

Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

**SECOND APPEAL NO.78 of 2006
WITH
SECOND APPEAL NO.90 of 2006**

SECOND APPEAL NO.78 of 2006

Smt. Mumtaj Bi,
Daughter of late Shaikh Ismail and
Late Smt. Roshan Bi Ismail Bepari,
Of major age, Indian National,
Residing at Karaswado, Tivim,
Bardez, Goa.

..... Appellant

Versus

(1) Shri Pandurang S. Toraskar,
Resident of Sodiem, Tivim,
Bardez, Goa.

(2) Smt. Rukmini Pandurang
Toraskar;

(3) Shri Shrikant H. Toraskar,
Both of major age,
Indian Nationals,
Residents of Tivim,
Bardez-Goa.

This appeal stands
abated as against R.
No. 3 in view of order
dated 12.01.2009.

(5) Chandrabai M. Arambolkar
Resident of Lobowada,
Tivim, Bardez-Goa.

(6) Smt. Shanti M. Arambolkar
Resident of Dhanoa,
Tivim, Bardez-Goa.

(7) Smt. Nutan M. Arambolkar,
Resident of Lobowada,
Tivim, Bardez-Goa. Respondents.

**WITH
SECOND APPEAL NO.90 of 2006**

Smt. Mumtaj Bi,
Daughter of Late Shaikh Ismail and
Late Smt. Roshan Bi Ismail Bepari,
of major age, Indian National,
Residing at Karaswado,
Tivim, Bardez-Goa. ... Appellant

(1) Shri Pandurang S. Toraskar,
Resident of Sodiem, Tivim,
Bardez, Goa.

(2) Smt. Rukmini Pandurang Toraskar;

(3) Shri Shrikant H. Toraskar(deceased)
Represented by his heirs:

(a) Smt. Shrimati Shrikant Toraskar,
Widow of Shrikant H. Toraskar,

(b) Ms. Sharmila Shrikant Toraskar,
major, daughter of Shrikant
Toraskar;

(c) Mr. Jeetendra Shrikant Toraskar,
Major, son of Shrikant Toraskar,
All of major age, Indian Nationals,

Resident of Painawado, Tivim,
Bardez-Goa.

(4) Shri Premnath H. Toraskar,
Of major age, Indian National,
Resident of Tivim, Bardez-Goa.

(5) Chandrabai M. Arambokar,
Resident of Lobowada,
Thivim, Bardez-Goa.

(6) Smt. Nutan M. Arambolkar,
Resident of Lobowada,
Thivim, Bardez-Goa.

(7) Smt. Shanti M. Arambolkar,
Resident of Dhanoa,
Thivim, Bardez-Goa.

... Respondents

Mr. Parikshit Sawant, Advocate for the Appellant.

Mr. A. R. Kantak, Advocate for Respondent Nos. 1
and 2.

CORAM: VALMIKI SA MENEZES, J.

DATED: 2nd November, 2023

JUDGMENT:

1. These second appeals are filed against common
Judgment and Decree dated 14/06/2005 passed by the

First Ad-hoc Additional District Judge at Panaji, North Goa, in Regular Civil Appeal No.161/2004 and Regular Civil Appeal 165/2004. The aforementioned appeals before the District Court were filed against Judgment and Decree dated 23/07/2004 in Regular Civil Suit No. 76/2001/A (old Special Civil Suit 27/98/A) before the Civil Judge Senior Division, Bicholim, respectively at the behest of the respondents herein/original defendants and the appellant herein/original plaintiff.

2. The genesis of these two second appeals lies in a Regular Civil Suit bearing No. 1/1967 filed by Rucmini Toraskar and her husband Pandurang, Sricanta Toraskar and Premnath Toraskar, before the Civil Judge, Senior Division at Bicholim against one Manguexa Arambolkar and his heirs Chandrabai, Shanti and Nutan Arambolkar for recovery of possession of a land known as “Sonny” or “Sonduem” registered in Land Registration Office, Bicholim under 4948 of Book B New of Bardez and enrolled in the Revenue office under no. 718. The said Rucmini, her husband Pandurang and Sricanta are respondent nos. 2, 1 and 3 in Second Appeal No. 78/2006 and respondent Nos. 2, 1 and 3 in Second Appeal No. 90/2006; Premnath is respondent No. 4 in Second Appeal No. 90/2006. All these parties were the original

defendants before the Trial Court, arrayed as defendant nos. 1 to 4 while the three heirs of Manguexa, Chandrabai, Shanti and Nutan Arambolkar were arrayed as defendants 5 to 7 therein.

