

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEALS NO. 51 & 74 OF 2012
WITH
MISC. CIVIL APPLICATIONS NO. 18/2022 & 66/2022 (F)

FIRST APPEAL NO. 51 OF 2012
WITH
MISC. CIVIL APPLICATION NO. 18/2022

1. Shri. Christanand Desai,
alias Kristanand Desai
son of Joquim Moraes,
age 64 years, married;
[original Party No.5a(i)
legal heir of deceased 5(a)]

2. Shri. Edwin Moraes
son of Joquim Moraes,
age 63 years, married;
(r/o Olleazaina Velim, Salcete — Goa);
[original Party No.5a(ii)
legal heir of deceased 5(a)]

3. Smt. Nima Moraes,
alias Mima Moraes
daughter-in-law of
Shri. Roque Manuel Moraes;
Aged 60 years
(Appellants No. 1 & 3 are
r/o H. No. 2312, Bemcleamvaddo,
Cuncolim, Salcete —Goa.

... Appellants.

Versus

1. Frank Moraes
(Since deceased represented by
his legal heirs);

1a. Smt. Jonita Moraes, [Deceased]
widow, r/o Bemcleamvaddo,
Cuncolim, Salcete, Goa.

1b. Shri Mario Moraes
Son, r/o Bemcleamvaddo,
Cucolim, Salcete, Goa.

1c. Smt. Myra Moraes,
Daughter and her Husband;

1d. Shri Corwin Coutinho,
Son in law,
Both 1(c) and 1(d) residents of
Navelim, Salcete Goa.

1e. Kum. Michelle Moraes,
Daughter, r/o Bemcleamvaddo,
Cuncolim Salcete-Goa.

2. Shri. Deodado Magno Moraes
(since deceased represented by his legal heirs)

2a. Smt. Verodiana Moraes [Deceased]
Widow of Shri. Deodado Magno Moraes;
Bemcleamvaddo,
Cuncolim, Salcete —Goa.

2b. Shri. Ivon Moraes,

son of Shri. Deodado Magno
(2a & 2b are r/o H. No. 25-A,
Bemcleamvaddo, Cuncolim,
Taluka Salcete, Goa);

3. Shri Lourencinho Moraes
(since deceased represented by his legal heirs)

3a. Smt. Presrentacao Moraes, [Deceased]
widow, r/o H.No.2346, Bemcleamvaddo,
Cuncolim, Salcete —Goa.

4. Smt. Fransquinha Coutinho Gomes,
r/o H. No. 1074, Ward, Mileamvaddo,
Cuncolim, Salcete - Goa;

5. Shri. Avelino Moraes,
(since deceased represented by his legal heirs)

5a. Shri. Bonafacio Moraes, [Deceased]
son of Shri Avelino Moraes,
r/o Bemcleamvaddo,
Cuncolim, Salcete —Goa.

... Respondents

***Mr. Guru Shirodkar, with Ms. Varsha Parab, Advocates for
the Appellants.***

Mr. Joaquim Godinho, Advocate for Respondents No.1(b), (c),
(d), (e).

***Mr. Sudin Usgaonkar, Senior Advocate with Ms. T.
Mashelkar, Advocate for*** Respondent No.2(b).

FIRST APPEAL NO. 74 OF 2012
WITH
MISC. CIVIL APPLICATION NO. 66 OF 2022 (Filing)

1. Shri Deodado Magno Moraes
(since deceased represented by
his legal heirs)

a) Shri Ivon Moraes, grandson
and his wife, major in age

b) Smt. Gwen Moraes,
granddaughter in law, major,
All r/o H.No.25-A, Bencleam waddo,
Cuncolim, Salcete —Goa.

... Appellants

Versus

1. Frank Moraes, (since deceased
represented by his legal heirs)

1a. Smt. Joanita Moraes, widow
r/o Benclem Waddo, Cuncolim,
Salcete Goa, major in age

1b. Shri Mario Moraes, son,
major, r/o Bencleam waddo,
Cuncolim, Salcete Goa.

1(b)(i) Smt. M. Jennifer E. P. Moraes,
wife of Shri Mario Moraes,
aged 49 years, resident of H.No.2348,
Bencleam vaddo, Cuncolim, Salcete Goa.

