

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA  
SECOND APPEAL NO. 49 OF 2022  
WITH  
CIVIL APPLICATION NO. 61 OF 2022**

SANTOSH                      HORICHONDRA  
POROB AND 3 ORS                      ....APPELLANTS

**Versus.**

SONU   DATTA   POROB   DESSAI  
AND 8 ORS                      ....RESPONDENTS.

**Mr. Ashwin D. Bhobe, Advocate** *for the Appellants.*

**CORAM :    M. S. SONAK, J.**

**DATE    :    20<sup>th</sup> October 2022**

**P.C.: -**

- 1.**        Heard Mr. Bhobe for the Appellants.
- 2.**        The Appellants are the original defendants in Regular Civil Suit No. 27/2008/B. The Trial Court decreed the suit partly by granting, *inter alia*, an injunction restraining the Defendants from interfering with the suit property, except a portion admeasuring around 730 sq. metres that the Defendants claimed by adverse possession.
- 3.**        The original Plaintiffs appealed and the Appellants-Defendants filed cross objections. The First Appellate Court has

partly allowed the Plaintiffs' Appeal and extended the injunction to the portion of the property admeasuring 730 sq. metres, except the portion occupied by a house of the Defendants therein. However, the cross objections were dismissed. Hence, the present Second Appeal.

4. Mr. Bhobe submits that since this was a suit for declaration, all the alleged co-owners were necessary parties. The two Courts below should not have granted a decree for declaration. Further, Mr. Bhobe submitted that there was no valid consideration of the Defendants' cross objections. Based on the reasoning in the original Plaintiffs' appeal, the cross objections have been summarily rejected.

5. Mr. Bhobe submits that this Second Appeal raises the following substantial questions of law:

(A) Whether the Regular Civil Suit No. 27/2008/B, which suit essentially being a suit for declaration on the facts and circumstances of the present case would be barred by limitation considering the entry in the occupants column of Ghanshyam Kakodkar and in the absence of Ghanshyam Kakodkar being arrayed as a party to the Regular Civil Suit no. 27/2008/B?

(B) Whether when the District Judge having observed that Trial Judge having failed to consider / discuss the plea of adverse possession, the District Judge was right in deciding the said issue for the first time in appeal, on the spacious plea that the fate of the plea would be the same as arrived by the District Judge?

6. In my judgment, no substantial questions of law, as aforesaid or otherwise, arise in this Appeal. The Defendants are not entitled to take up cudgels on behalf of any other alleged co-owners. In any case, this has been answered by the two Courts by stating that the decrees now made may, at the highest, not bind any such alleged co-owners. Accordingly, the first substantial question of law, as proposed, does not arise or, in any case, is required to be answered against the Appellants.

7. From the discussions in the judgments and decrees made by the Trial Court and the First Appellate Court, it is apparent that both the Courts have considered, in some detail, the plea of adverse possession raised by the Appellants-Defendants. After analysing the evidence on record, such a plea has been mostly turned down, except to the extent some protection is granted by the First Appellate Court. There is no perversity in the finding of fact recorded by the two Courts or the assessment of the evidence

on record. The First Appellate Court has modified the finding of the Trial Court, as it was entitled to do so. Again, there is no perversity in either reaching the finding, or the process by which the same came to be reached. Accordingly, even the second substantial question of law, as proposed, does not arise.

**8.** For the above reasons, this Appeal is dismissed. There shall be no order for costs.

**9.** Civil Application does not survive the disposal of the Second Appeal and the same is also disposed of.

**M. S. SONAK, J.**

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