

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.286/2008

1. SHRI BALKRISHNA INSULKAR

Son of Vishnu Insulkar

Major of age, residing at

House No. 671, Deugiwado,

Chodan, Goa.

2. SMT. BINDIYA BALKRISHNA

INSULKAR

Major of age, residing at

House No. 671, Deugiwado,

Chodan, Goa.

...APPELLANTS

Versus

1. SMT. CHITRA BADRINARAYAN Alias

B. Chitra, Wife of E.P. Badrinarayan,

Major of age, Residing at A-5,

Palmar Enclave Co-op. Housing Society,

Odlembhat, Taleigao, Caranzalem, Goa.

2. SHRI E.P. BADRINARAYAN,

Major in age, Advocate by Profession,

residing at A-5, Palmar Enclave Co-op.

Housing Society, Odlembhat, Taleigao,

Caranzalem, Goa.

3. SHRI VISHNU BABULI INSULKAR,

Major in age, residing at No.671,

Deugiwado, Chodan, Goa.

(deleted as per order dtd.5/11/09)

4. SHRI BABULI VISHNU INSULKAR,

Major in age, residing at No.671-B,

Deugiwado, Chodan, Goa.

5. SHRI KASHI BABULI INSULKAR,
Major in age, residing at No.671/B,
Deugiwado, Chodan, Goa.

6. SMT. SUMATI SURYAKANT
KARBOTKAR,
Major in age, residing at Bhatwadi,
Mayem, Bicholim-Goa.

7. SHRI SURYAKANT KARBOTKAR,
Major in age, residing at Bhatwadi,
Mayem, Bicholim-Goa.

8. SHRI ANANT S. TALKAR,
Major in age, residing at Carapur,
Sankhali, Bicholim, Goa.

9. SHRI AKSHAYA ANANT TALKAR,
Major in age, residing at Carapur, Sankh
Bicholim, Goa.

10. SMT. KUSUM D. GAVANDE,
Major in age, residing at Viridi,
Sankhalim, Bicholim, Goa.

11. SHRI DAYANAND GAVANDE,
Major in age, residing at Viridi,
Sankhalim, Bicholim, Goa.

12. DEPUTY COLLECTOR AND SUB
DIVISIONAL OFFICER
(Land Partition Division),
Collectorate Office,
Panaji Goa.

13. DIRECTOR OF SETTLEMENT AND
LAND RECORD,
Collectorate Bldg.,
Panaji Goa.

14. MR. R.C. NAIK,
Major in age, Supervisor,
Revenue, C/O Director of Settlement &
Land Records, Collectorate Bldg.,
Panaji Goa.

15. STATE OF GOA,
Through Chief Secretary,
Secretariat, Panaji Goa.

16. SHRI ANAND S. TALKAR,
Major of age, residing at
Carapur, Sankhali, Bicholim, Goa.

17. SMT. AKSHAYA ANAND TALKAR,
major of age, residing at Carapur,
Sankhalim, Bicholim, Goa.

18. INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS (ISKCON)
R/o Hare Krishna Land,
Juhu, Maharashtra 400 049.

...RESPONDENTS

Mr. P. A. Kamat, Advocate *for the Appellants*.

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar,
Advocate *for Respondents No.1 and 2*.

Ms. S. Linhares, Additional Government Advocate *for Respondent No.15*.

Mr. A. R. Kantak with Mr. R. Kantak, Advocates *for Respondent No.18*.

CORAM: **M. S. SONAK, J.**
Reserved on: **24th September 2021**
Pronounced on: **1st October 2021**

JUDGMENT:

1. Heard Mr. P. A. Kamat for the Appellants, Mr. J. P. Mulgaonkar, learned Senior Advocate who appears along with Ms. Rupa Banaulikar for Respondents No.1 and 2, Ms. Susan

Linhares, learned Additional Government Advocate for Respondent No.15 and Mr. A. R. Kantak who appears along with Mr. R. Kantak for Respondent No.18.

