

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.33/2005

1. SHRI. BALKRISHNA NILU
NAIK GAONKAR (deceased
through Legal Representatives)

a) Mr. Zulpo Balkrishna N.
Gaonkar aged 54 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

b) Mrs. Sulakshna Zulpo N.
Gaonkar aged 48 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

c) Mr. Nilkant Balkrishna N.
Gaonkar, aged 50 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

d) Mrs. Rashmi Nilkant N.
Gaonkar, aged 43 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

e) Mr. Satyawar Balkrishna N.
Gaonkar, aged 34 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

f) Mrs. Shruti Satyawar N.
Gaonkar, aged 32 years, resident
of Shirewada, Nagarcem,
Canacona, Goa.

g) Mrs. Anuja Anil Desai, aged 47 years, resident of Nagarcem, Canacona, Goa.

h) Mr. Anil Ganesh Desai, aged 55 years, resident of Nagarcem, Canacona, Goa.

i) Mrs. Sunita Uttam Rane, aged 40 years, resident of Paryem, Sankhalim, Goa.

j) Mr. Uttam R. Rane, aged 46 years, resident of Paryem, Sankhalim, Goa.

k) Mrs. Laxmi Ramakant Fal Desai, aged 37 years, resident of Balli, Matta Quepem, Goa.

l) Mr. Ramakant Dattu Fal Desai, aged 43 years, resident of Balli, Matta Quepem, Goa.

2. SMT. PRABHAVATI
BALKRISHNA NAIK
GAONKAR, (deceased) wife of
Appellant No.1, age 70,
occupation house wife.

Both residents of H. N. 1581,
Shirewada, Nagarcem, Canacona,
Goa.

... APPELLANTS/
ORIGINAL PLAINTIFFS

Versus

1. SHRI. PURSHOTTAM
VOIRO DESSAI (since deceased
through his legal representatives)

1(a) Smt. Bharati Purshottam Dessai, Widow of late Shri Purshottam Dessai, Age 64 years, occupation-housewife,

1(b) Shri Mahesh Purshottam Dessai, Son of late Purshottam Dessai, Age-41 years, occupation-landlord and his wife,

1(c) Smt. Mahima Mahesh Dessai, Age-39 years, occupation housewife,

1(d) Smt. Shila Manoj Dessai, Daughter of late Purshottam Dessai, Age-40 years, occupation-housewife and her son,

1(e) Master Vedhant Manoj Dessai, Age-11 years, occupation student.

All above are residents of H.No.83, Shirewada, Nagarcem, Canacona, Goa.

1(f) Smt. Manisha Divaker Dessai, Daughter of late Purshottam Dessai, Age-39 years, occupation-housewife and her husband,

1(g) Shri Divakar B. Dessai, Age-44 years, occupation-landlord.

Both residents of S-2, Grace Heritage, Near Sharadha Classic,

Fatorda, Margao, Goa.

2. SHRI. BALCHANDRA
NARAYAN DESSAI (since
deceased through his legal
representative)

2(a) Kunda Bhalchandra Dessai,
Daughter of late Bhalchandra
Narayan Dessai, Age-48 years,
Resident of Shirewada
Nagarcem, Canacona, Goa.

3. SHRI ANANT NARAYAN
DESSAI, age 54, married,
occupation agriculturist, r/o H.
No.1576, Shirewada, Nagarcem,
Canacona - Goa.

4. SMT. ALPITA ANANT
DESSAI, wife of Respondent
No.3, age 48, occupation service,
r/o H. No. 1576, Shirewada,
Nagarcem, Canacona - Goa.

... RESPONDENTS/
ORIGINAL
DEFENDANTS

Mr. Sudesh Usgaonkar with Ms. Rosette Pereira,
Advocates for the Appellants.

Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar,
Advocate for the Respondents.

CORAM: M. S. SONAK, J.