1c. Smt. Myra Moraes, daughter, major,

and her husband

1d. Shri Corwin Coutinho, son-in-law,
major, both residents of Navelim, Goa.

1e. Kum. Michelle Moraes, daughter,
major, r/o Bencleamwaddo, Cuncolim,
Salcete, Goa.
All major of age,

2. Maria Antona Britto (since deceased
represented by her legal heirs)

a) Smt. Mary Moraes, daughter-in-law
and her children, major,

b) Smt. Mebel Fernandes
granddaughter and her daughter, major,
c) Miss Giselle Fernandes
great granddaughter, major,

d) Mrs. Audrey D'Lima Moraes
granddaughter, married, major,

e) Shri Ivon D'Lima
grandson in law, major,

e(i) Mrs. Daphne Fernandes,
granddaughter, married, major,

f) Shri Brian Fernandes,
grandson in law, major,

f)(i) Shri Egbert Moraes,

grandson, unmarried, major,

g) Shri Brendan Moraes,
grandson, unmarried, major,

h) Shri Oliver Moraes,
grandson, unmarried, major,

All residents of 14,
Jer Mahal Annexe, Jambulwadi,
Dhobitalao, Mumbai-400 002
(Respondent Nos.2(a) to (h) deleted
as per order dated 5.8.2004)

ii. Smt. Verodiana Moraes, daughter;

a) Smt. Irene Antao, granddaughter,
her husband,

b) Shri Herculano Antao,
grandson in law,

c) Shri Ivon Moraes, grandson
and his wife;

d) Smt. Gwen Moraes,
granddaughter in law,

e) Kum. Ilaz Moraes, granddaughter,

f) Shri Izar Moraes, grandson
and his wife,

g) Smt. Lilian Moraes,

granddaughter in law,

h) Shri Ivor Moraes, Grandson
and his wife,

i) Smt. Freda Moraes, granddaughter in law,
All residents of H.No.25-A, Bencleamvado,
Cuncolim, Salcete Goa.
(Respondent Nos. ii(a) to (i) deleted as per
order dated 5.8.2004)

iii)a) Smt. Leena D'Souza,
daughter and her husband,

b) Shri Teotonimo D'Souza,
son in law,

Both resident of Biunsa, Cuncolim,
Taluka, Salcete Goa.
(Respondent Nos. iii(a) to (b) deleted
as per order dated 5.8.2004)

iv(a) Smt. Berta Tavares, daughter
and her children

(b) Miss Chris Tavares, grandson
All residents of Aquem Alto,
Margao Goa.

(c) Shri Denzil Tavares, grandson,

All residents of Aquem, Alto,
Margao Goa.
(Respondent Nos. iv(a) to (c) deleted

as per order dated 5.8.2004)

v(a) Shri Fulgencio Moraes, son
and his wife

(b) Smt. Vandebai Moraes,
daughter in law,

Both residents of Vaz Building,
Aquem, Margao Goa.
(Respondent Nos. v(a) to (b) deleted
as per order dated 5.8.2004)

vi) Sr. Lucy Moraes, daughter,
Convent Holy Family, Sancoale,
Taluka, Mormugao Goa.
(Respondent No. vi deleted
as per order dated 5.8.2004)

3. Dr. Condorcio Moraes (since deceased
represented by his legal heirs)

a) Dr. Claudio Moraes, son
and his wife, major,

b) Dr. Mrs. Roshan, daughter in law,
major,

c) Shri Clovis Moraes, son
and his children, major,

d) Miss Sharmila Moraes,
granddaughter, major,

e) Dr. Cedric Moraes, son
and his wife, major,

f) Smt. Usha Moraes, daughter in law,
All residents of Cavel, Mumbai.
(Respondent Nos. 3(a) to (f) deleted
as per order dated 5.8.2004)

