

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NOS. 89 AND 120 OF 2004
FIRST APPEAL NO. 89 OF 2004

Shri Rama Shanu Naik Dessai, r/o Cuncolim,
Salcete, Goa.

...Appellant

V e r s u s

1. Menino Salvador F. Coutinho
(deceased) represented by his legal heirs:

1a) Mrs. Marcelina Coutinho e Dias

1b) Mrs. Bruno Dias (deceased)

represented by his legal heirs :

1) Alvino Dias

11) Alvita Dias

2. Joaquim Santan Fernandes, (deceased)
represented by his legal heirs:

2a) Smt. Margarida Fernandes, wife of
Gabrial Fernandes and daughter-in-law
of Joaquim Santana Fernandes, r/o. Ward
Demane, Socrecotto, Cuncolim, Salcete,
Goa.

3. Joaquim Vicente Coutinho, (Deceased)
represented by his legal heirs:

3a) Mrs. Antonieta Coutinho, his widow.

3b) Ms. Astra Agosta Coutinho, his
daughter.

3c) Mrs. Alina Coutinho, his daughter
and her husband

3d) Mr. Anthony Dias.

4. Frank Moraes (deceased) represented by his
legal heirs :

4a) Smt. Joanita Moraes, widow,
Beuleamvaddo, Cuncolim, Salcete Goa

4b) Shri Mario Moraes, son r/o.
Beuleamvaddo, Cuncolim, Salcete,
Goa

4c) Smt. Myna Moraes, daughter,
resident of Navelim, Goa and her
husband,

4d) Shri Corwin Coutinho, r/o.
Navelim, Goa.

4e) Kum. Michelle Moraes, daughter,
r/o. Beuleamvaddo, Cuncolim, Goa.

1a, 1b(i),1b(ii), 3(a) to 3(d), all residents of
Ward Demane, Socrecotto, Cuncolim, Salcete,
Goa.

...Respondents

A N D

FIRST APPEAL NO. 120 OF 2004

Joaquim Vicente Coutinho (deceased) represented
by his legal heirs:

1. Mrs. Antonieta Coutinho, his
widow, major of age,
2. Ms. Astra Agosta Coutinho, his
daughter, major of age,
3. Mrs. Alina Coutinho, his daughter,
major of age and her husband
4. Mr. Anthony Dias,
Major of age,
All r/o. House No. 2488, Socrecotto,
Demani, Cuncolim, Salcete, Goa.

... Appellant

V e r s u s

1. Menino Salvador F. Coutinho (deceased)
represented by his legal heirs:

- 1a) Mrs. Marcelina Coutinho e Dias
- 1b) Mr. Bruno Dias (deceased)
represented by his legal heirs:

1(i) Alvino Dias

1(ii) Alvita Dias

All r/o. Socrecotto, Demani,
Cuncolim, Salcete, Goa.

2. Joaquim Santan Fernandes (deceased)
represented by his legal heirs :

2a) Smt. Margarida Fernandes, wife
of Gabriel Fernandes and daughter in
law of Joaquim Santana Fernandes,
major in age, resident of Ward
De,mani, Socrecotto, Cuncolim,
Salcete, Goa.

3. Frank Moraes, (deceased) represented by his
legal heirs :

3a) Smt. Joanita Moraes, (deceased)
represented by her legal heirs :

3b) Shri Mario Moraes, son, r/o
Beucleamvaddo, Cuncolim, Salcete,
Goa.

3c) Smt. Myna Moraes, daughter, r/o.
Navelim, Salcete, Goa, and her
husband

3d) Shri Corwin Coutinho, r/o.
Navelim, Salcete, Goa.

3e) Ms. Michelle Moraes, daughter,
r/o. Beucleamvaddo, Cuncolim,
Salcete, Goa.

4. Shri Rama Shanu Naik Dessai, major in age,
r/o. Cuncolim, Salcete, Goa.

...Respondents

Mr. G. Panandikar, Advocate for the original party no.5-Appellant in First Appeal No.89/2004.

Mr. S. S. Kakodkar, Advocate for the original party no.3-Appellant in First Appeal No.120/2004.

Mr. A. F. Diniz, Senior Advocate, with Mr. Ryan Menezes, Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Respondent-original Party no.4 in First Appeal No. 89/2004.

Ms. A. Agni, Senior Advocate, with Ms. Jay Sawaikar, Advocate for the Respondent-original Party no.4 in First Appeal No. 120/2004.