2. This appeal is directed against the Judgement and Decree dated 05.03.2007 dismissing the Civil Suit No.100/2004, instituted by the appellants-plaintiffs seeking decree to declare the sale deed dated 20.11.1996 and the rectification deed dated 08.08.1997 as illegal, null and void and also seeking decree to declare the consent decree dated 14.07.1997 made in Inventory proceedings No.2/1995 as illegal, null and void. Further reliefs concerning deletion of entries in survey records and for permanent injunction were also claimed in the suit.

3. Based on the pleadings in the suit, the Trial Court, was pleased to frame only the following issue:-

“Whether the Plaintiff proves that Sale Deed dated 20/11/96 deed of rectification dated 8/8/97, order in inventory proceedings and mutation in survey records were obtained by exercise of fraud?”

4. By the impugned Judgment and Decree, the Trial Court has answered the aforesaid issue against the appellants herein and dismissed the suit. Hence the present appeal.

5. Mr. P. A. Kamat learned counsel for the appellants submitted that several grounds were raised in the suit to challenge the sale deed, the rectification deed, and the consent decree. However, the learned Trial Judge has only addressed the ground of fraud, thereby, ignoring the other grounds raised in the plaint. He submits that even on the issue of fraud, the learned Trial Judge has misconstrued the evidence on record and failed to draw the correct inferences. Mr. Kamat further submitted that the evidence on record, in this case, had very clearly established that no consideration whatsoever was paid to the plaintiffs and this aspect has been completely glossed over by the Trial Court. He submits that the circumstances borne out from the evidence on record have not at all been cumulatively considered by the Trial Court and this is an error that warrants interference with the impugned Judgment and Decree. He submits that the position in law about the role of the *Cabesa de Casal* has been completely ignored by the Trial Court. He submits that the incorrect principle of devolution of the property has been applied by the Trial Court. He submits that the provisions of the Portuguese Civil Code have been completely ignored by the Trial Court. He submits that the learned Trial Court has simply refused to look into the allegation of fraud committed by the advocate and its impact on the challenged documents by observing that these are

matters which are to be looked into by the Bar Council of India. He submitted that the Bar Council of India can at the highest punish the advocate for the misconduct but it is only the Civil Court, that was empowered to go into the issue as to whether fraud was committed by the advocate, which resulted in the purchase of properties by him, vitiated such purchase or rather the sale deed dated 20.11.1996 and rectification deed dated 08.08.1997.

6. For all these reasons Mr. Kamat submits that the impugned Judgment and Decree be set aside and the suit be decreed. In the alternate, Mr. Kamat submits that the impugned Judgment and Decree be set aside and the matter be remanded to the Trial court for fresh consideration of all the issues that arise in the suit.

7. Mr. Mulgaonkar learned counsel for respondents no.1 and 2 defended the impugned Judgment and Decree based on the reasoning reflected therein. He submits that the pleadings in the suit were not in accord with the provisions of Order 6 Rule 4 of the Code of Civil Procedure and therefore, even the issue of fraud was not required to be gone into in the suit. He submits that in any case the fraud, even in a civil suit, is required to be established beyond a reasonable doubt. He submits that from the

evidence on record fraud is not at all been established and therefore, the suit was quite correctly dismissed by the Trial Court.

8. Mr. Kantak learned counsel for respondent no.18 adopts the submissions of Mr. Mulgaonkar. He submits that respondent no.18 is a subsequent purchaser and therefore, no reliefs are liable to be granted against respondent no.18.

9. Ms. Susan Linhares learned Additional Government Advocate leaves the matter to the determination of this Court by pointing out that these are disputes between private parties and the Government authorities were only formal parties to the plaint. She however submits that the Government parties are not guilty of any wrongdoing and therefore, no reliefs are liable to be granted against them.