3. Regular Civil Suit 1/1967 was decreed on 04/09/1990 directing the defendants (Arambolkars) to put the defendants in the present proceedings, in possession of the suit land within 45 days and to pay mesne profit from the date of institution of the suit till restoration of possession of the suit property to Rucmini, Pandurang, Sricanta and Premnath.

Execution proceedings bearing No. 16/1990 were filed by Rucmini and the other decree holders for recovery of possession of the suit land. In those proceedings, the plaintiff, who claimed to be the daughter of late Shaikh Ismail, whose name was recorded in the survey records of the suit property, which by then was given a survey no. 514/1 of village Thivim, filed an objection to the execution in term of Order 21 Rule 97 CPC, claiming independent title. Since possession of the suit property, as claimed by the defendants had been returned to them by the Judgment Debtors Arambolkars, the Execution proceedings were withdrawn.

4. Thereafter, the plaintiff filed Regular Civil Suit No. 76/2001/A against the four respondents (Toraskars) and also joined the Arambolkars as parties to the suit. The suit claimed that the property concerned therein was known as “Durgad” bearing survey no. 514/1 and was predominantly cultivated with fruit bearing trees and a paddy field. The plaintiff claimed ownership and possession of the suit property for over 50 years prior to filing of the suit property through the plaintiff’s father Shaikh Ismail Bepari. In para 11 of the plaint, the plaintiff claimed to be owner of the suit property by prescription through her father, being in continuous possession for over 50 years. On that basis the plaintiff sought a decree of declaration that the decree passed in Regular Civil Suit No. 1/1967 dated 04/09/1990 in favour of Toraskars (defendant nos. 1 to 4) was not binding on the plaintiff, and the same was a nullity; as a consequential relief, the plaintiff sought a decree of permanent injunction against the defendants from interfering with the suit property.

5. Defendant no. 1 to 4 (Toraskars) filed a written statement claiming the suit property under survey no. 514/1 was the very same property to which they were declared as a title holder in Regular Civil Suit No. 1/1967, and which, they had recovered possession of

from Arambolkars in Execution proceedings No. 1/1990; along with their written statement they filed a counter claim seeking therein a decree for deletion of the name of Shaikh Ismail Bepari from the survey records of survey no. 514/1, which was existing in the Revenue records in the occupants column along with their own names.

6. The Trial Court dismissed the suit as also the counter claim. In the Judgment of the Trial Court dated 23/07/2004, it concludes that the plaintiff had no evidence to substantiate from whom the suit property was purchased by Shaikh Ismail or any documents to substantiate his title. The Trial Court further concludes that the plaintiff has failed to prove ownership by prescription or adverse possession and consequently have failed to establish that the decree passed in Regular Civil Suit No. 1/1967 was a nullity. It however refused to grant the counter claim for deletion of the name of Shaikh Ismail from the survey records on the premise that the evidence of the defendants was weak and unconvincing to prove that the inscription of the property described in decree in Regular Civil Suit No. 1/1967 was the same as the suit property under survey no. 514/1.

7. Against the decree of the Trial Court dismissing her suit, the plaintiff preferred Regular Civil Appeal No. 165/2004, while against the decree of dismissal of their counter claim, the defendants preferred Regular Civil Appeal No. 161/2004.

The Appellate Court framed the following points for determination:

POINT	FINDINGS
(a) Who is the owner of the property, plaintiff or defendants?	Defendant Nos. 1 to 4
(b) Who is in possession of the suit property, plaintiff or defendants?	Defendant Nos. 1 to 4
(c) Whether the suit is barred by limitation?	Negative
(d) Whether the decree in RCS No. 1/1967 is a nullity?	Negative
(e) Whether the Trial Court has held in dismissing the suit and the counter claim?	Affirmative

Consequent upon the above determination, the Appellate Court dismissed the plaintiffs' suit and decreed the counter claim of the defendants, directing

the name of Shaikh Ismail Bepari to be deleted from the survey records of property under survey No. 514/1.

8. It is against this common Judgment and Decree, on the one hand rejecting her suit and on the other hand decreeing the defendants counter claim, that the plaintiff has preferred these two second appeals, though they arise from a common Judgment of the Appellate Court on the two appeals filed by the parties before it.