Reserved on: 16th December 2022
Pronounced on: 22nd December 2022

JUDGMENT:

1. Heard learned counsel for the parties.
2. The appellants are the original plaintiffs, and the respondents are the original defendants in Regular Civil Suit No.30/1993 instituted in the Court of the Civil Judge, Junior Division at Canacona (Trial Court) seeking relief that they be declared as owners in possession of the suit property, and further, for a permanent injunction to restrain the defendants from interfering or trespassing into the suit property. The suit property was described in paragraph 2 of the plaint *inter alia* as bearing Survey Nos.151(1), 151(2) and 151(3), Shirewada, Nagarcem, Canacona, Goa.
3. The Trial Court, vide its Judgment and Decree dated 30.10.2003, decreed the suit. However, the First Appellate Court, vide Judgment and Decree dated 19.10.2004, reversed the Trial Court's Judgment and Decree. Hence this Second Appeal.
4. The Second Appeal was admitted on 29.09.2005 on the following substantial question of law:-

"Whether the Appellate Court was right in ignoring the inscription of title in favour of the Appellants in the year 1956 which was based on acquisition of title in the year 1947, in as much as Article 953 of the Civil Code read

with Article 8 of the decree number 42.565 creates presumption of possession in favour of a person in whose favour the entry was made and that the same belongs to the person in whose name the entry is found registered?"

5. Mr Usgaonkar, learned counsel for the appellants, submits that the plaintiffs had produced title documents and survey records based on which the Trial Court had correctly decreed the suit. He offered that even the oral evidence supported the plaintiffs' claim of title and possession. He submitted that the land registration records, like inscription and description documents, also supported the plaintiffs' case. He relied on Article 953 of the Portuguese Civil Code and Article 8 of Decree No.42.565 to submit that these provisions provided a statutory presumption of ownership and possession. In this matter, he presents that all this documentary evidence and statutory provisions were either ignored or grossly misconstrued by the First Appellate Court. He submits that even the survey documents were grossly misread or misinterpreted by the First Appellate Court. He submitted that the Matriz documents or entries in the un-promulgated Survey Form No.III are irrelevant for determining the title. He relied on several relevant decisions, which will be considered in the course of this Judgment and Order. Based upon all this, Mr Usgaonkar submitted that the

impugned Judgment and Decree of the First Appellate Court warrant interference.

6. Mr Usgaonkar pointed out that the impugned Judgment and Decree made by the First Appellate Court was stayed by this Court subject to the appellants depositing some amounts each month. He states that the appellants have regularly made such deposits, and the interim order continues to date.

7. Mr Ramani learned Senior Advocate for the respondents supports the reasoning in the impugned Judgment and Decree of the First Appellate Court. He submits that while there is no dispute about ownership and possession of part of the suit property surveyed under No.151(1), the First Appellate Court quite correctly dismissed the suit regards property surveyed under Nos.151(2) and 151(3). He submits that the correlation between the so-called title documents or the land registration documents and these two survey numbers was not established. He presents that the rights of the vendors from whom the appellants claim to have acquired title were also never clearly established. He submits that the Matriz documents or the un-promulgated survey records are not altogether irrelevant, particularly regarding actual physical possession.

8. Mr Ramani relied on *Rajendra Deshprabhu vs. Sitadevi Deshprabhu – (2006) 5 AIR Bom R 792* to submit that Article 953 of the Portuguese Civil Code provides only for *de-jure* transfer of possession and not *de-facto* possession. He proposes that the oral and documentary evidence on record, which the First Appellate Court correctly evaluated, substantially establishes the defendants' possession of property surveyed under Nos.151(2) and 151(3). He also relies on *Ronceu Telles & Anr. vs. Jose Estebeiro & Ors. – Civil Revision Application No.102/1986 decided on 20.11.1986* to support his contention that the unpromulgated survey entries are not irrelevant in determining possession status. Based upon all this, Mr Ramani urged the dismissal of this Second Appeal *qua* the portion of the suit property surveyed under Nos.151(2) and 151(3).

9. The rival contentions now fall for my determination.

10. The appellants-plaintiffs have sought not only a declaration of ownership but also a declaration about their possession of the suit property. Based upon this claim of possession, the plaintiffs also applied for a decree of permanent injunction to restrain the defendants from interfering with or attempting to trespass into the suit property.

