

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 87 OF 2005

1. Shri Harischandra Panglo Gaonkar (since deceased)
 2. Smt. Shanem Harischandra Gaonkar (since deceased)
 3. Shri Shashikant Harischandra Gaonkar (expired)
Leaving behind the following heirs:
 - 3(a) Master Gaurish Kanta Gaonkar (minor)
through his next friend and father
Appellant no.1
 4. Smt. Shashikant Gaonkar
 5. Shri Gajanan Harischandra Gaonkar (since deceased)
 - 5(a) Girija Gajanan Gaonkar
wife, major in age
 - 5(b) Chaitali Gajanan Gaonkar
daughter, minor.
Through her mother and natural guardian 5(a)
 - 5(c) Sonali Gajanan Gaonkar
daughter, minor,
Through her mother/natural guardian 5(a)
all residing at Goytawada, Vantimol,
Bethora, Ponda – Goa.
 6. Shri Ramesh Harischandra Gaonkar
All najor, Residents of
Gotyawada, Vantimol, Bethora,
Ponda, Goa.
- ... Appellants
/Original Defendants**

Versus

1. Shri Shambu Dacu Salelkar,

2. Shri Naguesh Dacu Salelkar (expired)

Leaving behind the following legal
representatives

(a) Shrimati Nagesh Salelkar

(b) Smt. Samti Satarkar

(c) Gurudas Nagesh Salelkar

(d) Mrs. Gulabi Vijay Satarkar

(e) Shri Vijay Satarkar

(f) Revati Nagesh Salelkar

(g) Salu Nagesh Salelkar

(h) Vashit Nagesh Salelkar

All majors, and resident of
Bethora, Ponda.

3. Shri Mortu Shankar Salelkar (since deceased)

3(a) Smt. Shantu Mortu Salelkar (Wife) 57 years

3(b) Shri. Tulshidas Mortu Salelkar (Son) 52 years

3(c) Tejaswini Tulshidas Salelkar (wife) 44 years

3(d) Smt. Yuvati Shankar Salelkar (daughter-in-law) 54 years

3(e) Shri. Sunil Shankar Salelkar (son) 33 years

3(f) Sushant Shankar Salelkar (son) 31 years

3(g) Suhas Shankar Salelkar (son) 28 years

3(h) Kum. Suvarna Shankar Salelkar (daughter) 22 years

3(i) Kum. Supriya Shankar Salelkar (daughter) 22 years

3(j) Shri. Prakash Mortu Salelkar (son) 37 years

3(k) Smt. Ranjani Mortu Salelkar (Daughter) 35 years

All are major in age residing behind Bethora, Ponda Goa.

3(l) Reshma Ganesh Salelkar (daughter) 54 years

3(m) Shri Ganesh Nagesh Salelkar (son-in-law)

55 years, Both are residing at Solve Raia,
Salcete, Goa.

.... Respondents

Mr. M. B. D'Costa, Senior Advocate with Ms. Karishma Betquekar, Advocate for the Appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Keny and Mr. T. Sequeira, Advocates for the Respondents.

Coram :- BHARATI H. DANGRE, J.

Reserved on: 21.01.2021

Pronounced on: 12.03.2021

JUDGMENT:

1. Heard Mr. M. B. D'Costa, learned Senior Counsel with Advocate Ms. Karishma Betquekar, for the Appellants and Mr. S. D. Lotlikar, learned Senior Counsel with advocate Ms. S. Keny and Mr. T. Sequeira, for the Respondents.

