

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA  
SECOND APPEAL NO. 49 OF 2019  
WITH  
MISC. CIVIL APPLICATION NO. 846 OF 2021 (F)**

DEVRAI            SAGUN            SHETE  
BANDODKAR AND ANR.,                      ....APPELLANTS.

**Versus.**

SRIPRASAD BALKRISHNA SIRSAT  
AND 18 ORS.,                      ....RESPONDENTS

**Mr. Prasheen Lotlikar, Advocate** *for the Appellants.*

**CORAM : M. S. SONAK, J.**

**DATE : 18<sup>th</sup> November 2022**

**P.C. :-**

- 1.**      Heard Mr. Lotlikar for the Appellants.
- 2.**      The challenge in this Appeal is to the concurrent decrees made by the Trial Court and the First Appellate Court in the suit instituted by the Respondents-Plaintiffs, seeking declaration and injunction in respect of the suit property, which is now surveyed under No. 120/4 at Ponda (suit property).
- 3.**      Mr. Lotlikar proposes the following questions which, according to him, constitute the substantial questions of law :

1. Whether the judgment and decrees of the courts below are perverse in as much as the courts below have failed to appreciate that the judgment in the inventory proceedings at Exhibit 31/C colly was admittedly quashed and set aside by the honorable High Court which fact was admitted by the PW3 in his cross examination and therefore placing any reliance of the same to decree the suit filed by the plaintiffs was contrary and unsustainable in law?

2. Whether the first appellate Court and trial court failed to appreciate that the boundaries mentioned in Exhibit 30/C colly and exhibit 29/C Colly did not match and therefore the plaintiffs had failed to identify the property as mentioned in exhibit 30 C colly and in view of the same, the Courts below were not justified in relying upon the said documents to decree the suit filed by the respondents/ Original plaintiffs, which has rendered the impugned judgements and decrees of the courts below perverse and unsustainable in law?

4.        Regards the first question, no order of the High Court was ever produced. In any case, even if the inventory proceedings at Exhibit 31/C colly are excluded from consideration, the declaration and the injunction granted by the two Courts, can be sustained based upon the title document i.e. the sale deed of 1951 at Exhibit 30/C colly. As it is, Mr. Lotlikar pointed out that mere inventory proceedings cannot be regarded as documents of title. Accordingly, the first question of law, as proposed, can hardly be regarded as some substantial question of law.

5. Regarding the second question which is proposed, the same is in the realm of reassessment or reappreciation of evidence. The two Courts have concurrently looked into the documentary evidence and oral evidence of the parties and concluded that the Respondents-Plaintiffs are not only the owners of the suit property, but they are in possession of the same. The two Courts have also concluded, based on evidence on record, that the property, in question, has been adequately identified.

6. Therefore, based on some discrepancies in the boundaries in the context of old documents, no case is made out to upset the decrees, currently issued by the two Courts. In any case, these are matters of appreciation of oral and documentary evidence and there is no perversity in the record of such findings on facts by the two Courts.

7. The Appellants' main plea was based on adverse possession. The same was rightly rejected by the two Courts and the Appellants were claiming adverse possession not against the Respondents-Plaintiffs, but against some third parties. In any case, the two Courts, on appreciation of evidence on record, did not find that the Appellants were in possession of the property in question. Therefore, based on some discrepancies in the boundaries when compared to the old records, no case is made

out to upset the decrees or the findings concurrently recorded therein.

**8.** None of the questions proposed, raises any issue of substantial questions of law. Accordingly, this Second Appeal is liable to be dismissed and is, hereby, dismissed. There shall be no orders for costs.

**9.** Misc. Civil Application does not survive and the same is also disposed of.

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

SANTOSH S  
MHAMAL

Digitally signed by SANTOSH S  
MHAMAL  
Date: 2022.11.18 18:25:18  
+05'30'