11. The plaintiffs claimed to have the title and the possession of the suit property since the execution of the registered Sale Deed dated 20.09.1947. The plaintiffs claim that their son Moreshwar died on 03.06.1993 due to illness, and the defendants taking advantage of this fact attempted to interfere with the suit property on 04.07.1993 and 05.07.1993. There are pleadings that this attempt was foiled by the plaintiffs, *among other things*, by filing police complaints and physically preventing interference. The suit was instituted on 14.07.1993, and ex-parte ad-interim relief restraining interference was obtained soon after. As noted, this interim relief continues to date.

12. The defendants filed their Written Statement on 20.08.1993. Though the defendants have denied the plaintiffs' title, there is no specific claim about the title vesting in the defendants. Instead, the emphasis was on a Matriz Certificate that earlier referred to four persons and the land Index Form No.III (un-promulgated survey records). The defendants claimed that three of the four persons referred to in the Matriz Certificate were their ancestors and the fourth person was the plaintiffs' ancestor. Based upon mainly these two documents, the defendants claimed that they were the owners, or in any case, possessors of part of the suit property surveyed under Nos.151(2) and 151(3). Therefore,

the suit ought to be dismissed at least *qua* the properties surveyed under Nos.151(2) and 151(3) were concerned.

13. The suit property is described in paragraph 2 of the plaint as follows:

"2. That, the Plaintiffs are the owners, and in peaceful possession and enjoyment of the landed property known as "CHOUNLE CATEM" or "CHAULIKHATE" enrolled in Taluka Revenue Office under Matriz No.1374, registered in the Conservatory of the property Registration of Judicial Division, Qupem, under No. 21423, and surveyed under Survey Nos.151/1, 2 & 3, situated at Shirewada, Nagercem, Canacona, Goa, within the jurisdiction of Canacona Municipal Council and having an area of 2318 sq. metres and 1975 sq. metres (S.No.151/1), consisting of cashew and other trees and rice, 2031 sq. metres and 44 sq. metres (S.No.151/2), consisting of Rice and Bharad and 1632 sq. metres (Rice) Survey No.151/3 and bounded on the East-Vornio of Giva Rama Naique, on the West and North-Hill of Fazenda and South by Coniem of Loxamona Ragoba Sinai and others and Veriavarnio of Raghoba Deuli and others. This property is refereed to as 'suit property', for brevity's sake."

14. The plaintiffs have pleaded that they purchased the suit property vide registered Deed of Sale dated 20.09.1947. Based on this registered document, an inscription was annotated in the Land Registration Records in 1956. Both these documents were duly produced in evidence and marked as exhibits. Therefore,

based on these two documents, there was no reason to doubt the plaintiffs' title to the suit property.

15. There was never any serious dispute about the correlation between the property referred to in the title documents and the suit property surveyed under numbers 151/1, 151/2, and 151/3. Even the boundaries were tallied. Neither in the written statement nor before the Trial court was any such issue seriously raised or argued. Therefore, the title documents indeed correspond to the suit property.

16. In addition to the above two title documents, the plaintiffs also produced on record the evidence indicating that by a gift deed dated 10.02.1934, the suit property was gifted by Balso Naik and Anandi Desai to one Ramchandra Naik. The inscription records refer to this transaction under Entry No.15454. This was a provisional inscription which was confirmed or made definitive on 23.02.1944 in the Land Registration Records.

17. There is further evidence about the revocation of the gift deed on 02.10.1945 by mutual consent of the donors and the donee. By this composite document, not only was the suit property reverted to Balso and Anandi, but the said Balso and

Anandi agreed to sell the suit property along with some other properties to the plaintiffs. It is in pursuance of this composite document, including the agreement for sale recorded therein, that Balso and Anandi executed the Sale Deed dated 20.09.1947 conveying the suit property to the plaintiffs.

18. Thus, the Plaintiffs have established their title flow based on registered public documents and corresponding public land registration records. They have deposed to these documents in oral evidence. The documents refer to transactions from 1934 up to 1956, much before the disputes erupted between the parties. However, the defendants have not produced any title documents nor explained the precise source or nature of their alleged rights to the suit property.