2. The suit property is an agricultural property known as "COLEAN SARVO" or "COLEACHO SODO" and also known as "GAR ROVLU" situated at Bethora, Ponda-Goa and described in Land Registration Officer of Ilhas under no.13657 of Book B 36 (new) and originally surveyed under old cadastral survey no. 41 and presently surveyed under no. 249/1, 249/2, 250/0, 251/0, 252/1, 253/0, 256/0, 265/2 and 265/3 of village Bethora and bounded as under:

East	: By top of hill and boundary of Village Codar.
West	: By rivulet.
North	: By stone fence of Sheutu Probina
South	: By old Dabal road

3. The Plaintiffs (Defendants herein) instituted a suit for permanent injunction claiming to be the owners and in possession of the suit property recorded under Land Registration Office under No.13657 and originally surveyed under Old Cadastral Survey No.41. They trace their title to the suit property to the Deed of Sale dated 22.09.1975, registered in the Sub-Registrar's Office at Ponda under No. 284 at pages 40 to 43 of Book No.1, vol.33 dated 24.10.1975. The Plaintiffs claim that since then they are in possession and enjoyment of the suit property as owners thereof. It is also the claim of the Plaintiffs that prior to its purchase, the property was enjoyed by the father of the Plaintiff No.1 and 2 as a leased out property. The Plaintiff rely upon the Form No.III wherein in the occupant's column of new survey number, the suit property is recorded as belonging to the deceased brother of the Plaintiff, Vasant Dhaku Salelkar as occupant alongwith the name of the Plaintiffs. On an application being moved for correction of survey record pertaining to the suit property before the Mamlatdar, a case was registered and after conducting necessary enquiry, the application was allowed, directing inclusion of the name of the Plaintiffs and the deceased brother as occupant in respect of the suit property. An appeal against the said order has been preferred by the Defendants, and the same was also dismissed by the Deputy Collector on 25.01.1993, is the version of the Plaintiff.

4. On an attempt by the Defendant no.3, on 26.12.1993 to forcibly and illegally trespass on a portion of the suit property and in cutting of saplings and bushes under the pretext of cleaning the portion, the Plaintiffs approached the Court seeking a permanent injunction restraining the Defendants and the family members or any person claiming through or under them in any manner interfering with the suit property or in part thereof.

5. The Defendant set up a claim that property "COLEAN SARVO" is in fact the property "Bhirondem" and known by both the names but it is registered under No.5665 of Book of B-15 new and inscribed in the name of Puno Deu Gaonkar and Sonu Deu Gaonkar, grandfather and granduncle of defendant No.1. It is claimed that the suit property is in their possession and enjoyment alongwith their cousin Venkatesh Gaonkar and the vendor of the plaintiffs Kagi Mohamad Isac and his wife had no right, title or interest in the suit property and that the Sale Deed in his favour is a nullity.

6. The Civil Judge Junior Division at Ponda, vide his judgment dated 24.07.2002 declined the relief claimed in the Regular Civil Suit No.6/94/C, recording that the Plaintiffs have

failed to prove that they are owners in possession of the suit property, since they have failed to establish any connection between their vendor Kagi Isac and Xec Saloskar in whose name the property was inscribed and that the boundaries of the property bearing Land Registration no. 13657 do not correspond to the boundaries of the property bearing Old Cadastral Survey No.41. It was also held that entry in Form No. III and Form No. I and XIV raises a presumption of possession in favour of the plaintiffs but since the names have been mutated in the record by deleting the name of the defendant and the proceedings in appeal are pending, the presumption cannot be raised. The issue no.3, whether the Defendants are owners in possession of the suit property, which according to them was known as "Bhironдем", was also answered in the negative.

7. On an appeal being filed before the Additional District Judge, Panaji under Regular Civil Appeal No.98/2002 by the Plaintiffs, the suit came to be decreed granting permanent injunction in favour of the Plaintiffs, by recording a finding that the Sale Deed on the basis of which the Plaintiffs claim their title not being questioned and by holding that the Trial Court did not give due weightage to the entries in the record prepared under the Land Revenue, in light of the presumption under Section 105 and holding that there is a presumption of truth of entries in the Record

of Rights unless the presumption is rebutted, the Plaintiffs who claim to be in possession on the basis of the survey records and in absence of the presumption being rebutted by the defendants, the judgment of the Trial Court was set aside and permanent injunction, as prayed for was granted to the plaintiff/appellant.

