

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.105 OF 2010

MISS LUIZA MARIA ISAURA MILENA	Appellant/
MENEZES ALIAS MILENA MENEZES	Original
daughter of late Heladio Antoninho	Plaintiff
Menezes, residing at H.N. 289,	
Gaunkarvaddo, batim, Ilhas, Goa.	

V/S

- | | | |
|--------------------------------|-------|--------------|
| 1. Mr. Malaquias Menezes | | Respondents |
| Son of Victor Manuel Menezes, | | |
| And his wife. | | |
| | | |
| 2. Gracy Menezes both | | |
| Resident at Corlim, Ilhas, Goa | | |
| | | |
| 3. Mr. Prfofilo Menezes | | |
| Son of Victor Manuel Menezes, | | |
| and his wife | | |
| | | |
| 4. Mrs. Audrey Menezes | | |
| Both residing at Gaunkarvaddo, | | |
| Batim, Ilhas, Goa. | | Respondents. |

Mr. M.B. D'Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. T. Sequeira, Advocate
for the respondent Nos. 1 and 2.

Coram:- SMT. M.S. JAWALKAR,J.

Date :- 24th March,2021.

ORAL ORDER:

In the present Second Appeal following substantial question is framed as under:-

i) Where a suit can be held to be hit by the principle of res judicata when cause of action was not the same and the issue of the legality of a Sale Deed is still pending in Second Appeal before the High Court?

2. In this Second Appeal Judgment and Decree dated 17/08/2010 of the District Judge, Panaji in Regular Civil Appeal No. 66 of 2006 is under challenge. There is a long history of litigation. The appellant herein claiming to be purchased the plot (Lote No.3) along with the house from Amelia Ferrao Alias Amelia Santana Ferrao. He filed Civil Suit bearing No.174/76/B against the defendants who were staying in the house, but the plaintiff wrongly pleaded that the father of Defendant Nos.1 and 3 viz Victor Manuel Menezes had been appointed receiver in view the said attachment. However, these defendants were claiming that they were Mundkars. The said suit was dismissed holding the plaintiff had failed to prove that Victor Manuel father of the defendant Nos.1 and 3 had been

appointed receiver and it is further held that the defendants had proved that their uncle Francisco Lucio Gabriel de Menezes came into possession of the house by virtue of the subrogation. The Regular Civil Appeal No.32/93 challenging the Judgment and Decree was dismissed on 12/05/1998 by the District Court. There is another set of litigation in 1995. The plaintiff filed a suit against Filinta Menezes and Jose Menezes for a declaration that she is the owner of the property and both of them had secured wrong entries in the survey records. Though initially this suit was decreed but in appeal it was held that the Sale Deed dated 20/04/1976 was not valid. Against the said Judgment and Decree the plaintiff filed a Second Appeal No. 103 of 2005 which was admitted. In view of the finding of District Court in Regular Civil Appeal No.32 of 1993 the observations of this Court in C.R.A. No.135/B/82 which had arisen out of the suit against the framing of the issue. This Court had observed that no receiver nor his children can claim to be mundkar and that even if the case of the defendants is accepted that their uncle came into possession by virtue of the subrogation, it is difficult to accept that the person subrogated to the rights to mortgagee or his heirs can qualify to be mundkars. In view of the findings and observations, the appellants herein filed the present suit

for declaration that they are entitled to pay the amount due and secure the release of the attachment and for possession. The said suit was dismissed by on 29/04/2006. The appeal filed against that suit i.e. Regular Civil Appeal No. 66 of 2006 also came to be dismissed on 17/08/2010. The Second Appeal No. 103 of 2005 challenging the Judgment and Decree in Regular Civil Suit No. 172/76/D and the Judgment and Decree in Regular Civil Appeal No.32 of 1993 was pending when present Second Appeal was admitted. Now it is informed that the said Second Appeal No. 103 of 2005 summarily dismissed on 13/09/2017. There is no appeal or any application pending for revival of the said Second Appeal. As such order passed in Regular Civil Suit No. 174/1976/B and the Regular Civil Appeal No. 32 of 1993 have attained finality and issue of legality of the Sale Deed was also concluded finally. As such nothing survives in the Second Appeal, in view of the substantial question of law framed. Hence, the appeal is dismissed and accordingly stands disposed off.

SMT. M.S. JAWALKAR,J.

mv

MEENA
VISHAL
BHOIR

Digitally signed by
MEENA VISHAL BHOIR
DN: cn=MEENA VISHAL BHOIR,
c=IN, o=, ou=, email=mv@mv.com