19. Both plaintiffs and the defendants relied upon a Matriz Certificate concerning Matriz No.1374. The certificate produced by the plaintiffs refers only to the name of plaintiff no.1, without the history. However, the defendant's certificate states that earlier, the suit property was endorsed in the names of Bicaró Govinda Naique 1/4th, Zulpo Pissolo Naique 1/4th, Oiro Govinda Naique 1/4th and Bicu Bombo Naique 1/4th. However, even this Matriz Certificate states that "presently", the suit properties are solely inscribed in the name of plaintiff no.1. Therefore, both matriz

Certificates show that presently the suit property is enrolled in the Plaintiff's name.

20. The defendants claim some sort of possessory title by contending that Bicaro Govinda Naique, Oiro Govinda Naique and Bicu Bombo Naique were their ancestors. Unfortunately, the evidence on this aspect is highly sketchy. No family tree was produced even to attempt to establish the lineage. Instead, vague claims were made about the ancestors being great grandfathers or brothers of great grandfathers and so on.

21. Though Mr Ramani did attempt to explain that there was no difference between "Naique" and "Naique-Desai", such an explanation was never offered by any of the witnesses on behalf of the defendants. However, even if this explanation is accepted on a balance of probabilities, the evidence about these three persons indeed being the defendants' ancestors is quite sketchy and does not inspire much credibility. In any case, there is no dispute that even this Matriz Certificate produced by the defendants clearly states that the suit property was presently endorsed exclusively in the name of plaintiff no.1.

22. A registered sale deed or a land registration certificate constitutes documents or evidences of title. Article 953 of the

Portuguese Civil Code provides that the inscription in registration records of a title of transfer of property without any condition, involves, independently of any other formality, the transfer of possession to the person in whose favour such inscription was made. To the same effect are the provisions of Article 8 of the Code of Property Registration, 1959.

23. In contrast, the entries in a matríz document are only for collecting revenue and neither a source of title nor a proof of possession. In *Fabrica da Igreja de N.S. De Milagres vs. Union of India – 1995 (1) Bom.C.R. 588*, the learned Single Judge of this Court has held that *it is a settled position that a matríz document is neither an instrument of title nor a source of possession and that the organisation of the "matríz predial" is a mere administrative exercise aimed at collecting tax revenues from the land. As such no legal evidentiary value can be attributed to the said registration for the purpose of establishing ownership title or presuming possession on the land.*

24. The Hon'ble Supreme court in *State of Goa vs. Narayan V. Gaonkar & Ors. - (2020) 15 SCC 233* specifically endorsed the above-referred position from *Fabrica da Igreja de N.S. De Milagres (supra)*. In para 24, the Hon'ble Supreme Court held that a matríz document claimed to be the basis of rights is not a

document of title. Therefore, based on the decision of the single judge duly approved by the Supreme Court, the defendant's claim based on past or present entries in a matríz document cannot sustain.

25. Thus, assuming any conflict (though there is none) between the matríz certificate relied upon by the defendants and the registered sale deed or the land registration records relied upon by the plaintiffs, the latter documents must prevail over the former. This is the scheme of the provisions in Article 953 of the Portuguese Civil Code and article 8 of the code of property Registration, 1959. Besides, once it is accepted that the matríz predial system was only for collecting land revenue, even under Indian laws, a registered conveyance and land registration records would prevail over a matríz certificate. In any case, there is no conflict because even the matríz certificate relied upon by the defendants unambiguously states that the suit property is presently endorsed in the name of plaintiff no.1 and not the so-called ancestors of the defendants.

26. The Index of Lands Form III (un-promulgated survey records), possibly relying upon certain extracts from the matríz certificate, did refer to the names of the defendants *qua* the survey no.151(2) and 151(3). However, given the subsequent

developments that are a part of the record, such entries are hardly relevant or reliable. Therefore, the first appellate Court was not justified in relying upon them.

27. *Ronceu Telles (supra)* merely observes that in addition to the other material produced by the respondents in the said matter to prove their possession, their names were also found entered in the Index of Lands as its tenants. In this context, it was further observed that though the survey records have not been promulgated, they have some presumptive value, since they reproduce a factual situation found by the Surveyor when he inspected the site for the purposes of the survey records.