8. Being aggrieved, the original Defendants are before this Court. The Appeal came to be admitted on 19.10.2005 by formulating the following substantial question of law:

'Whether the entry in the survey record which has been right from the inception in dispute and which continue to be in dispute can be relied upon for the purposes of raising any presumption.'

9. The Goa Land Revenue Code, 1968, which amend the law relating to land and land revenue provide for the revenue survey of the lands of a village, town or city. Chapter V contain a detailed procedure of Survey and Chapter VI prescribe the manner of assessment and settlement of land revenue of agricultural land. Section 94 contained in Chapter VIII set out the obligation of the Government to take all measures for preparation and maintenance of land records and Section 95 prescribe the manner in which the record shall be maintained in every village in prescribed form and the contents of such Record of Rights. Section 105 of the Act

provide for presumption of correctness of entries in such Record of Rights and Register of Mutations. The said Section reads thus:

'105. Presumption of correctness of entries in record of rights and register of mutations.— An entry in the record of rights, and a certified entry in the register of mutation shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.'

The said provision raises a presumption which is also raised in various statutes governing land revenue in the entry in the Record of Rights and certified entry in the Register of Mutation is presumed to be true until the contrary is proved. The presumption of correctness of an entry in the revenue record is a rebuttable presumption is the settled position of law, whilst the presumption cannot be rebutted by a mere statement contained in the written statement and it can be rebutted only by leading evidence.

The detailed procedure for recording of the periodical Record of Rights as well as maintaining the Record of Rights is set out in the Act and it contemplate the Record of Rights to be maintained up to date by following the procedure prescribed. Such Record of Rights carries the presumption of correctness in terms of Section 105 of the 1968 Act and also by virtue of Section 35 of the Indian Evidence Act, 1972. The relevant provision in the Indian

Evidence Act read as under:

“35. Relevancy of entry in public record or an electronic record made in performance of duty.- *An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.’*

The presumption of truth attached to revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability. Oral evidence can be adduced contrary to the revenue record but such oral testimony will not be sufficient to hold that the statutory presumption stands rebutted. The witness may lie but the documents do not is a golden rule. The Apex Court in case of *Vishwa Vijay Bharti v/s. Fakhrul Hasan & Ors*¹. held as under:

“14. it is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is the revenue record states but the entry is open to the attack that it was Made fraudulently or surreptitiously. Fraud and forgery rob

1(1976) 3 SCC 642

a document of all its legal effect and cannot found a claim to possessory title.”

The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously or where such entry has not been made by following the prescribed procedure.

10. The Plaintiffs approached the Court staking permanent injunction and the source of their title is the Sale Deed which is registered on 22.09.1975, which contain the description of the property purchased by the Plaintiffs from one Kagi Mohamad Isac, as its owner. The description of the property in the Schedule is as under:-

'All that property known as "COLEAN SORVO" or "GAR ROULO" situated at Betora, Taluka Ponda, sub-district of Ponda, District of Goa, grampanchayat of betora bounded on the East by top of hill and boundary of Codar village on the West by rivulet (regueiro) known as Bonguicho val on the North by stone fence known as Camiada of Shentim Porbina and on the South by old road which proceeds to Dabal registered in land Registry office of Ilhas under number 13657 of Book B 36 New and not registered in Taluka Revenue Office.'

