

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.96 OF 2019

ANKUSH SHANKAR NAIK
(DEC) REP. BY HIS LRS.

... Appellants

Versus

MANUEL SEBASTIAN
D'SOUZA AND 16 ORS.

... Respondents

Mr. P. P. Singh, Advocate for the Appellants.

Mr. Vivek Rodrigues and Mr. S. Malik, Advocates for Respondent
No.1.

CORAM: M. S. SONAK, J.

DATED : 6th OCTOBER 2022

P.C.:

1. Heard Mr. P. P. Singh, learned counsel for the Appellants, and
Mr. V. Rodrigues learned counsel for Respondent No.1.

2. Mr. Singh proposes the following substantial questions of law.

(a) Whether the Courts below were justified in decreeing the
suit in favour of original plaintiffs when admittedly the name of
the sellers/vendors did not mention in any of the documents,
thus no title and ownership was transferred to the plaintiffs of
the suit property being purchased from strangers?

(b) Whether the Courts below can grant reliefs to the plaintiffs
who do not have title and ownership of the suit property being

tenanted one cultivated and occupied by the appellants as deemed purchasers under the law?

(c) Whether the Courts below committed gross illegality while passing orders in favour of the respondents without following the due process of law as the suit property was agricultural and cultivated by the appellants being tenants?

(d) Whether the Courts below ought not have framed a specific issue on the point of limitation when the suit property was purchased on 23.03.1984 and the suit was filed in the year 2009 which is clearly barred by law?

(e) Whether the First Appellate Court was justified to dismiss the application of the appellants to take documents on record for the just decision so as to remove the anomaly between the names of the parties?

3. The Appellant was the original Defendant or rather legal representatives of the original Defendant. The Respondents are original Plaintiffs. The two Courts have concurrently decreed the Plaintiffs' suit and issued an injunction against the Appellants.

4. The Plaintiffs claim title based upon a sale deed of 23.03.1984. They pointed out that Ankush Naik, the predecessor in title of present Appellants was a confirming party to this sale deed.

5. Before Ankush Naik filed a written statement in the suit, he expired. The legal representatives i.e. the present Appellants filed a written statement in which they claim that the signature on the sale deed was not that of Ankush Naik. Mr. Singh pointed out that the Appellants even stepped into the witness box and denied the signature as being that of Ankush Naik. However, the Appellants, in this case,

did not bother to lead any further evidence to establish that the sale deed was not signed by their father Ankush Naik. No evidence was led about the admitted signature of Ankush Naik to point out variance. No expert was examined on this issue. Based on the evidence on record, two Courts have concurrently held that Ankush Naik had indeed signed the sale deed and after that, neither Ankush Naik nor his legal representatives were entitled to interfere with the suit property admeasuring about 301 square metres.

6. Mr. Singh pointed out that the suit was barred by limitation because the same was instituted in the year 2009. This was a suit for injunction. The claim is that from 1984 till 2009, there was no interference mainly because Ankush Naik had signed the sale deed as a confirming party. Accordingly, there was no question of a bar on limitation being attracted.

7. Mr. Singh also submitted that the property originally belonged to Anant Narayan Kerkar whose name is recorded in the occupants' column in the survey records. However, the sale deed of 1984 was signed by Anil Narayan Kerkar. Based on this, Mr. Singh submitted that the Plaintiffs had no title or ownership to the suit property.

8. Mr. Singh points out that Anil Kerkar and his wife were made parties in the suit (Defendant Nos. 2 and 3). However, they did not contest the suit.

9. The above point raised by Mr. Singh is a point in favour of the original Plaintiffs. The Plaintiffs had a sale deed through Anil Kerkar. Anil Kerkar and his wife chose not to contest the suit meaning thereby that they accepted the validity of the 1984 sale deed.

10. This is not a case filed against Anant Narayan Kerkar or his legal representatives. This defence could have been taken by Anant Kerkar or his legal representatives. However, there is no question of the Appellants' taking such defence particularly since the Appellants have failed to establish that the signature on the sale deed was not that of Ankush Naik.

11. Mr. Singh finally contended that since the property was tenanted, the Civil Court had no jurisdiction. The Plaintiffs filed the suit based on their title. The Appellants had not claimed any tenancy qua the Plaintiffs. In any case, even a dispute between the two tenants can be looked into by the Civil Court. No issue of tenancy as such that required reference, arose in the suit. Accordingly, the substantial questions of law proposed by Mr. Singh do not arise in this matter. There is no perversity in the concurrent findings of fact recorded by the two Courts to give rise to any substantial questions of law.

12. For all the above reasons, this appeal is liable to be dismissed and is hereby dismissed. There shall however be no order for costs.

M. S. SONAK, J.