4. Shri Roque Manuel Moraes (since deceased
represented by his legal heirs)

a) Smt. Sofia Moraes, daughter in law,
major

b) Flossy Martins, major,
granddaughter and her husband

c) Shri Cruz Martins, major
grandson in law

d) Smt. Nancy Moraes, daughter in law,
major

e) Shri Ravi Moraes, great-grandson,
bachelor, major

f) Shri Raju Moraes, major,
great grandson, bachelor,

g) Shri Rohin Moraes, major,
great grandson, bachelor,

h) Shri Cristanand Desai, major,
grandson and his wife,

- i) Smt. Nirmala Desai, major,
granddaughter in law,
- j) Shri Edwin Moraes, major,
grandson and his wife,
- k) Smt. Lanny Moraes, major,
granddaughter in law,
- l) Smt. Goretti Figueiredo, major,
granddaughter and her husband,
- m) Shri Levy Figueiredo, major,
grandson in law,
- n) Smt. Hilda Caeiro, major,
granddaughter and her husband
- o) Shri Rosario Caeiro, major,
grandson in law,
(Respondent Nos. 4 (b) to (o)
deleted as per order dated 5.8.2004)
- p) Smt. Nima Moraes, daughter in law,
- q) Smt. Elvy Pinto, granddaughter
and her husband
- r) Shri Jeffry Pinto, grandson in law
- s) Shri Elvon Moraes, grandson
and his wife

- t) Smt. Sandra Moraes, granddaughter in law
- u) Smt. Erlifa Dias, granddaughter
and her husband
- v) Shri Edwin Dias, grandson in law
- w) Batestina Moraes, daughter in law
and her children
- x) Shri Khazanji Moraes, grandson
and his wife
- y) Smt. Rubby Moraes, granddaughter in law
- z) Smt. Fatima Moraes, granddaughter in law
and her children
- aa) Shri Sachin Moraes, great grandson,
- bb) Shri Shodhan Moraes, great grandson
- cc) Shri Savino Moraes, great grandson
- dd) Shri Derick Moraes, grandson
and his wife
- ee) Smt. Jovino Moraes, granddaughter in law
- ff) Smt. Alda Moraes, daughter in law
- gg) Shri Antolino Carvalho, son in law
and his children
- hh) Smt. Dhoraty D'Souza, granddaughter

and her children

ii) Shri Ramsey D'Souza, great grandson

jj) Shri Grimaldo Carvalho, grandson
and his wife

kk) Smt. Nancy Carvalho,
granddaughter in law

ll) Shri Alvito Carvalho, grandson
and his wife

mm) Smt. Filomena Carvalho,
granddaughter in law

nn) Smt. Alexandrina Carvalho, daughter
and her children

oo) Smt. Eufemia D'Mello, granddaughter
and her husband

pp) Shri Domnick D'Mello, grandson in law

qq) Shri Vithal Carvalho, grandson
and his wife

rr) Smt. Diana Carvalho, granddaughter in law

ss) Shri Edy Carvalho, grandson
and his Wife

tt) Smt. Matilda Carvalho, granddaughter in law

uu) Shri Eulice Carvalho,

grandson, bachelor

All residents of Bencleamvado,
Cuncolim, Taluka, Salcete, Goa.
(Respondent Nos. 4(q) to (uu) deleted
as per order dated 5.8.2004).

5. Lourencinho Moraes (since deceased
represented by his legal heirs)

(a) Smt. Presrentacao Moraes. (Since deceased
through her legal representatives)

5(a) (i) Smt. Shitia Noronha, Major in age,
Daughter of

i) Smt. Sharon Dias, Major in age,
daughter and her husband

ii) Shri. Atil Dias, Major in age

iii) Shri. Selvin Noronha, Major in age, son

iv) Shri. Symes Moraes, Major in age,
Son and his wife

v) Smt. Maria Moraes Major in age,
daughter in law,

vi) Smt. Sally Almeida, Major in age,
daughter and her sons

vii) Shri Clive Almeida, Major in age,
grandson

viii) Shri. Conrad Almeida, Major in age,
grandson,

ix) Smt. Sayama Barros, Major in age,
daughter, And her husband

x) Shri Mark Barros, Major in age

xi) Smt. Sandra Dias, Major in age,
daughter and Her husband

xii) Shri. Arun Dias, Major in age

xiii) Kum. Sayne Moares, Major in age,
daughter

All are resident of house no. 2346,
Benclevaddo, Cuncolim, Goa.

