

Sonam

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 45 OF 2010**

1. Mr. Ramanand Gunaji Amonkar,
Major of age, married,
2. Mr. Gajanan Gunaji Amonkar,
Major of age, married,
3. Mr. Shivanand Gunaji Amonkar,
Major of age, married,
4. Mr. Nityanand Gunaji Amonkar,
Major of age, married,
5. Mrs. Prabhavati G. Amonkar,
Major of age,
6. Mr. Brahmanand G. Amonkar,
Major of age,

All r/o H. No. NIL,
Khorlim, Mapusa, Goa.

... Appellants

Versus.

Mr. Raghuvir Shamba Amonkar,
Aged about 72 years, married,
R/o H. No. 37, Khorlim, Mapusa,
Bardez, Goa (deceased) through his legal heirs:

- 1a. Mrs. Tulsi Raghuvir Amonkar,
Widow of late Raghuvir Amonkar,
Major of age,

1. (a)(i) Mr. Ravindra Raghuvir Amonkar,
Son of Raghuvir Amonkar,
Aged 58 years,
Married, Indian National,
- 2(a)(ii) Mrs. Ravina Ravindra Amonkar,
Wife of Ravindra Amonkar,
Aged 54 years, married,
Indian National,
Both resident of Flat No. BJ1,
Almeida Residency,
Duler, Mapusa, Bardez, Goa.
- 1(b). Mr. Kishor Raghuvir Amonkar,
Major of age, bachelor,
S/o late Raghuvir Amonkar,
- 1c. Mr. Rajendra Raghuvir Amonkar,
Major of age, bachelor,
S/o late Raghuvir Amonkar,
- 1d. Miss. Meera Raghuvir Amonkar,
Major of age, unmarried,
D/o late Raghuvir Amonkar,
- All r/o H. No. 37, Khorlim,
Mapusa, Bardez, Goa.
- 1e. Mrs. Seema Dilip Naik,
D/o late Raghuvir Amonkar,
Married, major of age,
- 1g. Mr. Dilip Naik (Son-in-law),
Major of age,
Both r/o Flat No. BJ1,
Almeida Residency, Duler,
Mapusa, Bardez, Goa.
- Amendment
carried out in
terms of order
dated
01.12.2021
- ... Respondents

Mr. N. N. Sardessai, Senior Advocate along with Mr. Shivam Fadte and Mr. Panandikar, Advocates *for the Appellants.*

Mr. Shivan Dessai along with Ms. Maria Viegas and Mr. Varun Bhandankar, Advocates *for the Respondents.*

CORAM : VALMIKI SA MENEZES, J.
RESERVED ON: 17.10.2023
PRONOUNCED ON: 06.11.2023

JUDGMENT:

1. This second appeal impugns judgment and decree dated 29.01.2010 of the District Court, Mapusa passed in Regular Civil Appeal 64/2009. The appeal has been admitted on the following substantial questions of law:

(i) Whether the Appellate Court committed illegality by reversing the order passed by the Learned Trial Court, which had allowed the appellants' Counter Claim for permanent injunction as also mandatory injunction thereby directing the respondents to remove the wooden showcase/ wooden planks fixed on the door of the suit shops leased to the appellants, despite the Appellate Court giving a categorical finding that the respondents had no right to do so, and that, the said act was an act of encroachment?

(ii) Whether the findings of the Appellate Court that the respondents were in settled possession of the space outside the door of Shop No.98, based on the exhibits PW1/J, PW1/M, PW1/E, and PW1/C and the bills from the year 1989 to 1992 can be sustained in law, when neither the authors of the said documents were examined nor the said documents taken at its face value could establish the respondents' possession of the space outside Shop No.98?

iii) Whether the Appellate Court misconstrued the concept of 'Settled Possession' and thereby erred in disallowing the permanent and mandatory injunction granted by the Learned Trial Court in favour of the appellants, when the said concept, in law, does not mandate that a person in settled possession can never be enjoined but only implies that, recourse should be had to law for removal of such a person?

The appellants herein are the original defendants to Regular Civil Suit No. 68/1999/C filed by deceased respondent Raghuvir Shamba Amonkar, the sole plaintiff in the proceedings; for the sake of convenience and easy reference, the appellants in this appeal shall be referred to as "defendants" and the deceased respondent herein shall be referred to as "plaintiff".

