

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.5 OF 2021

DHANANJAY NARAYAN CHARIAPPELLANT

Versus

SHRIDHAR RMAAM PRABHU
CHODNEKARRESPONDENT

Mr A.D. Bhobe, Advocate for the Appellant.

Mr S.G. Desai, Senior Advocate with Mr Tejas Rane,
Advocate for Respondent No.1(a).

Mr Jatin Ramaiya, Advocate for Respondent Nos.2 to 6.

CORAM : M. S. SONAK, J.

DATE : 15th JUNE 2023

ORDER :

1. This Second Appeal is directed against concurrent decrees dated 11.04.2019 and 05.12.2019 made by the trial and first appellate Courts decreeing Regular Civil Suit No.12/2012/A.

2. Mr Bhobe urges the following substantial questions, which according to him arise in this appeal:-

A) Whether on the face of the dispute to the title of the Respondent to the suit property and/or a cloud over the Respondent's title to the suit property, Regular Civil Suit No. 12/2012/A filed by the

Respondent seeking permanent injunction, in the absence of declaration, was maintainable?

B) Whether the findings of the learned Appellate Court that the Respondent had established title and identity of the suit, which findings based on family partition deed dated 15/12/1978 at Exh. C-53 and the Gift Deed dated 11/02/1982 at Exh. C-54, suffer from perversity?

C) Whether the findings of the Appellate Court that the Appellant had no locus standi to challenge the validity of the title of the Respondent, on the face of the observation of the Appellate Court that the mother of the Appellant Was not a party to the Civil Suits, suffer from perversity?

D) Whether the Courts below were justified in decreeing the suit filed by the Respondent when the suit suffered from defect pertaining to the identity of the property viz. the other half of the property known as “PELTODVADDEVORIL NOCODBAB” which was not referred in the said suit?

3. Mr S. G. Desai, learned Senior Advocate submits that the above questions do not arise, and, in any case, must be answered against the appellant. He submits the suit was for permanent injunction and damages of ₹5000/- because the appellant wrongfully destroyed the railings of the staircase to the storeroom. The property was properly identified and there was never any serious doubt on the Respondent's title.

4. The two Courts, in the present case, have concurrently held that the Respondent was the owner in possession of the suit property. There are detailed findings recorded by the two Courts on the issue of title. The Respondent's title is backed by title documents and also decrees made in the various judicial proceedings referred to by the trial Court in paragraphs 26 to 41 of the judgement dated 11.04.2019. The appeal Court has also independently considered this aspect and held that the Respondent was indeed the owner of the suit property. No perversity was pointed out in the concurrent findings of fact recorded by the two Courts.

5. Therefore, even though no formal declaration may have been sought, the two Courts examined the title issue in great detail, and found that the same vested in the Respondent. The finding that the appellant lacked locus, was only incidental. It is not as if the appellate Court declined to go into the issue of title on this ground. Therefore, questions (A) and (C) as proposed, do not arise. In any case, they would have to be answered against the Appellant.

6. The so called dispute about identity was raised by the Appellant only to confuse the matter. The suit property was sufficiently described by referring to survey numbers, land registration documents etc. Proper correlation was also shown. The suit property was subject matter of previous litigations. Therefore, the questions (B) and (D)

based on the identity of the suit property, do not arise. Based on the same, the concurrent decrees cannot be interfered with.

7. Accordingly, no case is made out to admit this Second Appeal. The appeal is dismissed.

8. But there shall be no order for costs.

M. S. SONAK, J.