Ms. S. Narvekar, Advocate holding for Mr. Valmiki Menezes, Advocate for the Respondent no.2-A.

CORAM: MANISH PITALE, J
RESERVED ON: 21st October 2021
PRONOUNCED ON: 16th November 2021

JUDGMENT

1. These two Appeals have been filed challenging Judgment and Order dated 27.02.2004, passed by the District and Sessions Court, South Goa, at Margao, in Land Acquisition Case No. 136/90/I. By the said Judgment and Order, a reference under Section 30 of the Land Acquisition Act, 1894, (*the aforesaid Act*, for short), was decided as regards the claims of the interested parties before the aforesaid Court. Although there were five interested parties who lodged claims in respect of entitlement to compensation concerning acquisition of 8547 square metres of land from survey no. 435/1 at Cuncolim, Salcete Taluka, it was interested party nos. 3, 4 and 5, who led evidence in support of their respective claims. Therefore, the contesting claims of these three parties were considered by the aforesaid Court and, on the basis of analysis of the documentary and oral evidence on record, the claims of original interested party nos. 3 and 5 were rejected, holding that only interested party no.4 was entitled to the entire compensation amounting to Rs.1,21,480/- along with other benefits.

2. First Appeal No. 89 of 2004 was filed by the original interested party no.5 and First Appeal No. 120 of 2004, was filed by original interested party no.3 and these Appeals were admitted. During the pendency of these Appeals, there were certain orders passed by the aforesaid Court in references under Section 30 of the said Act, as also orders passed by this Court in Appeals arising from such orders and there were certain orders passed by the Civil Court in proceedings initiated by the parties. These orders were sought to be placed on record before this Court in various applications filed in these pending Appeals. On all these applications, orders were passed directing that the applications would be taken up for consideration at the stage of final hearing of the two Appeals. Accordingly, the two Appeals along with all the applications filed by the parties under Order 41 Rule 27 of the Civil Procedure Code (CPC), were taken together at the time of final hearing.

3. Since, it would be convenient to refer to the Appellants and the contesting Respondent as per their position before the Court below, the Appellant in First Appeal no. 89/2004 is being referred to as party no.5 and the Appellant in First Appeal No.120/2004, is being referred to as party no.3, while the contesting Respondent in both these Appeals is being referred to as party no.4.

4. Notification under Section 6 of the aforesaid Act was issued on 26.02.1988 and it was published in the Official Gazette on 24.03.1988, for acquisition of 8547 square metres of land from survey no. 435/1 of Cuncolim, Salcete Taluka, for Selaulim Irrigation Project. As noted above, five interested parties came forward to claim compensation. Since there was a dispute between the parties, it was referred to the said Court under Section 30 of the

aforesaid Act. Party no.5 (Appellant in First Appeal No. 89/2004), claimed that the Survey Records indicated that the land in survey no.435/1 belonged to the Predecessor of party no.5, bearing Land Registration No. 6206. Party no.3 (Appellant in First Appeal No. 120/2004), claimed that the said property corresponded to Land Registration no. 17765, which was in the name of its Predecessor while party no.4 i.e. the contesting Respondent, claimed that the property was registered in Land Registration no. 11223 and that it was called *Moroda Carojem*, which belonged to their Predecessors. The parties led oral and documentary evidence in support of their respective claims. A perusal of the impugned Judgment and Order shows that the aforesaid Court discussed in great detail the evidence led by the rival parties and found that party no. 4 and his legal heirs were entitled to the entire compensation while the party nos. 3 and 5 had failed to prove their claims. This was mainly on the basis that the oral and documentary evidence produced by party no.4, indicated that the boundaries of the property corresponded with the property in Survey no. 435/1 and that sufficient material was placed on record to show that the land in question was acquired from land known as *Moroda Carojem* bearing Land Registration No. 11223. On this basis, it was held that the entire compensation was payable to the party no.4 and his legal heirs.