These appeals were admitted upon the following common substantial questions of law:

1. Whether, the findings of the Lower Appellate Court that the Judgment and Decree dated 4/9/1990 passed in Regular Civil Suit No. 1/1967 is binding on the Appellant although the Appellant was not party to the said suit are contrary to law?
2. Whether, the Lower Appellate Court failed to appreciate the legal effect of withdrawal of Execution Application by the Respondent?
3. Whether, the 'de facto possession' of the Appellant can be ignored by the Civil Court while

granting Permanent Injunction on the ground the legal possession is presumed to be with the Respondents?

4. Whether, in the facts and circumstances of the case, the Lower Appellate Court could have dismissed the suit on the ground of limitation?

9. During the pendency of these appeals, it was reported on 06/10/2008 in the order of the Registrar of this Court that respondent No. 1 had expired. Further, since no steps were taken by the appellants to bring on record the Legal Representatives of the respondent No. 3 for which reason, by order dated 12/01/2009, this Court recorded that the appeals stood abated against deceased respondent No. 3. The suit being one for declaration that a decree in favour of deceased respondent No. 3 was void, it stands to reason that the appeals would abate against that respondent.

10. Heard Shri. Parikshit Sawant for the Appellant and Shri. Ajit R. Kantak for respondent No. 1 and 2. I have perused the records of the proceedings of the Trial Court and the Appellate Court as well as the records of both these appeals.

The submissions of the learned Advocate for the Appellant can be concised below:

(a) The withdrawal of the Execution proceedings by the defendants, in the absence of any proof of fact that the possession has been returned to them pursuant to the decree passed in Regular Civil Suit No. 1/1967 would amount to giving up their claim to possession of the suit property; it was submitted that the plaintiff was not bound by the decree passed in this suit as neither she nor her father Shaikh Ismail was made party to those proceedings and that being the position, the presumption under the Revenue Code being in favour of the plaintiff by virtue of the entry in the occupant's column, the Trial and Appellate Court ought to have held the possession to be with the plaintiff.

(b) That the Appellate Court fell in error in holding that the suit was barred by limitation when clearly the cause of action had arisen only after withdrawal of the Execution application, leaving the plaintiff with no other remedy to pursue a claim of title which was raised under Order 21 Rule 97 CPC, than by filing the present

suit. It was submitted that the cause of action would therefore arise not when the plaintiff claims that the defendants interfered with her possession but when the Execution application was withdrawn.

(c) That the Courts ought to have considered that the plaintiff was in de facto possession of the suit property considering the entry in the survey records in the name of her father Shaikh Bepari and in view of the presumption in favour of the entry of possession of the property in terms of Section 103 of the Land Revenue Code; it was further submitted that such presumption was not rebutted by evidence led for the defendants, and the Courts ought to have granted the relief of permanent injunction sought in the suit only on the basis of such possession.

(d) That the decree of the Appellate Court to the extent that it directed in Regular Civil Appeal No. 161/2004, deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey records of land under survey No. 514/1 of village Thivim is without jurisdiction and contrary to the

provisions of Section 106 of the GDD Land Revenue Code. In support of this submission the following Judgments were relied upon:

- (i) ***Roshanlal Kuthalia V/s R. B. Mohan Oberio*** reported in (1975) 4 SSC 628.
- (ii) ***Smt. Anandi Bhicaro Veluskar V/s Kustanand Vithu Veluskar*** reported in AIR 2006 Bombay 241.
- (iii) ***Narayan Mugu Teli V/s Ramchandra Teli*** reported in 2004(5) Maharashtra Law Journal 727.
- (iv) ***Damaciano Fernandes V/s St. Anthony's Chapel*** – Judgment dated 13/06/2014 in Second Appeal No. 100/2004 (Bombay High Court).

It was urged that this Court should frame an additional substantial question of law on this count, which squarely arises for determination in this matter.

11. Countering these submissions the learned Advocate for the respondents/defendants has submitted:

(a) That during the course of evidence, it has come on record that the said Shaikh Bepari had a Sale Deed executed in his favour on 13/03/1969 by Mangesh Arambolkar during the pendency of Regular Civil Suit No. 1/1967 wherein clear recitals are made that Shaikh was sponsoring the defense of Arambolkar in that suit. It was further submitted that this Sale Deed was executed pendente lit and the plaintiff, being the daughter of Shaikh Bepari was bound by the outcome of that suit, which held the title in favour of Toraskar.