10. Based on the rival contentions, the following points arise for determination in this appeal:-

(a) Whether the Trial Court was justified in framing only a single issue about fraud vitiating the sale deed dated 20.11.1996, rectification deed dated 08.08.1997, and the consent decree in Inventory Proceedings No.2/1995 or

whether other issues arose in the suit, which were completely glossed over by the Trial Court?

(b) Whether the sale deed dated 20.11.1996 and rectification deed dated 08.08.1997 was vitiated because there was no consideration paid to the plaintiffs or some of the plaintiffs and further, even the consent decree in Inventory Proceedings No.2/1995 was vitiated, having regard to the provisions of the Portuguese Civil Code?

(c) Whether the Trial Court, in the facts of the present case, was justified in refusing to go into the allegations made against respondent no.2, an advocate, on the ground that such allegations are required to be looked into by the Bar Council of India, when in fact, the allegations were made in the context of the advocate, fraudulently or by undue influence obtaining the execution of the sale deed, rectification deed, either in his favor or in favor of his wife?

(d) Whether the Trial Court was justified in holding that the pleadings in the plaint were not sufficient to make out a case of fraud and further, and in any case, the evidence on record did not establish fraud particularly on the part of the defendant no.2, an advocate by profession?

11. Originally, this suit was filed on 09.02.2000 by plaintiff one Shri Balkrishna Insulkar. However, on 23.03.2001, defendant no.3 in the suit, who was incidentally the father of plaintiff-Balkrishna, applied for his transposition as plaintiff no.2. On the same date, even defendants no.8 and 9, son of the sister of the plaintiff and her husband applied for transposition as plaintiff nos.3 and 4. Such transposition was ultimately allowed by the Trial Court.

12. During the pendency of the suit, plaintiff no.2 i.e. Vishnu expired. Therefore, his legal representatives were also brought on record, or an endorsement was made in the plaint about the legal representatives already on record.

13. For the aforesaid reasons, the plaint contains averments initially made by plaintiff no.1-Balkrishna Insulkar. At a later stage, however, these averments came to be adopted by the parties who were transposed as plaintiffs. For this appeal therefore reference is made to plaintiff no.1-Balkrishna Insulkar, as the plaintiff.

14. The plaintiff-Balkrishna is the son of late Vishnu and mother Laxmi. Laxmi had expired on 11.06.1986 i.e. before the filing of the suit. The plaintiff has pleaded that his parents

Vishnu and Laxmi were the owners in possession of the properties described in para 1 of the plaint i.e. (a) property admeasuring 59504 sq. mtrs. bearing survey nos.70/1 and 70/2, Chorao, Tiswadi-Goa; (b) property bearing survey nos.42/9, Chorao, Tiswadi-Goa; (c) property bearing survey nos.41/8, Chorao, Tiswadi-Goa; and (d) property bearing survey nos.84/2, Chorao, Tiswadi-Goa.

15. The plaintiff-Balkrishna had pleaded that his father Vishnu had made two separate gift deeds dated 26.11.1987, in terms of which the property (a) above was gifted to plaintiff-Balkrishna and his brother Babuli (defendant no.4). This was not even disputed by any of the defendants.

16. The plaintiff-Balkrishna has further pleaded that after the death of his mother Laxmi on 11.06.1986, his father Vishnu instituted Inventory Proceedings No.2/1995 before the Civil Judge, Senior Division at Panaji. Vishnu was appointed as the head of the family (*Cabesa de Casa*). On 13.01.1995, Vishnu made a statement on oath in the said Inventory Proceedings that he had listed all the properties left behind by his wife Laxmi.