11. The Plaintiff has stepped into the witness box and

placed on record document of Inscription and Description. The said certificate contain the description of the property which is exactly bearing the same description as above and the certificate issued certify that the contents of the inscription Nos. Ten thousand thirty seven(10037) at folios seventy nine of the Book F.18 and number fourteen thousand eight hundred ninety (14890) at Folios eighty six of the Book F.23. The inscription in respect of the said property under No.13657 named as "COLEAM SARVO" or "GAR ROULU" situated at Village Betora of Ponda Taluka, has two entries; first being inscribed on 28.01.1918 in favour of one Xec Amida Saloskar, the lease of property described under No. 13657 by Rucmini, widow of Vithoba Rodvo Gaunkar for period of nine years counting from 1st January till 31st December, 1926 on an yearly rent of 5/-. The other inscription of the described property is recorded on 09.06.1972, by which the inscription is in favour of Xequ Amida Saloskar having purchased the suit property for consideration of ₹100/- from Rucmini, widow of Vithoba Rodvo Gaunkar. The Plaintiff described the suit property as the one described in Land Registration Officer of Ilhas under No.13657 of Book B. 36 New and originally surveyed under Old Cadastral Survey No.41 and presently under Survey No.249/1, 249/2, 250/0, 251/0, 252/1, 253/0, 256/0, 265/2 an 265/3 of Village Bethora. The plaintiff claim to have purchased the suit property vide Sale Deed dated

19.07.1975 which mention that the property sold is registered in Land Registration Office at Ilhas No.13657 of Book B-36 New. There is no dispute that the suit property "COLEAN SARVO" is also known as "BHIRONDEM" and that the new survey Nos. mentioned above pertain to property "COLEANCHO SARVO and the survey record brought on record as Exhibit PW1C collectively. From Form No. III at Exhibit PW1/E collectively the names of the respondents have been deleted vide Order dated 08.08.2001 passed by the Awal Karkun for Record of Rights at Fatora. The said Order placed on record is passed in a disputed case No.196/Bethora instituted by the plaintiff in respect of inclusion of their names and for survey of the property in Village Bethora Taluka Ponda. Kupaso Gaonkar and others are party to the said proceedings. The application was allowed and the existing name of the occupant in respect of survey no.249/1, 249/2, 250/0, 251/0 and 253/0 were directed to be deleted and the name of the Salekars was directed to be substituted. As far as Survey No.252 is concerned which was a part of Old Cadastral Survey No.42 it was directed to be recorded in the name of Nagesh Daku Salekar by sub-dividing it. The necessary changes were directed to be effected in the Index of Land Records, i.e. Form No.III and other Survey Records as per the said order. An appeal filed against the said order in the Court of Deputy Collector is also dismissed and placed on record as Exhibit PW1H. A second

appeal has been filed by the respondents against the said order but without any interim protection. The revenue authority and in particular the Deputy Collector has recorded as under:-

"For the purpose of entering the name of a person as 'occupant' in the Record of Rights it is just not enough that the said person should be in actual possession and enjoyment of the land but it is also necessary that he should be lawfully in possession of that land. The applicant before the lower Court proved beyond doubt that they are owner in lawful possession of the property known as "COLEAN SARVO" or "GAR ROVLU" registered under Land Registration Officer no. 13657. The respondents before the lower Court failed to prove that the said property do not belong to the applicant and it is owned and enjoyed by them. To ascertain the physical possession of the applicant in respect of the property owned by them as per direction of Deputy Collector Margao, the Awal Karkun Record of Rights passed the order alongwith the Surveyor inspected the land in dispute in presence of the interested persons and they found that the properties in respect of which the Awal Karkun ordered to be recorded in the name of applicant, are in actual physical possession."

It is further recorded that "the evidence before the lower Court prove that property claimed by the applicant has got its own separate identity with independent description or boundary and the respondents did not succeed to disprove the claim before the lower Court. The site inspection memorandum and the plan drawn by

the lower Court with the help of the surveyor are in conformity with the evidence on record."

