

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 19 OF 2022

WITH

CIVIL APPLICATION NO.30 OF 2022

PHILOMENA GONSALVES E
FERNANDES THR. POA MARIA
LINETTE PEREIRA AND ANR

.... APPLICANTS/
APPELLANTS.

Versus.

SANTANA MARIANO
ANTONIO XAVIER
FERNANDES (DEC) AND 2
ORS

.....RESPONDENTS.

Mr. Rohit Bras de Sa, with Ms. Golda Fernandes,
Advocates for the Appellants/Applicants.

Ms. S. Kenny, Advocate for the Respondent No.2

CORAM : M. S. SONAK, J.

DATE : 26th August 2022

ORAL ORDER: -

1. Today, when the matter was called out for considering the application for interim reliefs, Ms. Kenny, the learned Counsel for Respondent No.2 pointed out that the Appeal should have been instituted before the District Court because, the plaint had been valued for ₹1,000/-.

2. Mr. De Sa, the learned Counsel for the Appellants points out that this was a case of under-valuation of the plaint because, the Plaintiffs' Architect/Government Valuer had estimated the value of the suit house and the suit property at ₹30,16,000/- as of 26/12/2005. He submits that based on this valuation, the appeal was instituted before this Court. He relied on an order dated 17th April 2009 in the case of ***Capt. Lance Irwin Lobo and anr. vs. Gil Oswald Ribeiro and ors.*** (Writ Petition No.735 of 2008) in which it is held that the plaintiff has to value the relief sought based on reasonable estimation of the immovable property and that there can be no arbitrary or fanciful valuation.

3. In this case, admittedly, the suit had been valued at ₹1,000/- . Whether this valuation was correct or not, is a matter that can be gone into by the appropriate Court. However, for the purpose of an appeal, that valuation was crucial. Based on the said valuation, the appeal should have been filed before the District Court. Relying on the Plaintiffs' evidence about the value of the suit property, the Defendants cannot file an appeal directly before this Court.

4. Accordingly, for want of pecuniary jurisdiction, this Appeal is not maintainable before this Court. However, it is clarified that

such an appeal will be competent before the District Court.

5. Mr. De Sa states that such an appeal will be filed at the earliest and, in any case, within 15 days, before the District Court. If the appeal is indeed filed within 15 days from today, then, the District Court should consider that this appeal was pending before this Court and the same was even admitted by this Court by an order dated 20th June 2022, after hearing the learned Counsel for the parties. At the time of admission of the appeal on 20th June 2022, it does not appear that the objection now raised by Ms. Kenny was ever raised on behalf of Respondent No.2. Ms. Keny now clarifies that this objection was not raised because, in the copy of appeal memo, the column relating to valuation was not filled in. At least, *prima facie*, this cannot be a justification because, it is the Respondents who are the Plaintiffs before the Trial Court and it is they who had valued the suit at ₹1,000/-.

6. Be that as it may, the aspect that this Appeal was instituted in this Court and even admitted by this Court, should be taken into consideration by the District Court when considering the issue of condonation of delay in instituting the appeal before the District court.

7. Ms. Kenny states that the impugned decree will not be put into execution or the execution will not be proceeded with for a period of four weeks from today. She, however, clarifies that this statement is made without prejudice.

8. The Appeal and the Civil Application are, accordingly disposed of by granting liberty to the Appellants to prefer an appeal before the District Court. The Registry to immediately return the certified copy of the impugned judgment and decree to the Appellants to enable them to file an appeal before the District Court. Mr. De Sa states that he will place on record a xerox copy of the impugned judgment and decree in this file.

9. In so far as return of Court fees is concerned, the Appellants can apply for the same and such an application will be disposed of in accord with law.

10. The Appeal and the Civil Application for stay are disposed of in the above terms.

11. All concerned to act on an authenticated copy of this order.

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M. S. SONAK, J.