

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 36/2023**

MANGESH ARVIND MANTRI.

... Appellant.

Versus

SHRI VETAL MAHARUDRA
SHIRODKAR SAUNSTHAN AND
OTHERS.

... Respondents.

Mr J. Godinho, Advocate for the Appellant.

CORAM : M. S. SONAK, J.

Reserved on : 22nd June 2023

Pronounced on 28th June 2023.

ORDER :

1. Heard Mr J. Godinho for the Appellant.
2. This appeal challenges the decrees dated 17/7/2015 and 30/10/2018, made by the Trial Court and the First Appellate Court, dismissing the Appellant's Regular Civil Suit No. 95/2006/C, instituted before the Civil Judge, Jr. Division at Ponda.
3. The Appellant was the original Plaintiff, and the Respondents were the original Defendants in Regular Civil Suit No. 95/2006/C. The Plaintiff claimed to be the Mahajan of the temple of Deity Shri Vetal Maharudra Shirodkarwadi, Mulgao, Bicholim, Goa. He complained that the Devasthan's property known as 'Saguo', also known as 'Savang' or 'Sangon' at Priol, Ponda bearing Survey No. 488, was encroached upon by the Defendants (other than the temple). The Plaintiff complained that some portions of this

property were allotted to the Defendants in lieu of their rendering services to the temple. However, no such services were being rendered by the said Defendants. Plaintiff complained that such Defendants were enjoying the suit property without obtaining permission from the Devasthan Committee or making any payments to the Devasthan Committee. Based upon such complaints and the alleged cause of action, Plaintiff sought a declaration, permanent injunction and consequential reliefs against the Defendants.

4. The two courts have held that the suit property belonged to the Devasthan but was leased to some of the Defendants at some point. The two Courts conceded locus standi favouring the Plaintiff but ultimately found no fault with the entries made in the survey records by some of the Defendants. Upon analysis and evaluation of the evidence on record, the Appeal Court concluded that Plaintiff did not know the details about the suit property and produced no evidence to correlate the old Devasthan records with the new survey numbers. On evaluating the evidence, the Appeal Court also found that Plaintiff had no clue about the dealings between Defendant and Devasthan. The two Courts did not accept the case about reversing the suit property to the Devasthan by evaluating the evidence on record.

5. The Plaintiff had a grievance about some of the Defendants applying for obtaining mutation in the survey records. Again, the Defendants did produce some material in support of the entries in the survey records. In contrast, Plaintiff had no details on which he could question the entries in the survey records. The Devasthan had

itself not challenged the entries in the survey records. Ultimately, entries in survey records are not determinative of title. One of the Defendants had claimed tenancy and even filed proceedings for declaration. Some Defendants had leases favouring them, and Plaintiff did not establish Plaintiff's case about reversing such leases. Based upon such evidence, the two Courts have not erred in dismissing the suit.

6. The two Courts have also returned the findings about the long tenure of the Defendants' possession. The two Courts are not clear about the title or otherwise of the Defendants to remain in possession. But, simultaneously, the two Courts have found that the evidence led by Plaintiff was far from sufficient to grant the decrees prayed for by Plaintiff.

7. The Judgments delivered by the two Courts concurrently dismissing the suit are based mainly on evaluating the oral and documentary evidence. The documentary evidence on either side is not quite adequate. However, the two Courts concurrently dismissed the suit since the burden was on Plaintiff and, further, since Plaintiff failed to discharge this burden.

8. Mr Godinho, the learned Counsel for the Appellant-original Plaintiff, urged that the substantial questions of law set out in paragraph 13 of the Appeal Memo arise and should be considered. On a perusal of such questions, the same can hardly be regarded as any questions of law. The entire attempt is to seek reappraisal or reassessment of the evidence on record. Considering the limited jurisdiction in a second appeal, no such reappraisal or reassessment would be appropriate.

9. The Appeal Court has considered the matter in some detail and, after coming into close quarters with the reasoning of the Trial Court, upheld the Trial Court's Judgment and Decree. The contention that no points for determination were framed may not be correct because such points were indeed framed based on the oral arguments and the written submissions filed by the parties. The fact that the points for determination could have been better framed is not a ground to admit this second appeal or to conclude that the Appellate Court's Judgment is hit by Order XLI, Rule 31 of the CPC.

10. The Appellant/Plaintiff has posed some questions in paragraph 13, but the same do not arise in this second appeal. On the evaluation of the evidence on record, the two Courts have concurrently held that the Plaintiff failed to prove his case even though the locus standi was conceded favouring the Plaintiff.

11. Accordingly, no substantial questions of law arise in this Appeal. This Appeal is dismissed.

12. There shall be no order for costs.

M. S. SONAK, J.

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