5. Aggrieved by the same, party nos. 3 and 5 filed these Appeals, which stood admitted for final hearing.

6. During the pendency of these Appeals, party no. 4 filed Misc. Civil Application No. 484 of 2013 in First Appeal No. 120 of 2004 under Order 41 Rule 27 of the CPC, to place on record three Judgments, which according to the said party, were relevant for

adjudication of the Appeal. One was a Judgment and Order passed in a similar reference under Section 30 of the aforesaid Act, wherein the Court of Adhoc District Judge held that the party no.4 was entitled to compensation for acquisition of another piece of land from the very same survey number i.e. 435/1. The party no.4 also annexed a Judgment and Order of the Inspector of Survey and Land Records directing inclusion of names of the said party in the occupant column pertaining to survey no. 435/1 and its name to be corrected as *Moroda-Carojem* classified under Bharad category. The third Judgment and Order was passed by the District Judge in Regular Civil Appeal No. 282 of 2010, which arose out of a suit for declaration and permanent injunction filed by the party no.4, wherein party no.3 was also a Defendant. The suit had been initially dismissed by the Civil Court but the aforesaid Appeal was allowed and the suit was partly decreed, thereby declaring that the party no.4 were owners and in possession of the aforesaid property in survey no. 435/1 from Cuncolim Village. According to the party no.4, this was clinching evidence in its favour, which had come into existence after decision by the Court below in the present case and, therefore, the documents were necessary to be brought on record. Party no.4 moved a similar application to bring on record the very same documents by filing Misc. Civil Application No. 531 of 2013 in First Appeal No. 89 of 2004.

7. Party no.5 moved Misc. Civil Application No. 34 of 2017 in First Appeal No. 89 of 2004, to bring on record Judgment and Order passed by this Court in First Appeal No. 88 of 2004, wherein this Court had set aside an award passed by the District Court under Section 30 of the aforesaid Act concerning acquisition from the very survey no. 435/1 for another portion of the land and it was

directed that the matter be remitted to the Court below with a direction to appoint a Commissioner to examine whether the property bearing survey no. 435/1 corresponded with Land Registration No. 17765 or Land Registration No. 6202. The party no. 5 also sought to bring on record Judgment and Order passed by the District Court in Land Acquisition Case pursuant to the aforesaid remand order passed by this Court, wherein it was held that party no. 5 had proved its claim to compensation for the said land acquired from survey no. 435/1. It was conceded on behalf of the said party that the matter was pending in another Appeal before this Court.

8. Party no.4 filed Misc. Civil Application No. 857 of 2017 in First Appeal No. 120 of 2004, to place on record a Judgment and Order passed by the Civil Court in a suit for declaration and injunction filed by party no.5 against a Devasthan and another Defendant concerning Land Registration No. 6202 in survey no. 435/1. It was claimed by party no.5 in the said suit that it was owner along with other co-owners of property in survey no. 435/1. The Civil Court framed an issue in that regard and after analysing the material on record, held on merits, that the party no.5 i.e. the original Plaintiff failed to prove the aforesaid claim and the suit was dismissed. The Appeal filed by Party no. 5 was also dismissed by the District Court, thereby confirming the findings of the Civil Court. According to party no. 4, this was necessary to be considered by this Court while deciding the present Appeals. Party no. 4 moved a similar application to place on record the very same Judgments and Orders by filing Misc. Civil Application No. 145 of 2018 in First Appeal No.89 of 2004.

9. Party No.4 also moved Misc. Civil Application No. 730 of 2019 in First Appeal No.120 of 2004, to place on record Judgments and Orders passed by the District Court in a reference under Section 30 of the aforesaid Act, pertaining to acquisition of land from Survey no. 435/1, wherein party no. 4 was found entitled to compensation. Another Judgment and Order passed by this Court in First Appeal No. 286 of 2007, was sought to be placed on record, claiming that it was relevant for decision in these Appeals.

10. As noted above, all these applications were filed under Order 41 Rule 27 of CPC and this Court directed by various orders that these applications would be taken up for consideration at the time of final hearing of the Appeals. Accordingly, when these Appeals were finally heard by this Court, the said applications were duly taken up for consideration.

11. In view of the contentions raised in the two Appeals and the above-mentioned applications filed on behalf of the parties, the following points arise for consideration in these Appeals:

(i) Whether the Appellants i.e., the original party nos. 3 and 5 could demonstrate error on the part of the Court below in granting entire compensation to original party no. 4 with regard to acquisition of the aforesaid land from survey no. 435/1 in Village Cuncolim?

(ii) Whether applications filed under Order 41 Rule 27 of CPC by the contesting parties deserve

to be granted and, if so, what is the effect of the documents sought to be brought on record?

(iii) Whether in the face of Civil Court findings and decrees in favour of original party no.4 as regards title in land from survey no. 435/1 and against party no.5 concerning the same, the orders passed in reference under Section 30 of the aforesaid Act, could support the case of original party nos. 3 and 5?

