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IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.119 OF 2004

1, Mrs. Filomena Dantas, wife of Francisco Dantas, major of age, residing at Igreja Vado, Marra, Siolim, Bardez, Goa.

2. Mr. Francisco Dantas, married (Since deceased) represented by his legal representatives:

2a) Mr. Andrian Dantas, son of late Francisco Dantas, aged about 35 years, unmarried, residing at Marra, Siolim, Bardez, Goa.

2b) Mr. Joseph Dantas alias Joe Dantas, son of late Francisco Dantas, married aged about 30 years, service, residing at Marra, Siolim, Bardez, Goa.

2c) Mrs. Luiza Dantas, wife of Joseph Dantas, housewife, residing at Marra, Siolin, Bardez, Goa.

2d) Mrs. Betty Noronha, daughter of late Francis Dantas, wife of Ouvida Noronha, residing at Bamnawado, Siolim, Bardez, Goa.

2d) Mr. Ouvido Noronha, married, major of age, residing at Bamnawado, Siolim, Bardez, Goa.

..... Appellants.

Versus

Santa Monica Convent of Archdiocese of Goa and Daman, represented by the Patriarch of East Indies, Rt. Rev. Dr. Raul Nicolau

Gonsalves, Bishop's Palace, residing at Panaji,
Goa,
through his attorney Rev. Fr. Victor Conceicao
Rodrigues, son of Luis Rodrigues, residing at
Altinho, Panaji, Goa. ... Respondents.

Mr. Parikshit Sawant, Advocate for the Applicant.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Sagar Rivankar,
Advocate for Respondent.

CORAM: VALMIKI SA MENEZES, J.

DATED: 16 October, 2023

ORAL JUDGMENT

1. This second appeal, filed at the behest of the original defendants in Regular Civil Suit No. 132/1987/B, was admitted on the following substantial questions of law:

(1) Whether the 1st Appellate Court has reversed the findings given by the Trial Court without any manner considering the reasons recorded by the Trial Court and without giving any reasons for reversing such findings?

(2) Whether the reliance placed by the Lower Appellate Court on the Order dated 10.04.1985 of the Dy. Collector purportedly deleting the name of Appellant No. 1 from the survey records is unsustainable for the following reasons:

(i) The said order is pending in appeal;

(ii) The orders of the survey authorities are not binding on the Civil Courts;

(iii) The existence of the said order was never pleaded by the plaintiff;

(iv) The plaintiff had in fact pleaded that vide letter dated 13.12.1985, the Dy. Collector had advised the plaintiff to establish his right to the suit property in the Civil Court.

2. The Regular Civil Suit No. 132/1987/B was instituted by the Respondents herein seeking a declaratory decree to the effect that Defendants/Appellants herein have no right to the suit property which bears survey no. 118/2 of village Marna, Siolim, Bardez, Goa. The other relief sought in the suit was for a direction to the survey authorities to delete the name of the Appellant from the survey records and for the consequential reliefs of permanent injunction to restrain the Defendants therein from interfering with the suit property.

3. This suit was opposed by the Defendants, who claimed to be owners in exclusive possession of the suit property for more than 80 years, since the time of their ancestors. He also claimed that the suit property was part of the larger property purchased by their ancestors by the Sale Deed dated 27.05.1899.

With these pleadings, issues were framed by the Trial Court, the main issues being whether the plaintiff proves ownership of the suit property and whether the plaintiff proves that the fact that the suit property was wrongly recorded in the survey records in the name of the

Defendant no. 1 came to its knowledge in January, 1985 ; an issue was also framed by the Trial Court as to whether the defendant proves that the suit was barred by law of limitation.

The Trial Court has held the first two issues relating to whether the plaintiff proves title to the suit property and whether the wrong entry came to their knowledge in January, 1985 against the plaintiff while holding that the defendants had proved the issue that the suit was barred by law of limitation.

4. In an appeal carried by the present Respondents against the dismissal of Regular Civil Suit No. 132/1987/B to the District Court numbered as Regular Civil Appeal No. 165/2000, by the impugned decree dated 21.08.2004, the District Court has reversed the findings of the Trial Court on the question of Plaintiff's ownership of the suit property by holding that the Respondent herein had proved their title to the suit property. On the question of whether the suit was barred by law of limitation, no finding has been given in the judgment of the Appellate Court.