(b) That there is no disclosure of the Sale Deed in the plaint and the entire title was based upon possession/prescription, which was contrary to the claim in the Sale Deed. It was further submitted that the entry in the survey record being based upon a Sale Deed executed pendente lit, the same was of no use to the plaintiff once the decree was passed in favour of the defendants. It was further submitted that the description in the Sale Deed matches with the description of the suit property in RCS No. 1/1967 and therefore, the findings of both the Courts should not be disturbed.

12. To determine the substantial questions raised in present appeals, the real controversy would revolve around two issues. The first, as to whether the plaintiff proves ownership by prescription, and possession of the suit property for a period of 50 years as claimed by her in the plaint, prior to the institution of the suit on 25/06/1998. The second issue would be, whether the defendants have proved that the property which was subject matter of Regular Civil Suit No. 1/1967 on which a decree of possession was granted to them, was the same property subject matter of the present suit under survey no. 514/1 of village Thivim.

13. Before the Trial Court, the plaintiff herself has not stepped into the witness box, but has examined her attorney, who is the daughter-in-law of late Shaikh Ismail. She deposes that she was married in 1971 and that she had personal knowledge about the possession of the suit property by the plaintiff only post 1971, all other statements as to the possession of the suit property were based on information given to her by Shaikh Ismail who is deceased. Clearly therefore, this sole witness examined on behalf of the plaintiff was by a witness who was not competent to depose as to the factum of possession of the plaintiff for 50 years prior to the filing of the suit.

14. Nevertheless, the only document produced to support the plaintiff's possession of the suit property was a license of the year 1967, prior in point of time to her marriage, and the survey record of the suit property which came into existence and was promulgated much thereafter. Thus, there is clearly no evidence of how Shaikh Ismail came into possession of this property or exercised any acts of possession like cultivation, over the same. The Trial Court has given a specific finding on this aspect at para 13 of its Judgment holding that other than the survey records, the plaintiff has produced no title documents or through whom possession was obtained by Shaikh Ismail. The Trial Court also holds that the license produced in cross examination by the plaintiff's witness was granted to Shaikh Ismail to conduct a Marathi drama, though this license states that the same is issued for property known as "Sonny" or "Sonduem" which is the very property which was subject matter of Regular Civil Suit No. 1/1967 and execution proceeding No. 16/1990. The Trial Court also records that the license does not refer to a property, as claimed by the plaintiff to be known as "Durgad".

On this count, the Appellate Court has returned a concurrent finding on facts, after re-appreciating the

evidence, that the evidence led by the witness of the plaintiff was of hearsay nature and the plaintiff had not been able to prove either title or possession of the suit property for 50 years prior to the filing of the suit. The Appellate Court has given a specific finding of fact that the plaintiff has failed to prove that she has been in possession of the suit property since June, 1991 or prior to that.

15. The Appellate Court, on re-appreciation of the evidence has compared the description of the property in Regular Civil Suit No. 1/1967 in terms of the description of the boundaries and on making a comparison found at paragraph 21 of its Judgment that the property was identical to the description of the property under survey No. 514/1 of village Thivim, which is the present suit property; to that extent it has reversed the findings of the Trial Court that the defendants have failed to prove that the description in both proceedings of the suit property was one and the same. It has also gone into the entire title claimed by the defendants and given a specific findings as to how the defendants derived their title as was proved in Regular Civil Suit No. 1/1967. On going through the record of the Appellate Court and the evidence for the plaintiff, the findings arrived at by the Appellate Court,

both on ownership and possession cannot be faulted. The finding that the defendants were owners of the suit property through title, and in possession of the suit property, at least after possession was recovered in Execution proceedings is based upon the evidence on record and no informative can be found with the same.

16. Though, the plaintiff was not a party to the proceedings and the decree passed in Regular Civil Suit No. 1/1967, that decree was certainly binding upon Manguexa Arambolkar, who was the defendant in this suit and who was directed to hand over possession of the suit property to Toraskars. In the evidence of DW1 Gurudas, it has come on record that a Deed of Sale as marked in evidence as DW1/G-colly was was executed on 13/03/1969 and registered between Mangesh and Chandrabai Arambolkar on the one hand as owners of property “Sondi” or “Sondiem” situated in Thivim described under Land Registration No. 4948 in favour of Shaikh Ismail Bepari who had defrayed the expenses of Regular Civil Suit No. 1/1967. There does not appear to be any evidence led by the plaintiff to contradict this evidence of DW1 or to dispute the Execution and content of Deed of Sale of 1969 produced by the defendants.