17. The plaintiff-Balkrishna has further pleaded that before 1995 he was working as a peon with the Gomantak

Maratha Academy and at this time one Mr. Deelip Kenkre introduced him to defendant no.2, an advocate by profession. Mr. Kenkre did this because at that time one Dinesh Phadte had illegally obtained a loan from the Bicholim Urban Cooperative Bank of which Deelip Kenkre was the Managing Director. This loan was obtained by Dinesh Phadte in the name of plaintiff-Balkrishna and plaintiff-Balkrishna, therefore, required legal advice. Plaintiff-Balkrishna has further pleaded that defendant no.2 then began to take interest in the properties of plaintiff-Balkrishna and his family at Chorao and even offered to get the inventory proceedings settled. The plaintiff-Balkrishna has then pleaded that defendant no.2 ultimately impressed upon him to leave his job as a peon with the Gomantak Maratha Academy on the promise that he would secure some Government employment for him. The plaintiff-Balkrishna has pleaded that defendant no.2 held out to him that he was dealing with various Government departments and was also an advocate for the Central Government.

18. The plaintiff-Balkrishna has further pleaded that he resigned from his job as a peon with the Gomantak Maratha Academy relying on the assurances of defendant no.2. In the interregnum, defendant no.2 offered and the plaintiff-Balkrishna accepted a job as a peon in the office of defendant no.2. The

plaintiff-Balkrishna has then pleaded that defendant no.2 got close to him and even started visiting him and his family members at their family house in Chorao. The plaintiff-Balkrishna has pleaded that defendant no.2 impressed him that he is a believer of God and performs various religious pujas and other activities. There are pleadings that defendant no.2 would chant various mantras stating that the plaintiff-Balkrishna and his family would prosper. There are pleadings about how defendant no.2 would come very often to the plaintiff's house during festivals and other religious functions and offer sweets and other articles to gain confidence of plaintiff and his family members. There are pleadings as to how defendant no.2, in this manner, befriended Vishnu and other family members.

19. The plaintiff-Balkrishna has then pleaded that finally defendant no.2 offered some money to Vishnu and also stated that he would take care of the inventory proceedings. The plaintiff has pleaded that sometime in the year 1996 the defendant no.2 took the plaintiff, his wife, and father Vishnu to the office of the Sub-Registrar and made them execute some papers without explaining to them what they were. Vishnu only put his thumb impression on the documents. Similarly, defendant no.2 also obtained signatures of some of the other legal heirs of Laxmi – defendants no.10 and 11 in the plaint, without

informing them anything and started appearing in the inventory proceedings on behalf of the said defendants.

20. The plaintiff-Balkrishna has pleaded that defendant no.2 persuaded the family members not to engage any other advocate and also began liaisoning with the advocate who was appearing for Vishnu. Defendant no.2 having, in this manner, gained the full confidence of the plaintiff and his family members, persuaded them to sign consent terms in the inventory proceedings. Again, this was without explaining to them the implications of such consent terms or about what they were actually getting under the said consent terms.

21. The plaintiff-Balkrishna has pleaded that defendant no.2 had promised the plaintiff that he would be in a position to purchase a flat and a shop to start his own business after the consent terms were filed in the inventory proceedings. The plaintiff-Balkrishna has pleaded that defendant no.2 had also assured him that he would get a substantial amount on signing the consent terms. There are pleadings that defendant no.2 even took the plaintiff to Batim, Bardez-Goa to show him a flat which he could acquire after signing the consent terms.

22. The plaintiff-Balkrishna has then pleaded that after the consent terms were filed in the inventory proceedings, defendant no.2 took the plaintiff, his wife, and Vishnu to the office of the Sub-registrar and got some papers executed. Here again, they were not made aware of what these papers or documents were. Similarly, defendant no.2 took signatures of the plaintiff, his wife, and Vishnu on several documents, applications, papers stating that the same was necessary to correct the records in the office of Talathi, Deputy Collector, etc.

23. The plaintiff-Balkrishna has pleaded that all this while they were under the impression that defendant no.2 was doing all this to safeguard their interest so that they would get the necessary share in the property as well as income. However, after the consent terms were filed and these signatures were obtained, the plaintiff or for that matter the other family members hardly got anything. Instead, defendant no.2, began to ignore and abuse the plaintiff. For about two months the defendant no.2 did not even pay salary to the plaintiff-Balkrishna.

