

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL No. 20 OF 2020
WITH
CIVIL APPLICATION No. 43 OF 2020
IN
SECOND APPEAL No. 20 OF 2020

Gabrial Gama (dec) rep. by his LRs.

.... Appellants.

V e r s u s

Lima Fernandes, thr. his Attorney,
Pantoleon Joseph Quadros And Anr.

.....Respondents

Mr. Prashil Arolkar, Advocate for the Petitioner.

Mr. Cleofato A. Coutinho, Advocate for the Respondents.

CORAM : M. S. SONAK, J

DATE : 6th July, 2021

P.C.:

Heard Mr.Prashil Arolkar, the learned counsel for the petitioner and Mr C.A.Coutinho, the learned counsel for the respondent.

2. The challenge in this second appeal is to the judgments and decrees concurrently made by the learned Trial Court and the First Appellate Court decreeing the Regular Civil Suit No.RCS/42/2002/D

instituted by respondent no.1.

3. Mr. Arolkar, the learned counsel for the appellant urges the framing of the following substantial questions of law:

- (a) *Whether the courts below exceeded their jurisdiction vested in them by ordering that the name of Original Appellant/ Defendant to be deleted from the tenants column in Form I and XIV of Survey no. 233/4 and 234/4 of Village Cortalim?*
- (b) *Whether the Courts below erred in deletion of the name of the Original Appellant/ Defendant from the survey records in the absence of any declaratory reliefs being claimed by the Respondent no.1/ Original Plaintiff on the basis of his title?*
- (c) *Whether in the facts and circumstances of the case and in the light of pleadings and evidence on record, the Courts below failed to appreciate that the suit filed by the Respondent no.1/ Original Plaintiff claiming for declaratory reliefs was bad in law due to non-joinder of necessary parties more specifically when the Respondent no.1/ Original Plaintiff has not joined his brother and sister as a party and has himself admitted in the plaint that he along with his other brother and sisters are in possession and enjoyment of the suit property?*
- (d) *Whether in the facts and circumstances of the case and in the light of pleadings and evidence on record, the Courts below erred in holding that Respondent no.1 has proved to be the owner of the suit property in the absence of any title documents being produced on record by the Respondent no.1 and only on the basis of survey records and matríz document and lack of specific denials by the Appellants in their written statement?*
- (e) *Whether the courts erred in deciding the issue of tenancy of the Appellants over the suit property along with the Civil suit and the Regular Civil Appeal, when such tenancy proceedings are governed under the provisions of Goa, Daman and Diu Agricultural Tenancy Act, 1964 and Rules framed thereunder?*

4. Mr. Arolkar submits that no suit is maintainable for correction of revenue entries simpliciter. He submits that at the highest the plaintiff should have applied for a declaration as to his title and based upon such declaration approached revenue authorities for correction of the survey records. He submits that the civil court lacks jurisdiction to entertain suit for mere correction of revenue entries and approached authorities since, this is the relief which the 2 courts granted, the very entertainment of the suit for the grant of such reliefs is an exercise of excess of jurisdiction. He relies on the decisions in *Narayan Mugu Teli(since dec.) v/s. Ramchandra Mugu Teli & Ors*¹; *Gajanan Sazro Gaudo v/s. Govt. Of Goa*² and *Smt. Anandi Bhicaro Veluskar v/s. Kustanand Vithu Veluskar & anr*³, in support of his contentions.

5. Mr Coutinho the learned Counsel for the respondent No.1 (original plaintiff) points out that the Aval Karkun incorrectly recorded the name of the appellant in the survey records but this order was set aside by the Additional Collector. As a result, the survey records had to be corrected but the Deputy Collector held that he has no jurisdiction and the respondent No.1 will have to obtain necessary orders from the Civil Court. Mr Coutinho submits that this is the reason why the civil suit was instituted. He points out that in the civil suit no such issue as is sought to be raised now was ever raised, instead, the appellant raised a plea of tenancy.

1 2004 (3) All.M.R.880

2 2012 SCC OnLine Bom 568

3 2006 SCC OnLine Bom 430

An issue was framed but ultimately the issue was held against the appellant. Mr Coutinho therefore submits that there is no error of jurisdiction and no question of law, much less, substantial questions of law as proposed or otherwise arose in this appeal. He therefore submitted that this appeal may be dismissed.

6. The record bears out that the Aval Karkun by order dated 28.06.1983 had included the name of the appellant in the survey records concerning the suit property. However, this order of the Aval Karkun was set aside by the Additional Collector South Goa vide order dated 29.09.1994. Based upon the same, the survey records ought to have been corrected by the revenue authorities. However, the Deputy Collector, by his order dated 11.02.2002 held that he had no jurisdiction to correct the survey record and the respondent No.1 will have to obtain orders from the Civil Court for the said purpose. Accordingly, Regular Civil Suit No.42/2002/D was instituted by the respondent No.1 seeking a declaration about the incorrect entries and further seeking consequential reliefs. The 2 Courts, have concurrently upheld the claim of respondent No.1. The impugned judgments and decrees indicated that no issue regards jurisdiction was framed nor was any point for determination to this effect framed. Even otherwise, in the peculiar facts of the present case it is difficult to hold that the Civil Court has exceeded in the exercise of its jurisdiction.

7. Though, normally, the Civil Courts, cannot entertain suits simply for correction of revenue records, in the peculiar facts of the present case, there was nothing wrong in the Civil Court entertaining and decreeing the present suit. The respondent No.1, in the present case, had not only approached the revenue authorities but had also succeeded before them. Besides, in this case, even the appellants sought to justify the retention of their names in the survey records by raising the plea of tenancy. This plea was adjudicated by the competent authorities but found to be meritless and, therefore, rejected. In these circumstances, the appellants, again, insisted upon the retention of their names in the survey records. The substantial questions of law now proposed by Mr. Arolkar do not arise in this appeal, having regard to these peculiar facts.

8. Even otherwise, if the hypothetical objection raised by Mr. Arolkar is to be considered, then, something will have to be said about the order of the Deputy Collector dated 11.02.2002 by which he declined to correct the survey records even though, the revenue authorities had themselves upheld the claim of respondent No.1 and set aside the order of the Aval Karkun dated 28.06.1983 by which the name of the appellant came to be included in the survey records in the first place. This means that even de hors any decree, the revenue authorities, in this case, were obliged to make necessary corrections in the survey records. Even the plea of tenancy raised by the appellants came to be turned down.

9. The decisions relied upon by Mr. Arolkar are clearly distinguishable. In the said cases, there was no determination by the revenue authorities themselves that the entry was incorrect. Besides, in those cases, there was no determination by the competent authority that the person whose name was entered into the survey record was not a tenant of the suit property. Based upon such distinguishable features, it is not possible to accept Mr. Arolkar's contention that the civil suit was not maintainable or that the respondent No.1 ought to be non-suited at this stage despite succeeding before the revenue authorities, the tenancy authorities as well as the Trial Court and the First Appellate Court.

10. For all the aforesaid reasons, this appeal is required to be dismissed and is hereby dismissed. There shall be no order as to costs.

11. The civil application does not survive and the same is also disposed of.

M. S. SONAK, J.

msr.