12. The Trial Court has discarded the said entries on the ground the entries are effected by removing the name of the Defendants. Pertinent to note that the same Court also held that the Defendants have failed to establish that the suit property belong to them and the documents relied by the Defendants is the basis for their title to the suit property in fact do not pertain to the suit property and therefore, the presumptions which are raised by virtue of the entries in the Revenue record, was not rebutted by the Defendants. The certified inscription and description produced by the Plaintiffs came to be discarded on the ground that the Plaintiffs have failed to prove the flow of title of the suit property. In the cross examination the PW1 had denied the suggestion that neither Kagi Mohamad Isac nor his ancestors had at any point of time possessed or enjoyed the suit property. He deposed that the property came to Kagi Isac through Xec Saloskar but he did not possess any documents in that regard. The property described in the Sale Deed which is the genesis of the claim of the plaintiff correspond with the document of inscription and description and the Sale Deed which is registered document establish that the suit property is purchased by the plaintiff. Pertinent to note that there is no challenge to the Sale

Deed, except an averment in the written statement that it is void. There is no contradictory material brought on record by the defendants to establish that the vendor of the plaintiff has not acquired his title legally and the trial court has no basis to discard the flow of title of suit property to the plaintiffs from their vendor.

13. Assuming but not admitting that neither the appellants nor the respondents established their ownership in respect of the suit property, the learned Trial Judge was obliged to ascertain the preponderance of probability as of who was in possession of the suit property as it was permissible for the Defendants to resist interference with the “suit property” in their possession by the Defendants who were alleged to be rank trespassers on the basis of their possession which by itself would constitute a better title, as against the whole world except the true owner. The 'Record of Rights' has a presumptive value and the names of the Plaintiffs being recorded in column of occupant, leading to a presumption of the truthfulness of the said entries which was coupled with possession of the Plaintiffs over the suit property being established and with no rebuttal of Defendants, the Trial Court in complete ignorance of the presumptive value attached to the said documents, refused relief in favour of the Plaintiffs.

14. Another aspect which is lost sight of by the Trial Court is that of recording of the names of the Plaintiffs in the 'Record of Rights' in respect of the suit property, the proceedings were initiated and by an order passed by the Awal Karkum, the name of the Plaintiffs came to be recorded as occupants in the Record of Rights qua the suit property. Against the said order, the Defendants (present Appellants) had taken an Appeal to the Deputy Collector who dismissed the Appeal and confirmed the order of the Awal Karkun. The said order of Deputy Collector is assailed in a Second Appeal before the Collector of North Goa at Panaji preferred under Section 188(2) of the Goa Land Revenue Code, 1968. Mere pendency of the Appeal would not amount to rebutting of a presumption of the correctness of the entries recorded by an officer competent to make those entries and particularly when there is no order granting stay to the directions mutating the name of the Plaintiffs in the Record of Rights, resultantly the Record of Rights till date include the name of the Plaintiffs in the column of occupant. The said Appeal is pending for adjudication since the year 1993 without any order or any stay and therefore mere filing of Appeal do not operate as a stay.

The order of the Revenue authorities has been given effect to and the Record of Rights has been promulgated and as long as the said Record of Rights is corrected in terms of Section 105 of

the Goa Land Revenue Code, entries are presumed to be true unless substituted. After the survey record of the suit property are promulgated, the presumption if anything under the old existing record must necessarily yield its way in favour of the new record. The first Court had clearly erred in recording that the suit property corresponds to the property bearing old cadastral no. 41 but the boundaries of it as shown in certificate issued by the Directorate of Land Survey Panaji as Exhibit PW1/C do not correspond to the boundary of property registered under No.13657 in Land Registration document. The Appellate Court has upset the said finding by rightly relying upon Section 107 of the Land Revenue Code which has the effect of continuing the presumption under the existing Record of Rights in force in that area until the Record of rights is prepared under the Land Revenue Code.