12. Mr. G. Panandikar, learned Counsel, appeared for the Appellant in First Appeal No. 89 of 2004 (original party no.5) and Mr. Kakodkar, learned Counsel appeared for the Appellant in First Appeal No. 120 of 2004 (original party no.3). The said Counsel contended that the evidence and material on record was not properly appreciated by the Court below whilst passing the impugned Judgment and Order. It was submitted that in view of the material that was brought on record by the rival parties, the Court below ought to have appointed a Commissioner to ascertain whether the boundaries of the property in survey no. 435/1, coincided with the land registration numbers upon which the rival parties had placed reliance. It was submitted that the party no. 4 i.e. the contesting Respondent was not able to place on record cogent material to show that the land which was subject matter of acquisition from survey no. 435/1 was called *Moroda-Carojem* and that it held Land Registration no. 11223. It was further submitted that in proceedings concerning another piece of land acquired from survey no. 435/1, this Court had allowed the Appeal and remanded the matter back to the Court below for appointment of

Commissioner. Upon appointment of Commissioner, the Court below had found as a matter of fact in favour of party no. 5. It was submitted that although the matter was still pending in appeal before this Court, there was enough indication to show that even in the present case, a direction to appoint a Commissioner was necessary to ascertain the truthfulness of the claims made by the rival parties. On this basis, it was submitted that the impugned order was unsustainable and that for ascertaining the truthfulness of the claims of the rival parties, the matter ought to be remanded to the Court below with a direction to appoint a Commissioner.

13. On the other hand, learned Senior Counsel Ms. Agni appeared for the contesting Respondent in First Appeal No. 120/2004 (original party no. 4) and learned Senior Counsel Mr. A. F. Diniz, appeared for the said party in First Appeal No.89/2004 and placed reliance on the Judgments and Orders passed by the Civil Courts, declaring the party no.4 as owner and in possession of property in survey no. 435/1. It was emphasised, that the said findings had attained finality. It was submitted that in the face of such findings rendered by the Civil Court in favour of party no.4, there was no ground for claiming that the matter deserved to be remanded to the Court below for fresh consideration and for appointment of Commissioner. It was submitted that even otherwise the Court below had exhaustively dealt with the oral and documentary evidence on record to hold in favour of party no. 4 and the Judgment and Order did not deserve interference. The learned Senior Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Ramesh Chand & Ors. vs Tanmay Developers Private Limited & Ors.*¹

¹ (2017) 13 SCC 715

14. Since number of documents in the form of Judgments and Orders of the Court below in references made under Section 30 of the aforesaid Act and certain orders of the Civil Court were sought to be placed on record under Order 41 Rule 27 of CPC, this Court would first address the aforesaid point, as to whether such documents could be taken on record. There is no dispute about the fact that the documents sought to be brought on record on behalf of the parties by filing applications under Order 41 Rule 27 of CPC, came into existence after the impugned Judgment and Orders were passed by the Court below. Therefore, there is no question of exercise of due diligence on the part of the parties to bring these documents on record when the Court below decided the reference under Section 30 of the said Act. The only question that remains is, as to whether the said documents would be necessary for this Court to enable it to pronounce Judgment in the present Appeals. This Court is of the opinion that since the said Judgments and Orders concern the claims of the contesting parties with respect to land belonging in the very survey no. 435/1, the said Judgments and Orders are indeed relevant and they would certainly assist this Court in pronouncing Judgment in the Appeals under consideration. Therefore, applying the settled principles of law concerning exercise of power by the Appellate Court under Order 41 Rule 27 of CPC, this Court is of the opinion that all the applications deserve to be allowed and the documents sought to be brought on record need to be perused by this Court.

15. Accordingly, Misc. Civil Application No. 484 of 2013 in First Appeal No. 120 of 2004, Misc. Civil Application No. 531 of 2013 in First Appeal No.89 of 2004, Misc. Civil Application No. 857 of 2017 in First Appeal No. 120 of 2004, Misc. Civil Application No.

145 of 2018 in First Appeal No. 89 of 2004, Misc. Civil Application No. 34 of 2017 in First Appeal No. 89 of 2004 and Misc. Civil Application No. 730 of 2019 in First Appeal No.120 of 2004 are allowed.

