

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 25 OF 2019

Mohandas Dattaram Neugi
(Dec.) Thr. His LRs & anr.

..... Appellants

V e r s u s

Sadanand Dattaram Neugi
and another

..... Respondents

Mr. Shivan Desai and Mr. A. Sardesai, Advocate for the Appellants.

Mr. A. D. Bhobe, Advocate for the Respondents.

Coram:- M. S. SONAK, J.

Date: 7th July 2021

ORAL ORDER

1. Heard Mr. Desai, the learned Counsel for the Appellants, and Mr. A. D. Bhobe, the learned Counsel for the Respondents.

2. This is a Second Appeal under Section 100 of the Civil Procedure Code (CPC), questioning the concurrent judgments and decrees made by the Trial Court and the First Appellate Court dismissing the Appellants-Plaintiffs suit seeking a decree of eviction to evict the Respondents, who is the brother of the Appellant from the western portion of suit House no. 30 in the limits of the Bicholim Municipal Council and

for permanent injunction restraining him from interfering with the suit property any further.

3. The two Courts have not only dismissed the Appellants' suit but have further decreed the counter-claim raised by the Respondents-Defendants.

4. Mr. Desai, the learned Counsel, submits that jurisprudentially, it is possible that the property is owned by one person but the structure thereon is constructed and owned by another. He submits that in the present case, even if assumed on account of the 1968 Sale Deed the suit property was commonly purchased and owned, nevertheless, there is overwhelming evidence on record which established that House no. 30 in its entirety was constructed only by the Appellants. He submits that there was never any dispute that the eastern portion of the suit house was constructed by the Appellants. He submits that the Respondents only joined the issue that even the western portion was constructed by the Appellants. Accordingly, an issue was cast by the Trial Court and the issue was answered in favor of the Appellants by holding that there is no evidence that the western portion of the suit house was indeed constructed by the

Respondents from their own funds. He submits that these findings were upheld by the First Appellate Court as well. He, therefore, submits that decree of eviction should have followed as prayed for by the Appellants.

5. Mr. Desai, based on the aforesaid, submits that the following two substantial questions of law arise for determination in this Second Appeal :

(A) Whether the Trial Court and the Appellate Court completely disregarded the admission on the part of the Respondents wherein the Respondents admitted that the house in occupation of the Appellants is exclusively constructed by the Appellants and in view of the same, Appellant had discharged the burden to establish that they had exclusively constructed the part of the house where they are residing which had a direct bearing on the principal issues involved in the suit with regard to ownership of the residential house ?

(B) Whether the Trial Court and Appellate Court misconstrued the pleadings and the reliefs claimed by the Appellants in the suit and by the Respondents in the counter-claim whilst concluding that the Appellants have failed to prove that they exclusively constructed the residential house on the said property which assumes

importance in the background of the fact that the said issue is fundamental to the entitlement of the Appellant in terms of the reliefs claimed ?

6. Mr. Bhobe, the learned Counsel for the Respondents, submits that there is overwhelming evidence on record that not only the Appellants and the Respondents were the co-owners of the suit property but further that the suit House no. 30 was jointly constructed out of the finances contributed by both parties. He submits that two Courts have quite correctly referred to exhibit 68, which is a mortgage deed in which finances were jointly raised by both the brothers for the specific purpose of construction of House no. 30. He refers to the dead wall between the eastern and western portions and submits that this is indicative of the circumstance pleaded by the Respondents. He also points out that the two toilets are on the western side and it is inconceivable that the Respondents would be allotted the western portion if the case of the Appellants, that such allotment was only on a gratuitous basis, is to be accepted. He submits that the Appellant in this matter came out with a false case to defeat the rights of his own brother. He points out that the Appellant was undertaking some illegal

construction and since that was opposed by the Respondent, the suit came to be instituted raising a patently false claim.

7. Mr. Bhobe also points out that DW.1 was 82 years at the time of his deposition and this aspect was not properly appreciated. He submits that otherwise, there are no admissions as suggested by the Appellant. He submits that no question of law much less any substantial question of law arises. He submits that the findings on material facts are neither perverse nor contrary to the evidence on record. He, therefore, submits that this appeal may be dismissed.

8. The rival contentions now fall for my determination.

9. Although jurisprudentially, it may be possible to say that one of the parties is the owner or co-owner of the land and another party is the owner or co-owner of the structure erected thereon, in the facts of the present case, however, there is no necessity to go into this issue because the two Courts have concurrently held in favor of the respondents on the aspect of the co-ownership of the land as well as the co-ownership of the House no. 30 thereon. The findings of fact are backed by the evidence on record and applying the test of preponderance of probability, it can hardly be said that

such findings suffer from such perversity or are contrary to the weight of the evidence on record to warrant interference in the exercise of limited jurisdiction under Section 100 of CPC.

10. Based upon the deposition of Dw.1, who was 82 years at the time of his deposition, it cannot be said that there was an admission that the Respondents or their Predecessor-in-title, had not expended any amounts towards the construction of House no. 30 and, therefore, had no rights or interest in respect of even the western portion of House no. 30. Dw.1, who was 82 years at the time of deposition, had merely stated that it may not be correct to say that the western portion was constructed by him “*exclusively*” from his own funds. By this, in all probabilities, he meant that a loan was jointly taken by the parties to finance the construction. The evidence of such witnesses has to be considered and evaluated from the context. A stray sentence dehors the context cannot be elevated to the status of admission.

11. In this case, the parties have produced on record exhibit 68, which is a mortgage deed based on which, the parties jointly obtained finance for the specific purpose of construction of this House no. 30. Besides, the existence of a common wall or a dead wall between the eastern

and western portion of House no. 30 militates against the case pleaded by the Appellant that the suit house was constructed by the Appellant exclusively for his own use and through his own finances and it is only at a later stage that the western portion was gratuitously given to the Respondent-brother. The two Courts, have also considered the aspect that the two toilets are mainly located in the western portion and, therefore, it is quite inconceivable that the Appellant would have gratuitously allotted the west portion of House no. 30 to the Respondent. On the test of preponderance of probabilities, the Respondents have established that they were not only co-owners of the suit property under a 1968 Sale deed but that they were also the co-owners in respect of House no. 30 constructed thereon. Therefore, based merely on the cursory manner in which one of the issues has been answered, it cannot be said that the substantial questions of law which are now proposed, either arise or are required to be decided in favor of the Appellants.

12. For all the aforesaid reasons, this appeal is dismissed. There shall be no order as to costs.

M. S. SONAK, J.