6. Smt. Fransquinha Coutinho Gomes,
major, r/o House No. 1074,
Ward Mileamvaddo,
Cuncolim, Taluka Salcete Goa.

7. Avelino Moraes (since deceased
represented by his legal heirs)

a) Shri Bonifacio Moraes, (Since deceased
through his legal representatives)
son and his wife, major

7(i) Mrs. Babita Barretto,
Major in age, Daughter and Her husband,

ii) Mr. Joe Barretto, Major in age,

iii) Balse Fernandes, Major in age,
Daughter and Her husband

iv) Mr. Victor Fernandes, Major in age,

v) Mrs. Bilda D'Souza,
Major in age, Daughter and
Her husband

vi) Mr. Mayur D' Souza,
Major in age

vii) Mr. Bobby Moraes,

All resident of Benclevaddo,
Cuncolim, Goa.

b) Smt. Elita Moraes,
daughter in law,

c) Smt. Elcy Aguiar, daughter

d) Smt. Eraldina Almeida, daughter
and her children

e) Smt. Irene Dias, granddaughter
and her husband

f) Shri Elias Dias, grandson in law

g) Shri Wilfred Almeida, grandson,
bachelor

All residents of Bencleam waddo,
Cuncolim, Taluka Salcete Goa.
(Respondent Nos.7 (b) to (g) deleted
as per order dated 5.8.2004)
8. Shri Deodado Magno Moraes
(since deceased represented by his legal heirs)

a) Smt. Verodiana Moraes, widow, major,

b) Smt. Irene Antao, daughter,
her husband,

c) Shri Herculano Antao, son in law,
(Respondent Nos. 8(b) to (c) deleted
as per order dated 5.8.2004)

d) Shri Ivon Moraes, son and his wife,
major,

e) Smt. Gwen Moraes, daughter in law,
major,

f) Kum. Iiaz Moraes, daughter,
major,

g) Shri Izar Moraes, son
and his wife, major,

h) Smt. Lilian Moraes, daughter in law,
major,

j) Smt. Freda Moraes,
daughter in law, major,

All residents of H.No.25-A,
Bencleam waddo, Cuncolim,
Salcete Goa.

(Respondent Nos. 8(e) to (j) deleted
as per order dated 5.8.2004) Respondents.

Mr. Sudin M.S. Usgaonkar, Senior Advocate with Ms. T. Mashelkar, Advocate for the Appellants.

Ms. A. A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for the Respondents No.1(b) to 1(e).

CORAM : M. S. SONAK, J.

Reserved on : 3rd February 2022

Pronounced on : 10th February 2022

JUDGMENT: -

1. Heard Mr. Sudin Usgaonkar, learned Senior Advocate, and Mr. Guru Shirodkar for the Appellants in both these Appeals and Mr. Joaquim Godinho for Respondents No.1(b), (c), (d), (e) in First Appeal No. 51/2012 and Smt. Agni, Senior Advocate for the Respondents No.1(b) to 1(e) in First Appeal No.74/2012.

2. The learned Counsel for the parties agree that both these Appeals can be disposed of by a common judgment and order

since, the challenge in both these Appeals is to the Judgment and Award dated 23/12/2011, made by the Reference Court in Land Acquisition Case No. 140/1990 concerning the apportionment of compensation between the various claimants or the groups of claimants.

3. A property admeasuring 6225 sq. metres surveyed under No.432/1 of Village Cuncolim, Salcete Taluka was acquired by the Government for the construction of minor M2 at Cuncolim. The compensation was determined by the Land Acquisition Officer but was not paid to any of the several claimants on account of disputes of apportionment. The Land Acquisition Officer made a reference under Section 30 of the Land Acquisition Act to the Reference Court that has since been disposed of by the impugned Judgment and Award dated 23/12/2011. Hence, these Appeals.

4. The Reference Court, by the impugned award, has apportioned the entire amount of compensation in favour of the legal representatives of the original Party No.1 *i.e.* Frank Moraes. Therefore, First Appeal No.51/2012 has been instituted by some of the legal representatives of the original Party No.5 *i.e.* Roque Manuel Moraes, claiming that they too have interest in the

compensation awarded to the extent of their share and as co-sharers/co-owners of the acquired property. Similarly, First Appeal No.74/2012, has been instituted by some of the legal representatives of the original Party No.3 i.e. Deodado Magno Moraes, who claim an interest to the extent of 1/4th in the acquired property as co-sharers/co-owners thereof.

