

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.110 OF 2019
WITH
CIVIL APPLICATION NO.246 OF 2019

MILAGRES GRACIAS

...Appellant

Versus

PETER GRACIAS AND ANR.

...Respondents

Mr. Prasheen Lotlikar, Advocate for the appellant.

Mr. G. Teles, Mr. A. Dalvi and Mr. A. Sail, Advocates for respondent No.1.

CORAM: M. S. SONAK, J

DATE : 8th June 2022

P.C.:

1. Heard Mr. P. Lotlikar, learned counsel for the appellant, and Mr. G. Teles learned counsel for respondent No.1.

2. The appellant is the original defendant No.1 and the respondent No.1 is the original plaintiff in Regular Civil Suit No.83/2009/C seeking *inter alia* the eviction of the appellant from the suit Gada (shop) premises bearing No.S/I/Y2K/888, situated at Baixo de Igreja Market, Agassaim, Tiswadi Goa, which is called as M/s Gracias Stores. The trial Court decreed the suit on 05.10.2017 and the Appellant Court dismissed the appeal on 02.01.2019. Both the Courts have concurrently held that the plaintiff had a better right or title to the suit Gada and further, the suit Gada was given to the appellant

only on a temporary basis during the period when the plaintiff had traveled abroad.

3. Mr. Lotlikar however, contends that the two Courts erred in not addressing themselves the specific question of whether the original Gada existed or whether the same was demolished and a new structure was put up by the appellant and the respondent No.2 in place of the original Gada some time in the year 2002. He submits that this issue is important because the licenses in respect of the structure are from the year 2008 and what was granted in the year 2002 was only a simple NOC from the panchayat.

4. Mr. Lotlikar also submits that the plaintiff has failed to produce any documents of title. He submits that the licenses from the authorities or the document about electricity connection can hardly be regarded as the document of title. Based on the aforesaid submissions, Mr. Lotlikar submits that the following substantial questions of law arise in this matter.

i) Whether the Courts below misdirected themselves by not addressing themselves to the specific question of whether the original Gada existed or the same was demolished and a new structure was constructed by the appellant and respondent No.2 in the said place in the year 2002?

ii) Whether the impugned judgment and decrees of Courts below stands vitiated on account of the fact that both the Courts failed to appreciate that the documents produced by respondent No.1/plaintiff could not be construed as document of ownership and more so in view of the fact that respondent No.1/plaintiff in the plaint and in the evidence

did not even spell out the measurements and area covered by the alleged Gada?

5. Mr. G. Teles, learned counsel for the original plaintiff defends the impugned decrees and the concurrent findings recorded therein. He submits that the concurrent findings of fact are borne out from the material on record and consequently, no question of law much less substantial question of law is involved in this appeal.

6. Having considered the rival submissions and perusal of the material on record, I am satisfied that no substantial question of law is involved in this appeal.

7. The two Courts have concurrently held that the original plaintiff has the much better right and title to the suit Gada as compared to respondent No.1. For this purpose, the two Courts have taken into account the circumstance that the permissions in respect of this Gada were in the name of the plaintiff. The electricity connection was in the name of the plaintiff. The two Courts have considered the appellant's case about the demolition of the old structure and putting up a new structure in its place with the help of respondent No.2. The two Courts have found that there is no shred of evidence to support this kind of evidence.

8. The inferences drawn by the two Courts from the material on record are also quite reasonable. In short, there is no perversity in recording concurrent findings of fact. The two Courts have also considered the documents on record and accepted the plaintiff's case

that for a brief period he had indeed traveled abroad and on his return, respondent No.1 refused to return the suit Gada to him. The trial Court has adverted to the evidence of the appellant in which he had admitted that the suit shop was given to him by the plaintiff to run his business. The explanation now offered about the cordial relationship is hardly sufficient explanation for this admission in the course of the evidence.

9. For the above reasons, I hold that there is no substantial question of law involved in this appeal and this appeal is consequently required to be dismissed.

10. The appeal is dismissed. There shall be no order for costs.

11. In view of the disposal of the appeal, the Civil Application No.246 of 2019 does not survive and the same is also disposed of.

M. S. SONAK, J