

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.26 OF 2022

GAJANAN MUKUND GAONKAR @
NAIK AND 20 ORSAPPELLANTS.

Versus

RAMNATH FONDU NAIK @
GAONKAR (EXPIRED) AND 3 ORSRESPONDENTS.

Mr. John A. Lobo, Advocate *for the Appellants.*

CORAM : M. S. SONAK, J.

DATE : 14th October 2022

P.C.:-

- 1.** Heard Mr Lobo for the Appellants.
- 2.** The challenge in this second Appeal is to the concurrent decrees in Regular Civil Suit No.71/2010 and Regular Civil Appeal No. 33/2015, in terms of which the Appellants are directed to pay the original plaintiffs a sum of ₹18,31,312/- corresponding to their 1/3rd share in the amount received by the Appellant/original defendant No.20 as their attorney from the original defendant No.22, along with interest at the rate of 12% per annum from the date of receipt of the said amount, till its full payment.
- 3.** Mr Lobo submits that the claim of the original plaintiffs was based upon Alvara no.84 dated 4/8/1903. It was the case of

the plaintiffs that this corresponds to the property surveyed under No.33/2 of Coranguinim village. He points out that the Trial Court specifically held that the plaintiffs could not prove that this Alvara no.84 corresponds to the property surveyed under No.33/2 of village Coranguinim.

4. Mr Lobo submits that once the Trial Court recorded the above finding, there was no question of holding that the Plaintiffs had 1/3rd rights in the suit property surveyed under No.33/2 and based on the same, making the decree requiring the Appellant to share 1/3rd of the amount received by the Appellant towards the lease rent by leasing out the suit property.

5. Mr Lobo submits that the following substantial questions of law arise in this second Appeal.

(I) Whether the Courts below have misread the documents as produced on record to hold that Ramnath Fondu Naik alias Gaonkar was the only heir of the late Fondu Mukund Gaonkar, and have therefore erroneously concluded that he is entitled to the entire share of the late Fondu Mukund Gaonkar, despite clear deposition/admission by his Power of Attorney that he is not the only heir ?

(II) Whether the Courts below have misread the documents and the evidence on record and have therefore arrived at an erroneous finding that the late Fondu Mukund Gaonkar was co-owner of the property bearing Survey No. 33/2 of Sanguem Village and have therefore

upon wrong assumption and conjectures without analysing the evidence on record, the case of the parties and the documents as produced held entitlement of the plaintiffs?"

6. Considering Mr Lobo's contentions and perusal of the two decrees, I find it difficult to accept the Appellants' case. The brief reasons follow.

7. In this case, there is no dispute that the Appellant obtained a power of attorney dated 21/7/2008 from the original plaintiffs. Other co-owners of the suit property also issued such a power of attorney. Based on such a power of attorney, the Appellant executed a deed of perpetual lease dated 4/3/2009 (Exhibit 34) with the original defendant No.22. In this deed, the original plaintiffs were described as the owners or the lessors of the suit property.

8. The original plaintiffs contended that the power of attorney was obtained by misrepresentation. Accordingly, the Trial Court framed almost seven issues. The first and second issues read as follows :

1. Whether Plaintiffs Prove that defendant no.20 obtained their power of attorney by without disclosing that the same was meant for giving the said property on

perpetual lease to defendant no.22 and obtained lease rent on behalf of plaintiffs and issued valid receipts?

2. Whether Plaintiffs prove that defendants are liable to pay to the plaintiff the sum of Rs. 18,31,312/- corresponding to their 1/3rd share in the amount received by the defendant no. 20 as their from defendant no. 22?

9. The Trial Court answered both issues positively, *i.e.* in favour of the Plaintiffs. Thus, the Trial Court held that the Appellant obtained the power of attorney without disclosing that the same was to perpetually lease out the suit property to defendant No.22 and receive the lease rent on behalf of the plaintiffs from defendant No.22.

10. The circumstance that the Appellant felt it necessary to describe the plaintiffs as the owners/lessors, along with others in the perpetual deed of lease, is a significant circumstance that has been considered by the two Courts concurrently. Therefore, even if the issue of misrepresentation is kept aside for a while, the fact that in the perpetual lease deed, the Appellants described the original plaintiffs as owners/lessors is a significant circumstance from which the Appellants cannot wriggle out and virtually deny the original plaintiffs' status as co-owners or co-lessors of the suit property. Such denial does not appear to be bonafide and is aimed

only at refusing to share the lease rent obtained by the Appellant for and on behalf of the original plaintiffs.

11. The issue of Alavara fades into the background now that the Appellant himself described the original plaintiffs as the owners/lessors of the suit property and, based on a power of attorney obtained from the original plaintiffs by not disclosing the true and correct facts, has appropriated the original plaintiffs' share to the lease rents. Therefore, this is not a case of any wrong assumptions or conjectures. This is not a case of misreading or misconstruction of documents. The two Courts have analysed the evidence on record in sufficient detail, and there is no case of perversity.

12. Therefore, the substantial question of law proposed by Mr Lobo does not arise. It is not a question of law but only a question of re-appreciation of the evidence. There is neither any perversity in the findings recorded nor the approach of the two Courts. This is a matter where there are concurrent decrees.

13. For the above reasons, this Appeal is dismissed.

14. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH
S MHAMAL
Digitally signed by
SANTOSH S
MHAMAL
Date: 2022.10.15
14:56:16 +05'30'

12-SA-26-22.DOC