5. In short, in both these Appeals, the Appellants do not dispute that Frank Moraes was one of the co-owners of the acquired property, but they submit that Frank Moraes was not the exclusive owner of the acquired property since even they were the co-owners of the acquired property along with others, including Frank Moraes.

6. In First Appeal No.51/2012, Mr. Guru Shirodkar, learned Counsel for the Appellants submits that the Reference Court has failed to look into the various documents produced on record and consequently, erred in awarding the entire compensation only to the legal representatives of Frank Moraes. He submitted that the documents on record establish the interest of the Appellants as the legal heirs of late Roque Manuel Moraes and, therefore, the Reference Court should have made an award, apportioning the compensation in favour of the Appellants as well.

7. Mr. Sudin Usgaonkar, learned Senior Advocate appearing for the Appellants in First Appeal No.74/2012 submitted that the acquired property can be taken as a part of the property registered under No.11223, now corresponding to the property surveyed under No.432/1. He submitted that the inscription and description documents, as also the matriz documents produced on record, clearly establish Deodado's right and interest to the acquired property and the impugned award has been made without appreciating the scope and import of such documents. He submitted that the Appellants were not claiming any exclusive co-ownership or interest in the acquired property, but were claiming interest only to the extent of 1/4th, along with the legal representatives of Frank Moraes and others. He, therefore, submitted that this appeal ought to be allowed.

8. Ms. Agni, learned Senior Advocate appearing on behalf of the legal representatives of Frank Moraes defended the impugned Judgment and Award based on the reasoning reflected therein. She pointed out that the title documents have been produced only by Frank Moraes or his witnesses. She pointed out that the description documents or the matriz documents are not the documents of title, as has been held by the Hon'ble Supreme Court in *State of Goa vs. Narayan V. Gaonkar and ors.* - Civil

Appeal No.1866 of 2020, decided on 4/3/2020. She submitted that even, otherwise, the documents of description and matriz produced by the Appellants do not tally with the description of the property registered under No.11223, of which the acquired property is admittedly, a part. She, therefore, submits that both these Appeals may be dismissed.

9. Ms. Agni also submitted that the property bearing registration No.11223 comprises 3 additions. One of the additions is property bearing Survey No.435/1 at Cuncolim, Salcete Goa. She submits that concerning the property surveyed under No.435/1, recently it is held by this Court in its Judgment and Order dated 16/11/2021, in First Appeals No.89 and 120/2004 that Frank Moraes was the exclusive owner. She submits that this is an additional reason to dismiss both the First Appeals.

10. Mr. Godinho adopts the submissions made by Mrs. Agni and submits that the entire compensation was rightly apportioned in favour of the legal representatives of Frank Moraes.

11. Mr. Usgaonkar and Mr. Shirodkar, however, submit that the parties whom they represent, were not parties to First Appeals No.89 and 120 of 2004 and, therefore, any decision therein

would not bind them, and based upon the said decision, there is no question of upholding the exclusive claim of Frank Moraes or his legal representatives.

12. The rival contentions now fall for my determination.

13. From the evidence on record, it appears that some of the parties have named the acquired property "Moroda-Carojem" and others as "Carojem". From the evidence on record, it does transpire that these are only two names given to the larger property, of which the acquired property admeasuring 6225 sq. metres forms a part.

14. From the evidence on record, there does not appear to be any serious dispute that the entire property "Moroda-Carojem" or "Carojem", of which the acquired property is only a part, is registered in the Land Registration Office under No.11223 and also enrolled in the matriz records under Nos. 3924 and 3925.

15. The original Party No.1 *i.e.* Frank Moraes, in his statement before the Reference Court, has described the acquired land as "Moroda-Carojem" also known as "Carojem" surveyed under No.432/1 Cuncolim, Goa. There is no dispute amongst the parties about the survey number being 432/1. Even, otherwise,

the acquisition of 6225 sq. metres was from the property bearing Survey No.432/1, and consequently, the Land Acquisition Case No.140/1990, in which the impugned Judgment and Award has been made, also relates to the property surveyed under No.432/1.