15. It is a settled position of law that entries in Revenue records do not create any title in respect of the land in dispute but it certainly reflect as to who was in possession of the land in dispute on the date the name of that person was entered into the Revenue record. The Revenue record in the present case clearly reflect that the Plaintiffs were in continuous possession of the suit property and in absence of any other documents of title corresponding to the suit property being brought on record by the Defendants, it cannot be

said that the entries in the Record of Rights were wrong. The Trial Court answered the issue about the Defendants being owners of the property bearing Survey No.249/1, 249/2, 250/0, 251/0, 252/1, 253/0, 256/0, 265/2 and 265/3, the property known as “Bhirondem” in the negative and has categorically rendered a finding that the Defendants have not produced any documents to prove that they are descendants of the four persons mentioned in document DW1A and DW1E collectively suggesting that property bearing No.5665 was partitioned on 21.09.1894. The feeble attempt to establish the title through Gift Deed which was produced as DW1/F, the Trial Court held that this would at the most make the Defendant No.1 entitled to 1/3rd of the share of half of the property “Bhirondem”. Failure on part of the Defendants to produce any material on record to even suggest that the property bearing old cadastral Survey No.41 correspond to property registered under No.5665, it is conclusively held that the Defendants are not owners in possession of the suit property but they can be at most considered to be in possession of part of the suit property. The finding rendered is, the Plaintiffs are in possession of some portion of the suit property whereas the Defendants are in possession of other portion, in absence of the extent of encroachment being indicated by a sketch, the suit of the Plaintiffs is dismissed.

16. The reasoning so rendered, in my considered opinion being erroneous and rectified by the Appellate Court which permitted the presumption under Section 105 to be raised and in absence of the said presumption being rebutted, granted the relief in favour of the Plaintiffs. The reliance by Mr. D'Costa on the judgment in case of ***Ananthula Sudhakar v/s. P. Buchi Reddy***² to canvass that plaintiff should have sought declaration of ownership and in absentia the suit for permanent injunction simpliciter is not maintainable, do not take their case any further. The revenue authorities which effected the entries in the column of occupant by deleting the name of the defendants has clearly recorded a finding that it is the Salelkars which are in possession of the surveyed properties and the plaintiff was not out of possession. Every denial of title of the Plaintiffs is not a ground to insist that he should seek declaration of his title and particularly when the person who question his title is a ranked trespasser and was without any title or possession of the said property. The Plaintiffs on the basis of his possessory title and his long continuous possession over the suit property is entitled to protect the same by seeking an injunction against any person in the world other than the true owner. Even the owner of the property can get back his possession only by resorting to due process of law. The contention of the learned Senior Counsel

² 2008 4 SCC 594

Mr. D'Costa therefore deserve to be rejected.

17. The finding rendered by the Trial Court that the Defendant has failed to prove his ownership over the property is never challenged by the Defendants nor there is any challenge to the Sale Deed which has been relied upon as a source of title of the Plaintiffs for claiming ownership as well as possession. The Appellate Court has corrected the Trial Court both on the ground of presumptive value under Section 105 of the Goa Land Revenue Code and also on the point of the Plaintiffs proving their title to the suit property by means of the Sale Deed and on the presumption of they being in possession of the suit property on the basis of the survey record and holding him entitled for order of injunction. I find no legal infirmity in the judgment and order of the Appellate Court. By virtue of Section 110 of the Evidence Act, the burden of proof as to ownership is on the person who assert that the other is not the owner and therefore had to be discharged by the Defendants, when the Plaintiffs claim that they were owner of the suit property and on the basis of the Revenue entries there was a presumption that they were in possession thereof and the Defendants ought to have discharged the burden that they are not owners of the suit property.

In light of the aforesaid discussions, the substantial

question of law is answered to the following effect:-

The entry in the Record of Rights and in the Register of Mutation, shall be presumed to be true until the said presumption is rebutted or a new entry is lawfully substituted therefor. This presumption would continue to hold good in respect of a disputed entry and when a finding is rendered by the competent revenue authority in such a dispute, and change is effected in the Record of Rights, until the entry is substituted by a new entry.

By answering the question of law as above, the Appeal being devoid of any merit and substance, is dismissed. The judgment and decree 28.02.2005 in Regular Civil Appeal No.98 of 2002 is confirmed. Decree be drawn accordingly.

BHARATI H. DANGRE, J.

msr.