

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 38 OF 2017
WITH
CIVIL APPLICATION NO. 57/2017**

WILLIAM PETRIC D'SOUZA AND 4
ORS.,APPELLANTS.

Versus.

REQUEINA MARIA MASCARENHAS
ALSO KNOWN AS ERMELINA DE
SOUZA AND 8 ORS.,RESPONDENTS

None for the Appellants-Applicants.

**Mr. Nilgel Da Costa Frias, Advocate for Respondents No.1, 2
and 3.**

Ms. Rosette Pereira, Advocate for Respondent No.9.

CORAM : M. S. SONAK, J.

DATE : 8th December 2022

P.C. :-

1. This Court admitted the second appeal, subject to framing, in the course of time, the substantial questions of law concerning the the doctrine of shifting onus applying to this case.

2. Accordingly, it is clarified this Appeal is admitted on the substantial quests of law :

(A) Whether the finding about Mrs. Requeina Maria Mascarenhas alias Mrs. Ermelina De Souza not being the predecessor-in-title of the Appellants, whose name is

recorded in the survey records pertaining to the suit property, is vitiated by perversity?

(B) Whether, in the absence of production of the title documents by either parties and further, assuming that Mrs. Requeina Maria Mascarenhas alias Mrs. Ermelina De Souza was indeed the predecessor-in-title of the Appellants, the onus shifted upon the Defendants to prove their case?

3. Accordingly, this order is to be construed along with the order made by Hon'ble Shri Justice D.S. Naidu on 02/01/2020. The Appeal is thus admitted on the above substantial questions of law.

4. Respective Counsel for the Respondents waive service after admission of the Appeal.

5. In so far as Civil Application No. 57/2017 seeking interim relief is concerned, the same can be disposed of even though the learned Counsel for the Appellants, is not present today.

6. The learned Counsel for the Respondents point out that the Trial Court has dismissed the Appellants' suit claiming ownership of the suit property. This decree was confirmed by the Appellate Court. They point out that to the best of their knowledge, there was no interim relief operating during the

pendency of the suit or the appeal. In such circumstances, the learned Counsel for the Respondents are justified in contending that this Court should not grant any interim reliefs, as prayed for by the Appellants.

7. Accordingly, Civil Application No.57/2017 is dismissed and is disposed of.

M. S. SONAK, J.

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