also the oral evidence led on behalf of the Plaintiffs themselves, the First Appellate Court was justified in reversing the Decree made by the Trial Court.

13. According to me, the First Appellate Court was not justified in placing entire emphasis upon the matriz document and thereby virtually ignoring the land registration document. The matriz document, at the highest, can be said to be a little ambiguous when it comes to the eastern boundary of the suit property. The matriz document also acknowledges that the eastern boundary of the suit property is the hill '*Nibegem Oiteral*' or '*Limbajacho Dongor*'. However, the matriz document is not clear as to whether the eastern boundary extends up to the base or up to the top of the hill. This

ambiguity stands answered by reference to the land registration document, which is very clear that the eastern boundary of the suit property is the top of the hill.

14. In *Fabrica da Igreja de N.S. de Milagres vs. Union of India and ors.* - 1995(1) Bom. C.R. 588 this Court has held that 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 to collect tax revenues from the land. As such, no legal evidentiary value can be attributed to the matriz document to establish ownership title or further for presuming possession of the land.

15. The position of a sale deed or for that matter, land registration document is, however, different and the same has a greater evidentiary value, particularly when such documents were prepared several years ago and have remained unchallenged. The First Appellate Court has discarded the land registration document, which describes the eastern boundary of the suit property as '*top of the hill denominated 'Limbajacho-dongor' of the Comunidade of Bally*' by observing that the land registration document was prepared based on a private document dated 22/1/1901 and since this private document of 1901 was not produced, the land registration document could not be relied upon. Now, the document of land registration is a public document. The fact that the same was prepared based on a

private document dated 22/1/1901, is not so important at this stage. There was no requirement for the Plaintiffs to produce on record 1901 document. The plaintiffs were entitled to rely upon the land registration document which was itself very old and had stated the boundaries of the suit property. Therefore, the First Appellate Court was not justified in rejecting the land registration document.

16. The Sale Deed of 1970 also provides the very same boundaries as are to be found in the land registration document. Therefore, on a proper construction of both these documents, it is apparent that the eastern boundary of the suit property was the top of the hill described as '*Limbajacho-dongor*' of the Comunidade of Bally'. Based mainly on the matriz document, the First Appellate Court was not justified in concluding that the eastern boundary of the suit property was only the base of the hill and not the top of the hill.

17. The oral evidence on record also supports the documentary evidence on record. The witnesses on behalf of the Plaintiffs, including their Surveyor, have deposed to the sloppy portion towards the eastern boundary and have also stated that there is cashew plantation on this sloppy portion. Based on some slight discrepancies here and there, the First Appellate Court was not justified in discarding the oral evidence led on behalf of the Plaintiffs or the documentary evidence which deserved to be accepted.

18. Defendant No.2 – Ram Jaiwant Fal Dessai, the attorney of the Comunidade, no doubt, spoke about some manipulation of the records, but was unable to elaborate upon such manipulation. In any case, even in the written statement, the Comunidade has not alleged any manipulation in so far as the old document of land registration is concerned. Therefore, the First Appellate Court was not justified in reversing the Decree made by the Trial Court in the present case. The substantial question of law, as framed, is required to be answered in favour of the Appellants.

19. In the result, the Appeal is allowed. The impugned Judgment and Decree dated 7th January 2011 of the First Appellate Court is set aside and the Judgment and Decree dated 26th March 2009, made by the Trial Court in Regular Civil Suit No.39/2002/B is, hereby restored.

20. In the facts and circumstances of the present case, there shall be no order as to costs.

M.S. Sonak, J.