16. Frank Fernandes, in his statement, has pleaded that the entire property *i.e.* the property known as “Moroda-Carojem” also known as “Carojem” comprises 3 additions, namely (i) property surveyed under No.394/1 Cuncolim; (ii) property surveyed under No. 435/1 and 2 Cuncolim; and (iii) property surveyed under No. 436/1 Cuncolim.

17. In the written statement filed by the two Appellants, or rather, the predecessors through whom the Appellants claim, there is no contest about the larger property bearing the names indicated by Frank Moraes or that the larger property comprises 3 additions as aforesaid.

18. Frank Moraes has further pleaded that the larger property comprising 3 additions as aforesaid, is registered in the Office of the Land Registration at Margao under Land Registration No.11223 at page 203 V of Book B-5 (da Cópia Antiga) of the Land Registrar of Quepem Taluka. He has also pleaded that the larger property is enrolled with the Land Revenue Authorities at

Margao under two additions of the same property, namely northern and southern wings, bearing Matriz registration No.3924 and 3925, respectively.

19. Now, the Appellants in First Appeal No.51/12, rely on the written statement filed by Conceicao Sofia Moraes, one of the legal representatives of Roque Manuel Moraes. She has pleaded that she along with others who have joined in filing the written statement were the occupants and tenants, lawfully in possession of the suit property. However, there are no pleadings about how the tenancy was constituted, if at all the same was ever constituted. The statements before the Reference Court were, however, based on the premise that Roque Manuel Moraes was the owner of the acquired property. As such, there is some inconsistency in the claims made and the same was not clarified either before the Reference Court or before this Court. Rather, Mr. Shirodkar submitted that he adopts the submissions of Mr. Usgaonkar in First Appeal No.74/2012, and based thereon, the Appellants would be satisfied if they get a share in the compensation awarded together with the legal representatives of Frank Moraes. In the written statement, Conceicao Sofia Moraes did claim that if Frank Moraes insisted that he has become the landlord of the entire property, then, it is for him to move

through the proper channel. Mr. Shirodkar clarified that by this what was meant was that Frank Moraes or his legal heirs should obtain a declaration from the competent Court by instituting a suit.

20. In First Appeal No.74/2012, the legal representatives of Deodado Magno Moraes have filed the written statement. Therein they claim that the larger property is known as “Carojem” and the same is bounded as follows :

On the east: By the property of Inacio Xavier Coutinho and others;

On the west: By the property of Marques and others;

On the north: By the public road; and

On the south: By the property Mordi of Pulso Naik and others.

21. In the aforesaid written statement on behalf of the legal representatives of Deodado Moraes, there is pleading that the property described in the Land Registration Office is 9782. However, Mr. Usgaonkar, in the course of arguments, submitted that this may not be correct and the acquired property can be taken as a part of the property registered under No.11223.

22. In the written statement filed by the legal representatives of Deodado, there is a statement that Frank Moraes does not have

any independent right to the acquired property. Mr. Usgaonkar clarified that what is meant by this is that Frank Moraes had no exclusive right to the acquired property.

23. Finally, the legal representatives of Deodado, in their written statement, have pleaded that they are entitled to 1/4th share, together with Frank Moraes and others.

24. Frank Moraes in his written statement, has relied on the Land Registration Certificate bearing No.11223 and, further pleaded that the boundaries in terms of this document are as follows :

East : With the property "Cotta-Molla" of Inacio Xavier Coutinho and Others, surveyed under L.S. Nos.430 and 431.

West : With the property "Carojem" of Marquez de Fronteira, Benjamin, and Others.

North: With the L.S. No.394/1, and public road coming from Comba-Paricotto,

South : With the hill-top known as "Cachamunddi" of the said Marquez de Fronteira, and public Highway road coming from Margao and going to Canacona Taluka

25. Frank Moraes has further pleaded that the actual boundaries of the acquired property i.e. 2nd addition survey under No.432/1 (part) are as follows :

East: "Cotta-Molla" of late Inacio Xavier Coutinho at present surveyed in the names of his present heirs-Amancio Baptista Coutinho, Smt. Pia Coutinho, and Shri Rock Coutinho, described under L.S. Nos. 6430/1 and 430/2.