16. Having taken the said documents on record, this Court will now proceed to consider the rival claims of the contesting parties by taking into consideration the said documents, as also the material that was adverted to by the Court below while passing the impugned Judgment and Order.

17. In the present case, the three contesting parties i.e. the party nos. 3, 4 and 5 have each claimed that the land in survey no. 435/1 coincides to land registration numbers, which belonged to them. A perusal of the discussion in the impugned Judgment and Order would show that the rival parties relied upon various documents from the Revenue Records to support their respective claims and that witnesses were examined in support of such claims. A detailed analysis was undertaken by the Court below, in order to examine as to the claim of which of the parties could be upheld. After a detailed discussion, the Court below found that the physical terrain of the land in survey no.435/1 demonstrated that the oral and documentary evidence brought on record by the party no.4 i.e. the contesting Respondents in both these Appeals, was indeed believable and that the claims of the Appellants herein i.e. party nos. 3 and 5 were not supported by the oral and documentary evidence on record. The Court below found that the nature of the land described by witnesses who appeared in support of the claims of the Appellants herein i.e. party nos. 3 and 5, did not indicate that the land about which they were deposing was located in survey no.

435/1. Instead, the Court below found that the nature of description of the land demonstrated that the witnesses of these parties were referring to lands located in other survey numbers. Although, one of the witnesses of the party no. 4 was also found to be wanting while describing the boundaries of land in survey no. 435/1, but on an overall appreciation of the evidence on record, it was found that the party no. 4 was successful in proving its claim.

18. This Court is of the opinion that in proceedings under Section 30 of the aforesaid Act, the Court is expected to examine the evidence and material on record to determine as to the claim of which party is best supported by material on record. These proceedings do not decide the title of the parties and it is perhaps for this reason, that the aforesaid Act refers to the expression “*interested person*” rather than “*party holding title in the land*”, in the context of payment of compensation. The scope of the said proceedings does not include determination of title of the parties in the land, which is subject matter of acquisition. At the same time, there can be no doubt about the fact that when a party is able to show sterling documents and material as regards its title in the acquired land, it would be material supporting the claim towards compensation. But, in the present case, before the Court below, the contesting parties had all relied upon Revenue documents and entries to support their respective claims. In such a situation, the Court below appreciated the evidence and material brought on record and found that the claim of party no. 4 was acceptable and that party nos. 3 and 5 had failed to demonstrate that the acquired land in survey no. 435/1 belonged to them or that they had sufficient material to show that their claims were best supported by the material on record.

19. Having perused the entire documentary and oral evidence brought on record, this Court is of the opinion that the Court below properly appreciated the material on record to hold in favour of party no.4.

20. But, since party nos. 4 and 5 filed the aforesaid applications to bring on record subsequent Judgments and Orders passed by the Court below in reference proceedings, as also orders passed by the Civil Courts in suits filed by the parties, it would be necessary to examine the impact of such Judgments and Orders on the claims of the Appellants before this Court.

21. The material brought on record shows that while party no. 5 has placed much reliance on certain Judgments and Orders passed by the Court below in reference proceedings under Section 30 of the said Act and Orders passed by this Court in appeals arising therefrom, the party no. 4 has not only relied on certain orders passed by the Court below in reference proceedings, but Judgments and Orders of the Civil Court have been placed on record as regards title in the property in survey no. 435/1.

22. In Regular Civil Suit No. 255/1990/D, the party no. 5 i.e. the Appellant in First Appeal No.89/2004 before this Court, had claimed a Decree of declaration, cancellation of rectification and injunction against a Devasthan and another Defendant on the basis that the land bearing Registration No. 6202 was surveyed in survey no. 435/1 and that the said party no.5 was an owner thereof along with other co-owners. The Court of Civil Judge while deciding the said suit, framed a specific issue as to whether party no.5, as the Plaintiff, was an owner along with other co-owners of the property

in survey no. 435/1. The said issue was answered in the negative and the suit was dismissed. Party no. 5 then filed Regular Civil Appeal No. 159 of 2001, challenging the aforesaid order passed by the Civil Court dismissing its suit. By Judgment and Order dated 01.09.2004, the Appeal was dismissed, thereby confirming the order of the Civil Court. There is no dispute about the fact that the matter was not further taken up in appeal by party no. 5 and that, therefore, the finding attained finality. In other words, the claim raised by party no.5 regarding title and ownership in property in survey no. 435/1 was rejected by the Civil Court and the finding attained finality. Even if the party no.4 i.e. the contesting Respondent herein, was not a Defendant in the said suit, that would not necessarily be of any assistance to party no.5, as its claim was squarely rejected by the Civil Court.