5. After having gone through the judgment of the Appellate Court, it appears from the records that the entire matter was considered in two short paragraphs. The Appellate Court has not considered any of the evidence on record, much less discussed the contesting titles of the parties or even referred to any specific witnesses' evidence on the issue of limitation. Instead of considering the plaintiff's evidence on the question of its claim of title to the suit property, the Appellate Court appears to have approached the matter purely on the basis of the defences raised by

the original Defendants based upon the presumption of possession of the Defendants cannot be drawn on the basis of survey records.

6. It is the mandate of Section 97, read with the provisions of Order 41 Rule 3 of the Civil Procedure Code that Appellate Court being the final court of facts, is required to consider all the evidence of the parties which was part of the record of the Trial Court and to arrive at its decision based upon that record. Its Judgment is required to deal with all the factual aspects of the matter and considerations of the evidence on record have to be apparent on the face of the judgment.

7. In the present case, other than making reference in a cursory manner of the defences of the Defendants before the Trial Court and to the survey records, there appears to be no real effort made by the Appellate Court to marshal all the evidence before it and arrive at specific findings on fact on the issues framed by the Trial Court. In fact, not even points of determination have been framed by the Appellate Court on the case before it.

8. The Hon'ble Supreme Court in ***Santosh Hazari V/s Purushottam Tiwari*** reported in (2001) 3 Supreme Court Cases 179 has dealt with precisely this issue and has, in detail, considered the powers of the Appellate Court and the manner in which the Appellate Court is by law required to deal with an appeal on facts. The following passage from *Santosh Hazari* (supra) is quoted below:

“A perusal of the judgment of the Trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to Trial. It also found that in support of his plea of adverse possession on the disputed

land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first Appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The Appellate Court has jurisdiction to reverse or affirm the findings of the Trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the Trial Court is an easier one. The Appellate Court agreeing with the view of the Trial Court need not restate the effect of the evidence or reiterate the reasons given by the Trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary*, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it. While writing a judgment of reversal the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the Trial Court must weigh with the Appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the Appellate Court is not competent to reverse a finding of fact arrived at by the Trial Judge. As a matter of law if the appraisal of the evidence by the Trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate Court is entitled to interfere with the finding of fact (See *Madhusudan Das Vs. Smt. Narayani Bai*

& Ors., AIR 1983 SC. The rule is and it is nothing more than a rule of practice ___ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the Trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the Appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first Appellate Court had discharged the duty expected of it. We need only remind the first Appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first Appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first Appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first Appellate Court even on questions of law unless such question of law be a substantial one.”

9. Applying the ratio laid down by the Supreme Court in *Santosh Hazari* (supra), I am of the considered opinion that the First Appellate Court in the impugned judgment has neither framed the points for determination that is required to be done by the Appellate Court, nor given its findings on fact based upon conflicting evidence arrived at by the Trial Court or even attempted to weigh this evidence afresh and on its merits. In that view of the matter, it is difficult to sustain the

impugned judgment. Accordingly, substantial question of law (1) is answered in favour of the Appellants and as a consequence, the impugned Judgment and Decree is required to be quashed and set aside. The Regular Civil Appeal No. 165/2000 will have to be heard afresh by the Principal District Judge, North Goa or any other District Court that the Principal District Judge allots the matter to. The question raised in substantial question of law No. (2) will now have to be answered by the Appellate Court on remand after considering the same to be one of the points for determination.

10. The appeal is allowed. The Judgment and Decree dated 21.08.2004 passed by the Ad hoc Additional District Judge at Panaji in Regular Civil Appeal No. 165/2000 is quashed and set aside. The matter stands remanded back to the Principal District Judge, North Goa at Panaji to decide Regular Civil Appeal No. 165/2000 afresh, after applying the principles laid down in *Santosh Hazari* (supra) and *Shasidhar Vs Ashwini Uma Mathad* reported in (2015)AIR(SC) 1139.

11. The appeal is to be decided as expeditiously as possible and in any case by 31st March, 2024.

12. Parties to appear before the Learned Principal District Judge, North Goa, Panaji on 23rd October, 2023 at 10.00 a.m.

VALMIKI SA MENEZES, J.

SANTOSH S MHAMAL
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