West: With the L.S.No. 433/1 to 7, belonging to this Plaintiff and others.

North: With the L.S. No.394/1x2 belonging to this Plaintiff being the first addition of the entire suit property known as "Carojem-Morada", or "Bharad",

South: With the L.5, Nos. 435/1x2 and 436/1 (3rd addition) and thereafter Highway public road going to Canacona ;

26. Frank Moraes, in his written statement, has relied upon the following documents in support of his claim of exclusive ownership :

a) Certified copy of Suit property Title Deed document bearing Land Registration No.11223 at page 203V of Book-5, registered

with Land Registrar at Margao, along with its english translation, marked as Exh, "A" and "B", respectively.

b) True certified copy of Certificate of Matriz from the Revenue Department, Margao, Salcete Taluka, bearing Nos. 3924 and 3925 in two additions, namely Northern and Southern Wings, marked as Exh, "C",

c) Two certified birth certificates - One of late Marcelino Piedade Moraes and other one of his son, applicant Frank Moraes, who is a direct hereditary heir to the entire said suit property, belonging to late Minguel Moraes and his late wife Brigida Fernandes - bearing No.11223. Exd - "D" and "E".

27. Based on the aforesaid, Frank Moraes has claimed the exclusive right, title, and interest to the acquired property.

28. The Appellant, in their evidence, have only relied upon the matriz records, in which the names of some of the predecessors of the Appellants do appear. Frank Moraes, in his deposition, quite frankly admitted that he cannot say how such names find a place in the matriz records. However, he asserted that the Appellants or their predecessors have no right, title, or interest in the larger property or the acquired property and relied

on the title document *i.e.* the Land Registration Certificate bearing No.11223.

29. The Appellants have not produced any title documents in the course of their evidence. Their entire case is based on the matriz documents or the description documents, in which the names of their predecessors do appear. Now, it is well settled that matriz documents are not documents of title, and based thereon no serious claim of title can succeed.

30. In *Fabrica da Igreja de N.S. De Milagres vs. Union of India and others*, (1995) 1 Bom CR 588, dealing with matriz documents, the learned Single Judge of this Court has held as follows :

“14. ... It is a settled position that a matriz document is neither an instrument of title nor a source of possession and that the organisation of the “matriz predial” is a mere administrative exercise aimed at collecting tax revenues from the land. As such no legal evidentiary value can be attributed also the said registration for the purpose of establishing ownership title or presuming possession on the land.”

31. Very recently in *Narayan V. Gaonkar* (supra), the aforesaid statement of law was upheld by the Hon'ble Supreme

Court. This means that based on only a matriz document, no party can claim title to a property.

32. In contrast, Frank Moraes has produced on record not only the matriz documents in which, along with others, the names of his predecessors appear, but most importantly Frank Moraes has produced the title documents in respect of the property registered under No.11223.

33. The translation of the title deed, which records the entry of 29th August 1881, reads as follows :

“Number 11223. year 1881, 29th August. It was presented and recorded in the "Diario" at page 48 relating to a title; by virtue of the said title and other clarifications made, which the title holder has presented before me, I have inserted the present extract of the property's description as "Property known as "Moroda-Carojem" consisting of land cultivated of cereal: it is situated in the Village of Cuncolim, and bounded towards :- East with the property "Cotta-Molla" of Inacio Xavier Coutinho and others. West with the property "Carojem" of the Marques de Fronteira, (also known as Condado), Benjamin and others. North : with the public road; and south with the hill top known as "Cachamuddi" of the said Marques de Fronteir. The previous owner transmitted it to the present actual owner —Minguel Moraes who was married, landlord, resident of Cuncolim. I have calculated the selling price of this property by virtue of the document presented

before me by the said Minguel Morais and his declarations made before me as Rupees Four Hundred (Rs.400/-) and its annual liquid income as Rs.8/-.