This Deed of Sale is executed after the filing of Regular Civil Suit No. 1/1967 and during its pendency and was therefore was pendente lit; the entry in the survey records was obviously made thereafter on the strength of the Sale deed which was clearly hit by Section 52 of the Transfer of Property Act, and there was no evidence led by the plaintiff to show disclosure of this Deed before the Court seized of Regular Civil Suit No. 1/1967 or as to whether permission was sought to execute the Deed. The transaction being directly hit by Section 52 of the Transfer of Property Act, Shaikh Ismail Bepari was clearly bound by the outcome of the suit and the consequence of execution of such a sale pendente lit was inescapable. The above evidence clearly dispels any doubt that Bepari's claim was not based upon prescription as claimed by the plaintiff in the pleading, but was based upon a Deed of Sale executed pendente lit. The second issue as to whether property "Sondi" or "Sondiem" situated in Thivim described under Land Registration No. 4948 which was the suit property in Regular Civil Suit No. 1/1967 was the same as the property in the Sale Deed in favour of Shaikh Ismail Bepari and now the suit property has also to be answered in favour of the plaintiffs for reasons discussed above.

17. I am therefore in agreement with the finding of the Appellate Court on considering this evidence, which is found at paras 21 to 24 of its Judgment, that the Judgment and Decree rendered in Regular Civil Suit No. 1/1967 was binding upon Shaikh Ismail Bepari and now on the plaintiff who is his daughter. Accordingly, I answer substantial question of law No.1 in the negative.

18. The second substantial question of law revolves around the effect of the withdrawal of the execution application which is produced in evidence at Exhibit DW1/D-1. This evidence has been considered by the Appellate Court in para 28 of the impugned Judgment. From the endorsement made in the application, it has been recorded therein that possession had been taken by the Decree Holder in June, 1991 and to that extent the Decree stood discharged. The application was kept pending only for recovery of the mesne profit. There is no objection recorded on this endorsement by the plaintiff who by then opposed the execution by filing a application under Order 21 Rule 97 CPC. Even the Judgment Debtor did not oppose the withdrawal of the execution application. The only inference that can be drawn from the conduct of the plaintiff who was seeking

adjudication of her right in her third party objection, was that she had accepted the position that the possession of the suit property had been returned to the Decree Holder in June, 1991.

The evidence led by PW1, who was herself not conversant with facts prior to 1970 does not state a single act by which possession was exercised by Shaikh Ismail over the suit property prior to 1967 or even after execution of the Sale Deed in 1969. PW2, one Pereira deposed that he had seen Bepari in possession of the suit property, though he admitted that he was working abroad since 1974. His evidence does not appear to be trustworthy, since he was not even aware of the correct age of the plaintiff or whether the plaintiff was at all living. He admitted that he had strained relation with defendant no. 1. Thus, apart from the evidence of DW1, which does not support the plaintiff case of possession, even DW2 has miserably failed to lead any evidence on possession, worthy of consideration. Clearly therefore, on appreciation of the evidence, the Appellate Court has rightly concluded that the defendants were in possession of the suit property. The evidence on record, as rightly considered by the Appellate Court clearly demonstrates that the execution application was withdrawn with no objection from any of the parties

including the plaintiff and therefore would have no legal effect on the outcome of the present suit. Accordingly, I answer substantial question of law No. 2 in the negative.

19. Having held that the defendant Nos. 1 to 4 were in possession of the suit property, at least from 1991 when it was returned in execution, the substantial question of law No. 3 would not arise. In that view of the matter, substantial question of law No. 3 need not be answered and does not arise for determination on the basis of pleadings of the parties and evidence on record.