28. *Ronceu Telles (supra)* is distinguishable because, in that case, it appears that apart from the un-promulgated survey entries, there was no other documentary evidence to determine the status of possession. In the present case, apart from the title documents produced by the plaintiffs, even the final position of the survey entries favours the plaintiffs rather than the defendants. Even this final position of the survey entries escaped the attention of the first appellate Court.

29. The record bears out that plaintiffs protested against including the defendants' names in form III against the properties

surveyed under Nos.151(2) and 151(3). In LRC Appeal No.4/1989, the Deputy Collector, by his Judgment and Order dated 06.03.1991, set aside the disputed entries related to Survey Nos.151(2) and 151(3) but remanded for re-inquiry and pass fresh orders. On remand, the Inspector of Survey and Land Records, by his Judgment and Order dated 08.07.1996, held against the plaintiffs and dismissed the plaintiffs' claim of possession to property surveyed under Nos.151(2) and 151(3). However, the Superintendent of Surveys and Land Records, by his order dated 14.07.1997, reversed the Inspector's order dated 08.07.1996 and again remanded the matter for fresh consideration after taking into consideration account the various documents produced by the parties.

30. On such remand, the Inspector of Survey and Land Records, by his Judgment and Order dated 18.10.2001, allowed the plaintiffs' claim and ordered the deletion of the defendants' names and substitution of Plaintiff's name in the Index of Land Form III concerning the survey nos.151(2) and 151(3). However, there is no dispute that the name of plaintiff no.1 was always recorded against the property surveyed under no.151(1). Therefore, at least from 18.10.2001, all the survey records also bear Plaintiff's name and thus align with the position reflected in the title documents.

31. The Trial Court, upon a detailed consideration of the title and survey documents and the oral evidence led by the parties, concluded that the plaintiffs had established both their title and possession of the suit property. The First Appellate Court, without coming into close quarters with the reasoning of the Trial Court, however, reversed the Trial Court by ignoring or misreading the matrix and survey documents. The First Appellate Court failed to appreciate that even the matrix certificate produced by the defendants indicated that the suit property was enrolled in plaintiff no.1's name. Further, the First Appellate Court went by the entries in Form III without bothering to refer to the several orders made by the Inspector, Superintendent, Deputy Collector and other survey authorities. The First Appellate Court did not even refer to the final position from the order dated 18.10.2001, in terms of which the Plaintiff's name stands endorsed even in the survey records.

32. Moreover, the First Appellate Court failed to appreciate the settled legal position that neither the Matrix documents nor the un-promulgated survey records are a source of title or possession, particularly when pitted against the registered sale deed and land registration documents produced by the plaintiffs. There are apparent errors on the face of record because the First Appellate

Court did not even bother to look at the critical documents or misread them.

33. For instance, the First Appellate Court found fault with the plaintiffs' case simply because the Land Registration endorsements were made in the year 1956 when the sale deed, which is the title document of the plaintiffs, was executed on 20.09.1947. Firstly, the endorsements in the Land Registration records are typically made only after there is a transmission of the title through a conveyance. Secondly, it is not as if some period is prescribed under the law for making such endorsements in the Land Registration Records. This was not even a ground urged by any of the defendants. Yet, the First Appellate Court declined to consider the Land Registration documents and the presumptions that such registration raised under Article 953 of the Portuguese Civil Code read with Article 8 of Decree No.42.565 on the spacious plea that such endorsements were made only after examination of the sale deed dated 20.09.1947.

34. The First Appellate Court refused to give credence to the registered sale deed and the endorsements in the Land Registration records on the alleged ground that the plaintiffs had failed to establish the vendors' right in the sale deed dated

20.09.1947. This was, with respect, not the correct approach to adopt, given the documentary and oral evidence on record.