The declaration and the power of attorney of the one who it has presented, are filed in the Second Volume of the year 1883. The document was given back to the presenting party, she being formal legitimate head of inheritance, with the date of 12th August, extracted from the Inventory Proceedings filed by Brigida Fernandes, upon the death of her husband, the said Minguel Morais, and the same is registered in the Office of Caetano Lourenco Faleiro, the Judicial Magistrate of the Salcete Taluka at Margao. This description stands annotated in the "Index Real" of this Registration Office of Salcete Taluka, at page ten and subsequent pages of the Book-7, pertaining to the Land Registration Office. Land Registration Officer-Augusto Cesar de Noronha.

I have issued this certificate which is signed by me after it is reviewed and corrected, at the request of FRANK MORAES, resident of Cuncoim, presented under number one of today diary.

Civil Registration Office, Salcete Taluka, Margao dated First July, 1987.

The Registrar

Sd/-

Domingos Antonio Conceicao Morais)"

34. The title deed states that in the year 1881, the property bearing registration No.11223, was owned by Minguel Moraes, a landlord from Cuncolim.

35. Frank Moraes or his witnesses have produced on record the birth certificate of Frank Moraes that establishes that his father was Marcelino Moraes. Frank Moraes has produced on record a birth certificate of his father Marcelino Moares, which records the name of his father as Luis Moraes and his mother as Refina Almeida. This birth certificate also records the name of the grandfather as Minguel Moraes and the grandmother as Brigida Fernandes.

36. Now, in the birth certificate of Frank Moraes, the names of grandfather and grandmother, have been recorded as Santana Moraes and Refina Almeida. Normally, the name of the grandfather of Frank Moraes should have been Luis Moraes and not Santana Moraes. However, this discrepancy, if at all, has been explained by Frank Moraes in his deposition where he states that his grandfather's name was "Luis Santana Moraes" and not just "Santana Moraes".

37. In this case, Frank Moraes expired before his cross-examination could be completed. Therefore, a legal representative

of Frank Moraes was examined, who again deposed consistent with what Frank Moraes had deposed in his examination-in-chief. No suggestions were put to this witness about Luis Santana Moraes and Santana Moraes being different persons. Besides, in terms of the certificates produced, the name of the grandmother of Frank Moraes should have been Refina Almeida and that is precisely the name that is reflected in the birth certificate of Frank Moraes. Accordingly, this is sufficient evidence in a matter of this nature to link Frank Moraes with Minguel Moraes. The chain or linkage has been sufficiently established. The title document is in the name of Minguel Moraes. Based upon this and upon applying the test of preponderance of probability, it can be said that Frank Moraes or his legal representatives have established their exclusive interest in the acquired property.

38. There is no serious challenge to the evidence led on behalf of the legal representatives of Frank Moraes about the larger property comprising the 3 additions, described above. This Court, in its Judgment and Order dated 16/11/2021 in First Appeals No.89 and 120 of 2004, has held that Frank Moraes and consequently, his legal representatives were exclusive owners in respect of the property surveyed under No.435/1 Cuncolim, which is one of the additions of the larger property, registered

under No.11223. There, the Appellants were not parties to these proceedings possibly because they had not raised any claim in respect of this addition, surveyed under No.435/1. However, the Judgment and Order does corroborate the case pleaded and established by Frank Moraes and his legal representatives in this matter.

39. As noted earlier, in First Appeal No.74/2012, the Appellants had referred to Land Registration No.9872. However, in the course of evidence, this attempt was not pursued. Mr. Usgaonkar also accepted that the acquired property is a part of the property bearing Land Registration No.11223. The boundaries in the written statement also do not tally with the boundaries of the property under Land Registration No. 11223. Rather, the boundaries as pleaded by Frank Moraes more or less tally with the boundaries of the property bearing Land Registration No.11223. In any case, it appears that the claim of the two Appellants is almost, exclusively based on the matriz documents, which cannot be held as title documents because of the law laid down by this Court and affirmed by the Hon'ble Supreme Court.

40. For all the aforesaid reasons, I find no merit in both these Appeals that are required to be dismissed and are, hereby dismissed.

41. There shall be no order for costs.

42. Given the disposal of the Appeals, Misc. Civil Applications also stand disposed of.

M. S. SONAK, J.