20. The first Appellate Court, after considering the evidence of the parties concluded, and rightly so from the statements made in the plaint and in the application under Order 21 Rule 97, that the plaintiff learnt about the decree passed in Regular Civil Suit No. 1/1967 in November, 1990 when the defendant Nos. 1 and 3 threatened to disposes. In terms of Article 58 of the Limitation Act, limitation to file a suit for declaration of title arises within 3 years from the day the right to sue first accrues. The right would accrue in this case when the defendants repudiated the claim and title of the plaintiff by interfering with the plaintiff's

possession. The cause of action therefore clearly arose in November, 1990, while the suit for declaration of the plaintiff's title, though couched in a language to imply decree in Regular Civil Suit No. 1/1967 was not binding on the plaintiff, was infact a claim of title in the plaintiff. The suit was therefore filed more than 7 years after the commencement of the cause of action in November, 1990 and therefore was barred by limitation.

21. The first Appellate Court has considered the evidence with respect to the question of limitation in great detail in para 34 to 38 of its Judgment and no infirmity can be found in the conclusions arrived at by it which are otherwise legally sound and do not call for interference. Substantial question of law No. 4 is therefore answered in the negative. The suit was correctly dismissed on the ground of limitation.

22. This brings us to the submission of the appellant that an additional substantial question of law is required to be framed and answered on whether, whilst decreeing the counter claim of the defendants, the Appellate Court has acted without jurisdiction and contrary to the bar of Section 106 of the GDD Land Revenue Code by granting a decree containing a direction that the name of Shaikh Bepari should be

deleted from the survey records. Having gone through the entire evidence and the provisions of Section 106 of the Revenue Code, I am of the opinion that the following additional substantial question of law does arise in the matter:

ADDITIONAL SUBSTANTIAL QUESTION

“In view of the bar contained provision of Section 106 of GDD Land Revenue Code, whether the decree of the first Appellate Court to the extent that it decrees the counter claim directing deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey record of survey No. 514/1 of village Thivim is without jurisdiction and is required to be quashed?”

23. In answering this question, one must first take note of the fact that the Revenue Authorities under the Land Revenue Code are not parties to the suit nor is any decree sought against them for deletion of the name of Shaikh Bepari on the ground that the entry of his name in the survey record is malafied or with some ulterior motive. There was thus, no cause of action pleaded in the counter claim against the Revenue Authorities to substantiate seeking a relief as contained

in para 25 of the counter claim i.e. for deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey record.

24. Section 106 of the GDD Land Revenue Code reads as under:

The functions of deleting entries in the record of rights are clearly reserved with the Revenue Authorities under the Code and any correction to these entries could not be effected by Courts, unless the entries are questioned by alleging malafides or bad faith against the Revenue Authorities and impleading them as parties to the suit.

25. This Court, in **Smt. Anandi Bhicaro Veluskar** (supra), relying upon a Judgment of this Court under Maharashtra Code in **Narayan Mugu Teli** (supra), has considered the impote of Section 106 of the Code and has held that the Civil Court would have no jurisdiction in effecting correction of the revenue entry in view of the provision of the Court as under:

“6. I have considered the submissions made by the learned Counsel for the parties. I have also perused the records. Both the Courts below have rendered concurrent finding that the defendant is owner in possession of the

suit property and the suit house existing therein, except one room in the suit house which is in permissive possession of the plaintiffs. This finding recorded is based on proper appreciation of evidence produced by both sides and, therefore, cannot be said to be perverse. However, I find considerable merit in the submission of Mr. Menezes that the appellate Court exercised the jurisdiction illegally in partly allowing the appeal filed by the plaintiffs by directing insertion of the names of the plaintiffs in Form I & XIV in other rights column as occupants of one room of the dwelling house situated in the suit property. Mr. Menezes is justified in placing reliance.

on the judgment in the case of Narayan Mugu Teli (since deceased) v. Ramchandra Mugu Tel, (supra) In paragraph 10 of the said judgment, this Court while dealing with the provisions of the Maharashtra Land Revenue Code observed thus:

“...It is true that the prayer made in plaint not properly worded. Instead of seeking a declaration of his title, the respondent No.1 has prayed for deletion of the names of the appellant and. other respondents from the record of rights in respect of the suit lands and to enter his name therein. It is neither the function nor the jurisdiction of civil court to issue direction for making or deleting entries in the record of rights. That is the function assigned to the revenue authorities under the Maharashtra Land Revenue Code. The proper relief which respondent No. 1 could have prayed for was for declaration of his title to the suit lands on the basis of the Will executed by deceased Mugu Balu Teli. Once

he obtains such a declaration from the court, the revenue authority will have to make or correct the entries accordingly in the record of rights in respect of the suit lands. Although, therefore, the appeal is being dismissed, the order and decree passed by the courts below will have to be suitably modified.