24. The plaintiff-Balkrishna has further pleaded that he had no alternative but to stop working with defendant no.2 and seek alternate employment after suffering unemployment for almost a year.

25. The plaintiff-Balkrishna has further pleaded that he made inquiries with the office of the Sub-registrar in June 1999 and managed to get copies of the sale deed dated 20.11.1996 and rectification deed dated 08.08.1997. He also managed to get copies of inventory proceedings bearing No.2/1995. The plaintiff-Balkrishna has pleaded that it is then that he realized that defendant no.2 had got a sale deed executed in favour of his own wife and even the consent terms in inventory proceedings were so prepared as to enable defendant no.2 to acquire the properties belonging to the plaintiff and his family. The plaintiff-Balkrishna has also made allegations about the conduct of defendant no.2 in proceedings before the Revenue Authorities, in getting land records changed.

26. Based upon all these the plaintiff has alleged that defendant no.2 has practised fraud undue influence and misrepresentation and got the impugned sale deed, rectification deed, and consent terms in the inventory proceedings executed.

27. But what is referred to above were not the only pleadings to challenge the impugned documents. The plaintiff-Balkrishna has further pleaded that in the consent terms filed in the inventory proceedings no.2/1995 there was no reference made whatsoever to the sale deed dated 20.11.1996 which defendant

no.2 got executed from the parties during the pendency of the inventory proceedings. In the said sale deed, it was stated that Vishnu was selling his undivided rights in the property of defendant no.1 i.e. the wife of defendant no.2 Advocate. The plaintiff has alleged that the factum of this sale deed had to be disclosed in the inventory proceedings and also had to be referred in the consent terms. The plaintiff has averred that perhaps even defendant no.1, in her purported role as co-owner was required to be a party to the inventory proceedings. The plaintiff has averred that disclosures about this deed needed to be made in the inventory proceedings before any consent terms were filed therein.

28. The plaintiff-Balkrishna has also averred that Vishnu as a co-owner, had no right to execute the sale deed dated 20.11.1996 because Vishnu, as a co-owner, had purported to sell a specific property by simply stating that undivided right to the same was being sold. The plaintiff has averred that no co-owner has a right of this nature unless the properties were partitioned by executing a partition deed or through inventory proceedings in terms of the law prevalent in Goa.

29. The plaintiff-Balkrishna has further averred that if, Vishnu, had indeed sold his right by the impugned sale deed,

then, it was not permissible to include his transferred rights in the inventory proceedings. There was the issue about previous gift deeds and the impact of the same on this later sale deed and rectification deed. On all these grounds the sale deed dated 20.11.1996 and the rectification deed dated 08.08.1997 were challenged. This means that the challenge was not only based on fraud and undue influence but on other grounds as well.

30. The plaintiff-Balkrishna, in para 16 of the plaint has also raised a specific plea that he had not received any consideration whatsoever from defendant no.1 for the sale deed and rectification deed. He had alleged that the sale deed is void on this count as well.

31. The plaintiff-Balkrishna has also alleged that the consent terms, apart from being fraudulent, purport to make allotments contrary to the provisions of the Portuguese Civil Code. In the plaint, there is a reference to the earlier gift deeds, the position arising after the demise of Laxmi, and further such issues to contain that the consent terms are even otherwise null and void.

32. Based upon all such pleadings, reliefs as aforesaid came to be applied for in the plaint concerning, in particular, the

properties bearing survey nos. 70/1 and 70/2, Chorao, Tiswadi, Goa.

33. No doubt, the allegations of fraud and undue influence were denied by defendants no.1 and 2 by filing a written statement.

34. Based on the pleadings, therefore, the Trial Court was not justified in framing only one issue i.e. the issue as to whether the sale deed dated 20.11.1996 and the rectification deed dated 08.08.1997 and the order in the inventory proceedings and the mutation of survey records being obtained “*by exercise of fraud*”. Apart from this issue, the Trial Court was required to frame issues as to whether the sale deed, the rectification deed, the consent terms were null and void on grounds other than fraud pleaded by the plaintiff-Balkrishna. Fraud, was no doubt, one of the issues involved but that was not the only issue involved in the holistic construction of the pleadings.