35. Besides, considering the provisions of Article 953 and Article 8, a presumption about title and possession had to be raised in favour of the plaintiffs. Therefore, at least *prima facie*, the plaintiffs were not obliged to prove that their vendors had title to the suit property. This was more so because the defendants had not set up any title in themselves but only vaguely claimed that their ancestors had some title to a portion of the suit property. Even in respect of this claim, all that was relied upon was the matrilineal certificate and some un-promulgated survey entries. However, as noted earlier, even these documents indicated the plaintiffs' name *qua* the suit property, and in any case, were not title documents.

36. But even assuming that the plaintiffs had to prove the title of their vendors, in the facts of the present case, the plaintiffs did prove the same. There is evidence about the suit property being gifted in 1934 by the vendors Balso Naik and Anandi Desai to one Ramchandra Naik. This is clear from the Land Registration documents. Based on this gift deed, the suit property was provisionally inscribed in the name of Ramchandra and finally on 23.02.1944.

37. There is documentary evidence about the revocation of the gift deed dated 10.02.1934 by the mutual consent of the donors Balso and Anandi and the donee Ramchandra. This was a composite deed because consequent upon the revocation, the suit property was agreed to be sold by Balso and Anandi to plaintiff no.1. Based upon this agreement, Balso and Anandi ultimately sold the suit property to plaintiff no.1 vide sale deed dated 20.09.1947. All these documents establish the title of Balso and Anandi, the Plaintiff's vendors, in the Sale Deed dated 20.09.1947. Thus, even the Vendors title was duly established by the Plaintiffs, assuming that the law did cast such burden upon them.

38. Some confusion was raised by urging that only half of the suit property was gifted. However, this was not so on the holistic reading of the Land Registration records. Moreover, this was not even the case raised by the defendants in their written statement or during the cross-examination of the Plaintiff's witnesses. No such specific case was also pleaded or deposed to by the defendants in their written statement or through their witnesses.

39. The Trial Court critically evaluated the oral evidence. Based upon the documentary and oral evidence, the Trial Court had correctly found that the plaintiffs were in possession of the suit

property and not the defendants. However, the First Appellate Court, in a cursory manner, after ignoring the relevant documents and misreading others, in a single line concluded that the defendants were in possession of the suit property. This finding contradicts the weight of the documentary and oral evidence on record. Even assuming that the oral evidence on the issue of possession was equally balanced, the documentary evidence in the form of title documents produced by the plaintiffs tilts the balance in favour of the plaintiffs.

40. Even assuming that the Land Registration documents and Article 953 of the Portuguese Civil Code raise a presumption of *de jure* possession and *de facto* possession as observed in *Rajendra Deshprabhu (supra)*, the defendants have failed to establish *de facto* possession. Instead, the plaintiffs established both *de jure* and *de facto* possession based on the documentary and oral evidence.

41. Thus, the First Appellate Court was not correct in ignoring the inscription title in favour of the appellants based on the 1956 endorsement. This endorsement, in turn, was based on the acquisition of the title in 1947. Article 953 of the Portuguese Civil Code and Article 8 of the Decree No.42.565 (Code of Property Registration 1959) assist the Plaintiff's case. Based upon

the same, the First Appellate Court was duty-bound to raise a presumption of title and possession favouring the plaintiffs. The defendants led no evidence to overthrow this presumption.

42. Besides, in this case, the plaintiffs were not relying only on the endorsements in the Land registration records and the statutory presumptions that arise from there. In addition to the Land Registration documents, the plaintiffs produced actual title documents, *inter alia*, the sale deed dated 20.09.1947. Based on all this, the substantial question of law has to be answered in favour of the plaintiffs.

43. For all the above reasons, this appeal is allowed. Accordingly, the impugned Judgment and Decree dated 19.10.2004 made by the First Appellate Court is hereby set aside, and the Judgment and Decree dated 30.10.2003 made by the Trial Court in Regular Civil Suit No.30/1993 is restored. No costs.

44. The Registry to draw out an appropriate decree. The amounts deposited by the appellants in this Court in terms of the interim order can now be refunded to the appellants with interest if accrued on such deposits. For this, the appellants should

furnish identification and bank details so that the Registry can transfer such amounts directly into their bank account.

M. S. SONAK, J.

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