In view of the ratio laid down by the learned Single Judge of this Court in Narayan Mugu Teli's case (supra); the appellate Court could not have directed insertion of the names of the plaintiffs in the survey records. To that extent, the appellate Court has erred in law. Therefore, the Second Appeal No. 147/2005 filed by the defendant deserves to be allowed. The substantial question of law framed is answered in favour of the appellant.”

26. A similar view has been taken by this Court in ***Damaciano Fernandes*** (supra), after referring to the aforementioned two Judgments in the following terms:

“25. Insofar as the relief directing the survey authorities of Village Nagorcem-Palolem to delete the name of Damaciano Fernandes from the Index of survey record in Form No. I & XIV of survey No. 248/34 of Village Nagorcem-Palolem and to insert the name of the plaintiff in its place, is concerned, it is well settled that such a direction cannot be given by the Civil Court in view of express bar under Section 106 of the Land Revenue Code, 1968, (the Code, for short) which provides that no suit shall lie against the Government or any officer of the Government in respect of

a claim to have an entry made in any record or register as maintained under this Chapter or to have any such entry omitted or amended. Such function is assigned to revenue authorities under the Code. In the case of **"Narayan Mugu Teli (since deceased) Vs. Ramchandra Mugu Teli"** (2004 (3) ALL MR 880], it has been held that it is neither the function of Civil Court to issue direction for making or deleting entries in the record of rights and that this function is assigned to the revenue authorities under the Maharashtra Land Revenue Code. It is further observed that the proper relief which could be prayed for was declaration of the title to suit land and once such a declaration is obtained from the Court, the revenue authority will have to make or correct the entries accordingly in the record of rights in respect of the suit land. The provisions of the Code are almost similar to the Maharashtra Land Revenue Code. In the case of **"Anandi Bhicaro Veluskar and others Vs. Kustanand Vithu Veluskar and others"** (2006 (6) Bom. C.R. 384], this Court relied upon the judgment in the case of **"Narayan Mugu Teli" (supra)** and held that the Appellate Court could not have directed insertion of the names of the plaintiffs in the survey records. Again in the case of **"Narendra Voikunt Raikar Vs. Amaral Pereira"** (2007 (3) Mh. L.J. 252], a similar view has been taken. The Land Revenue Code provides for the procedure for correction of the land records. Therefore, the trial Court could not have directed the Survey Authorities/Talathi to delete the name of "Damaciano Fernandes" and insert the name

of the plaintiff in the index in Form No. I and XIV of Survey No. 248/34.”

27. The position of law being thus, well settled, the first Appellate Court has traveled beyond the jurisdiction vested in and acted contrary to the provision of Section 106 of the Revenue Code to the extent that it has allowed the counter claim of the defendants and directed deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey record of survey No. 514/1 of village Thivim. To that extent, the decree of the Appellate Court is required to be set aside in Regular Civil Appeal No.161/2004 and the counter claim be dismissed to the extent of the direction to delete the name of Shaikh Ismail Lalasaheb Bepari from the survey record of survey No. 514/1 of village Thivim. This however, does not preclude the defendants from presenting the decree in these proceedings before the Revenue Authority and seeking deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey record of survey No. 514/1 of village Thivim in terms of the provisions of the GDD Land Revenue Code, and the Revenue Authorities would be obliged to give effect to the findings of the Civil Court, the District Court and of this Court in these

proceedings, by reflecting the same on to the survey record.

The additional substantial question of law is thus answered in the affirmative in favour of the appellant.

28. For the reasons cited above and on answering the substantial questions of law that arise in the present appeals, Second Appeal No. 78/2006 is dismissed, While Second Appeal No. 90/2006 is partly allowed by setting aside Judgment and Decree dated 23/06/2005 of the District Court in Regular Civil Appeal No. 161/2004 to the extent that it decrees the counter claim in Regular Civil Suit No. 76/2001/A by directing deletion of the name of Shaikh Ismail Lalasaheb Bepari from the survey record of survey No. 514/1 of village Thivim; consequently, the counter claim of the defendants in Regular Civil Suit No. 76/2001/A before the Civil Judge Senior Division, Bicholim shall stand dismissed. No costs.

Registry to draw up a decree accordingly.

VALMIKI SA MENEZES, J.