35. Mr. Kamat referred to the provisions of the Portuguese Civil Code and the law relating to inventories in an attempt to make good his contention that the impugned documents were null and void even on grounds other than the ground of fraud. However, at this stage, it would not be

appropriate for me to go into such issues because such issues were neither framed nor adverted to by the Trial Court in the present matter, though it appears that some arguments were advanced. The Trial Court was content by framing only a specific issue and thereafter, has proceeded to decide only the said issue without, even adverting to all the other issues about the validity of the impugned documents had, according to me, arose in the present matter.

36. The issue as to whether the rights to a specified portion of the undivided property could at all have been sold by Vishnu was specifically raised but the same has not been answered. Similarly, the issue that there was no consideration whatsoever paid to the plaintiff for the execution of the sale deed dated 20.11.1996 was specifically raised. If the sale deed is perused then at least *prima facie*, it does appear that no consideration was paid to the plaintiff. Even the oral evidence, to a certain extent, supports this position. Even the denial in the written statement of defendants no.1 and 2 is quite vague and evasive on this aspect. This issue has not even been adverted to by the Trial Court much less considered and adjudicated upon.

37. The sale deed dated 20.11.1996 purports to record that the prior two gift deeds by which Vishnu had gifted

undivided rights to the plaintiff and defendant no.4 “*are deemed to have been cancelled*”. The issue as to whether this could have been legally done or not was required to be adjudicated to decide whether the impugned sale deed was void or not. However, the Trial Court has failed to even go into such an issue much less adjudicate upon the same.

38. The impugned sale deed dated 20.11.1996 acknowledges the share of the plaintiff and then, speaks about payments made to various parties. There is a specific reference to the plaintiff-Balkrishna and his wife having a right to ‘undivided property to the extent of 3537.50 sq. mtrs.’ for consideration of ₹1,07,260/- in the recitals to the sale deed. However, when it comes to the operative clause of the sale deed i.e. clause 1, there is a reference to payment allegedly made to Vishnu but there is no reference whatsoever to any payment made to the plaintiff-Balkrishna and his wife for the portion of 3537.50 sq.mtrs. All this was required to be looked into by the Trial Court but the same has been completely ignored by the Trial Court simply because the Trial Court believed that apart from the issue of fraud, no other issue or question was involved in the matter.

39. Based on the pleadings of the parties, it will have to be held that the Trial Court was not justified in framing only a

specific issue about fraud vitiating the impugned documents since, in this case, there were several other issues raised concerning the grounds on which the impugned documents could have been held to be vitiated. The Trial Court erred in not even framing such issues and thereby, excluding consideration of such issues which squarely arose in the matter.

40. On the aforesaid ground alone the impugned Judgment and Decree is liable to be set aside and the matter is required to be remanded to the Trial Court with a direction to frame additional issues about whether or not the sale deed dated 20.11.1996, rectification deed dated 08.08.1997, and the consent terms in Inventory Proceedings No.2/1995 being vitiated on grounds other than fraud and undue influence. The Trial Court will have to then determine such issues if necessary, by allowing the parties to lead further evidence if they choose to.

41. Even on the issue of fraud, it is difficult to agree with the learned Trial Judge that the pleadings, in this case, were not in accord with the provisions of Order 6 Rule 4 of the Code of Civil Procedure, since there were no particulars set out in the pleadings. Based on such a premise, the Trial Court was not quite justified in not evaluating the oral and documentary evidence on record. The issue as to whether the evidence on record is sufficient to

make good the allegations of fraud or not is kept open, now that the matter is being remanded to the Trial Court for reconsideration on all issues including, the issue of fraud, undue influence vitiating execution of the impugned documents.

