

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 17 OF 2020

Suryakant Pundalik Kamat & anr.

... Appellants

Versus

Devidas Pundalik Kamat & anr.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate *with Mr. T. Sequeira, Advocate for the Appellants.*

Mr. J. J. Mulgaonkar, Advocate *for the Respondents.*

CORAM: A. K. MENON, J

DATED: 21st March 2022

ORAL ORDER

1. The challenge in this Appeal is to the Order and Judgment dated 6th November 2019, passed in Regular Civil Appeal No. 61 of 2012. The Appellants are aggrieved by the setting aside of the Decree passed by the Civil Judge, Junior Division, Bicholim, in Regular Civil Suit No. 43 of 2011/C, whereby the suit came to be decreed and it was declared that the Plaintiffs have half share in the suit plot described therein also half share in the suit house situated in the suit plot. The half share of the Plaintiffs in the suit plot and suit house

were directed to be separated by metes and bounds and allotted to the Plaintiffs.

2. The Respondents being the original Defendants, had filed a Counter claim. That Counter claim was dismissed. Aggrieved, the said Defendant preferred an appeal to District Judge, Mapusa, being RCA No. 61 of 2012, in which the Court passed the Judgment impugned in this Second Appeal. The learned Judge allowed the Appeal partly setting aside the Decree while sustaining the rejection of the Counter claim. The Second Appeal is taken up today and considering the narrow issue, the Appeal is taken up for hearing and disposal.

3. In paragraph 25 of the Judgment, the learned Judge has recorded that the Sale Deed nowhere shows that the Plaintiff no.1 had given a Power of Attorney to the first Defendant to sign on behalf of the first Plaintiff nor was any Deed of Rectification produced on the basis that the Plaintiff no.1 was then serving abroad and that he was not present at the office of the Sub-Registrar at the time of execution of the Sale Deed nor the Plaintiffs have produced any Power of Attorney appointing the first Defendant to sign the Deed on his behalf. This is one of the factors that has led the Court to hold against

the Appellants. In addition, the Appellants also appear to be aggrieved upon the rejection of the counter claim.

4. The interpretation placed by the First Appellate Court on Section 32 of the Registration Act 1908 and the conclusion drawn, is clearly erroneous.

5. I am of the view that the matter may be remanded to the Court of the District Judge, Mapusa, for fresh consideration and both sides have today submitted to the order of this Court. I am also of the view that the rejection of the Counter claim is also left open for consideration and I, therefore, pass the following Order :

ORDER

(i) The Order and Judgment dated 06.11.2019 is set aside.

(ii) RCA No. 61 of 2012 is remanded to the Court of District Judge, Mapusa for fresh consideration.

(iii) Needless to mention, the Court shall not be influenced by any observations made in this Order and shall hear the parties afresh.

(iv) Considering that the suit as originally filed is of the year 2001, an endeavour will be made to dispose of the same within six months from the date of this Order.

6. The parties shall appear before the District Court, Mapusa, on 31.03.2022 at 10.30 a.m and submit to further directions.

7. Petition stands disposed of accordingly.

A. K. MENON, J