23. On the other hand, when party no.4 filed a suit for declaration and injunction, i.e. Regular Civil Suit No. 158/1987, as regards its claim about being absolute owner of property in survey no. 435/1 known as *Moroda-Carojem*, although initially, the suit was dismissed by Judgment and Order dated 02.12.2002 passed by the Court of Additional Civil Judge, Senior Division, on an appeal, the findings were reversed. A perusal of the Judgment and Order dated 31.10.2012, passed by the Court of District Judge, South Goa, in Regular Civil Appeal No. 282 of 2010, would show that the Appellate Court squarely held that the Plaintiff i.e. the party no.4 herein, had proved its claim and the said party was declared as owner and in possession of the property in survey no. 435/1 of Village Cuncolim, which is the subject matter in the present Appeals. The original party no.3 i.e. the Appellant in First Appeal No. 120/2004, before this Court was Defendant in the said suit.

There is no dispute about the fact that the Judgment and Order of the Appellate Court was not challenged by any party and, therefore, the said findings also attained finality. Merely because party no.5 i.e. Appellant in First Appeal No.89/2004, was not a party Defendant in the aforesaid suit, would not take away anything from the fact that the Civil Court had held in terms that the party no.4 was found to be owner and in possession of property in survey no. 435/1 known as *Moroda-Carojem*. These findings of the Civil Court in favour of party no. 4 completely clinches the issue against party nos. 3 and 5, who are Appellants before this Court.

24. In this regard, Ms. Agni, the learned Senior Counsel appearing for the contesting Respondent i.e. original party no.4 in First Appeal No. 120/2004 and Mr. A. F. Diniz, learned Senior Counsel appearing for the said party in First Appeal No. 89/2004, are fully justified in contending that when there are findings of the Civil Court that have attained finality, holding that party no.4 is declared to be the owner and in possession of property in survey no. 435/1, the claims of the Appellants herein i.e. party nos. 3 and 5, cannot be accepted. It further becomes clear that even if in Appeal arising out of similar reference proceedings under Section 30 of the said Act at the behest of the Appellants, this Court had remanded the matter for appointment of Commissioner and thereupon, the claim of party no. 5 had been accepted regarding another portion of land acquired from survey no. 435/1, the findings rendered by Civil Courts in favour of party no.4, would certainly trump any such findings rendered in collateral proceedings under Section 30 of the aforesaid Act. In any case, the matter is said to be again pending in Appeal before this Court from the order of the Court below in reference proceedings.

25. In this context, reliance placed on the Judgment of the Hon'ble Supreme Court in the case of *Ramesh Kumar vs Santosh Kumar* (supra) on behalf of the contesting Respondent, is justified. It is clear that once the Civil Court has rendered findings on a proper contest as regards ownership and possession in the very property in question, the effect of such findings can certainly not be ignored while considering the question of apportionment of compensation under the provisions of the said Act. In fact, the third proviso to Section 31(1) of the aforesaid Act, makes it very clear that even if a person is found to be entitled to compensation and it is disbursed, he is not absolved from the liability from making it over to a person who is found to be entitled thereto. This indicates that in a given case, a party may be able to show ownership and title in the property, in which case the compensation disbursed to a party on the basis of reference under Section 30 of the said Act would have to be made over to such a person who is able to prove ownership and title in the property.

26. In the present case, the Judgments and Orders passed by the Civil Courts, which have attained finality, have been brought on record by party no. 4, showing that the said party has been declared to be owner and in possession of the property in survey no. 435/1 and the claims of title in such property raised by party nos. 3 and 5 i.e. Appellants herein, have been repudiated. Hence, this Court is of the opinion that the documents that have come on record clinch the issue in favour of the contesting Respondent i.e. the party no.4. Even otherwise, this Court finds that in the impugned judgment and order, the Court below has appreciated the oral and documentary evidence on record in the correct perspective to hold in favour of the party no.4 and against party nos. 3 and 5 i.e. the Appellants

herein. Consequently, the points framed hereinabove are answered against the appellants (original party nos. 3 and 5) and in favour of the contesting respondent (original party no. 4).

27. In view of the above, this Court finds that the Appeals are without any merit and they deserve to be dismissed.

28. Accordingly, the Appeals are dismissed.

MANISH PITALE, J.