42. The Trial Court, was also not justified in not going into the allegations of fraud against defendant no.2 simply because defendant no.2 was an advocate. The Trial Court has observed that the standards of professional conduct and etiquette are laid down by the Bar Council of India and therefore, such grievance, has to be agitated before the Bar Council of India. This is not correct and the allegations of fraud and undue influence qua the execution of the impugned documents were required to be gone into and could not have been avoided by simply stating that the Bar Council of India is the appropriate forum to go into such matters. The Bar Council of India may, at the highest, have the jurisdiction to take some action against defendant no.2 if allegations are found to be correct but the Bar Council of India, will not be the proper forum to declare the impugned documents as null and void. Therefore, these aspects had to be considered by the Trial Court. This is yet another reason why the impugned Judgment and Decree is liable to be set aside and the matter remanded to the Trial Court for reconsideration of all issues which arise in the matter.

43. There is no merit in the contentions of Mr. Kantak about respondent no.18 being a subsequent purchaser and therefore, unconcerned with the present proceedings. No doubt, respondent no.18 is a subsequent purchaser but such purchase was during the pendency of the proceedings and therefore, will be bound by the orders made in these proceedings. Respondent No.18 can get no better title than its vendors. The issues as to whether respondent no.18 is a bonafide purchaser or not will also not arise in these proceedings because admittedly, respondent no.18 has purchased suit properties, during the pendency of these proceedings and with the knowledge of such pendency. In fact, while disposing of the miscellaneous civil application no.197/2017 in this First Appeal, this Court by its order dated 07.03.2017 had made it clear that the alleged transfers during the pendency of the suit are hit by Section 52 of the Transfer of Property Act. This was recorded after accepting the submissions made by the learned counsel appearing for respondent no.18 itself.

44. For all the aforesaid reasons the impugned Judgment and Decree is set aside. The matter is remanded to the Trial Court for reconsideration of the following issues which, according to me, arise in the matter:-

(1) Whether the Plaintiff proves that Sale Deed dated 20/11/1996, deed of rectification dated 08/08/1997, the order in inventory proceedings, and mutation in survey records were obtained by the exercise of fraud and undue influence?

(2) Whether, *de hors* the issue of fraud and undue influence, the Sale Deed dated 20/11/1996 and the deed of rectification dated 08/08/1997 were vitiated on the following grounds:-

(i) The documents purported to sell the specified portion of undivided property even though, the same was not preceded by any partition through a partition deed or inventory proceedings;

(ii) The sale deed purports to cancel prior registered gift deeds, by which the ownership of the properties in question had already vested, *inter alia* in the plaintiff;

(iii) No consideration whatsoever was paid to the plaintiff-Balkrishna and his wife even though the

deed acknowledged that they had rights to 3537.50 sq.mtrs.;

(iv) Other legal grounds in the context of the provisions of the Portuguese Civil Code and law relating to inventories.

3) Whether, *de hors* the issue of fraud and undue influence, the consent terms and the consent order in the inventory proceedings were vitiated due to the provisions of the Portuguese Civil Code and the Law relating to inventories?

45. The Trial Court should also consider whether any further issues need to be framed in the context of the plea of limitation and plea of non-joinder of necessary parties raised by the defendants in the suit. If the defendants urge that such issues need to be framed, the Trial Court, to consider whether such issues indeed arise and if so, to frame the same, in addition to the aforesaid issues. If the Parties apply, and the Trial Court deems it appropriate, it may allow the Parties to lead additional evidence on the issues framed.

46. The appeal is allowed in the aforesaid terms. The impugned Judgment and Decree is set aside. The matter is remanded to the Trial Court for reconsideration on the aforesaid issues or further issues if they do arise. The Trial Court to consider whether the parties if they apply, should be allowed to lead additional evidence in the matter on the above issues.

47. The parties to appear before the Trial Court on 25.10.2021 at 10.30 a.m. The Trial Court to issue notices to such of the parties as are not represented in this appeal or who do not appear before it on the said date.

M. S. SONAK, J.