2. The facts that have led to the filing of the present second appeal are the following:

a) The plaintiff instituted Regular Civil Suit 68/1999/C claiming a relief of permanent injunction against the defendants from interfering with the suit shop, described in para 3 of the plaint as shop no. 98 situated in Mapusa Municipal Market, at Mapusa, Goa. According to the pleadings in the plaint, the suit shop was owned by the Mapusa Municipal Council(MMC) and was leased to the late Vishwanath Gunaji Amonkar, 38 years prior to the filing of the suit (which would date to the year 1961); apart from the suit shop, it is the plaintiff's case that another shop bearing shop no. 95 in the same market was leased to the said Vishwanath simultaneously with the lease of shop no. 98.

(b) The plaint further avers that Vishwanath died about 22 years prior to the institution of the suit (which would be in the year 1977) and his estate was succeeded by 11 children, being two sons, Gunaji and Anand, and 9 daughters. The plaintiff claims to be the husband of one of Vishwanath's daughter named Tulshi whom he married 45 years prior to the filing of the suit.

(c) It is further the plaintiff's case that about 28 years prior to the filing of the suit (which would be in the year 1971), during the lifetime of Vishwanath, an oral family settlement was arrived at, under which Vishwanath handed over possession of the suit shop to the plaintiff (his son-in-law), and allowed him to occupy the same

and conduct a business therein. That after being put in possession, the plaintiff commenced a business of grocery and general store in the suit shop, in respect of which the plaintiff was regularly paying the sale tax with respect to the business, which was registered under the Weights and Measures Act, 1985, Shops and Establishment Act and was paying house tax and rent for the suit shop to the Mapusa Municipality in the name of Vishwanath.

(d) The plaint further states that the defendants, (who are the sons of Gunaji), have no right to interfere with the possession of the plaintiff in relation to the suit shop; the cause of action arose for filing of the suit when the defendants forced the plaintiff to vacate the suit shop and tried to interfere with his business and attempted to dispossess him.

(e) In the written statement filed by the defendants, it was stated that the suit shop was leased by the MMC to M/s Vishwanath G. Amonkar, a partnership firm represented by its partners who are the defendants, besides whom the mother of the defendant no. 1 and one Brahmanand G. Amonkar were also partners. That the firm paid rent to the MMC. Whilst admitting that Vishwanath passed away in the year 1977 leaving his two sons as his heirs, it was denied that his nine daughters are his heirs. The plaintiff's contention that he entered into possession of the suit shop pursuant to a family settlement has been denied by the defendants. The defendants have also denied that the plaintiff must be put in possession of the suit

shop or that he is running a business therein or that he has been paying rent to the MMC or obtained registration under the Shops and Establishment Act or any other law with respect to the suit shop. Along with the written statement, the respondents filed a counterclaim seeking relief of mandatory injunction against the plaintiff to remove a showcase /wooden plank fixed by him to the door of the suit shop, and for a permanent injunction to restrain the plaintiff from interfering with the possession of the defendants with respect to the suit shop.

A written statement to the counterclaim was filed by the plaintiff denying the fact that the business run by the defendants was under a partnership firm or that there was any cause of action to file the counterclaim.

f) With these pleadings the parties went to trial on 8 issues framed by the trial court, the main ones being issue no. 1, 2, 3, 7, and 8 which are reproduced below:

1. Whether the plaintiffs prove that the late Vishwanath Amonkar handed over the possession of the 'suit shop' to the plaintiffs under the family settlement?

2. Whether the plaintiffs prove that after obtaining 'possession of — the "suit shop' from late Vishwanath Amonkar the plaintiffs Started an independent business of grocery and General Merchant in the 'suit shop' and made

his own investment towards the said business?

3. Whether the plaintiffs prove that at the time of filing of the suit, the plaintiffs were in Possession: and enjoyment of the 'suit shop'?

7. Whether the defendants prove that the plaintiff has fixed a showcase /wooden plank over the door of the 'suit shop' and also changed the lock of the shutter with the intention not to allow the defendants to open the door of the suit shop?

8. Whether the defendants prove that they are entitled for a mandatory injunction directing the plaintiffs to remove the showcase / wooden plank fixed over the door of the 'suit shop' and also for a permanent injunction restraining the plaintiffs from interfering with the 'suit shop'?

g) By the time the trial of the suit commenced, the original plaintiff had passed away, and though his wife Tulshi/ daughter of late Vishwanath was impleaded as a legal representative of the original plaintiff, the plaintiff's son, Kishor Kumar Amonkar led evidence on behalf of the plaintiff. Besides Kishor, the plaintiff has led evidence of one other witness, after which, the defendant no. 3 Shivanand was examined as the sole witness for the defendants.

(h) The trial court, in its judgment and decree dated 30.04.2009, has after considering the oral and documentary evidence of the parties answered issues no. 1 to 3 against the plaintiff and issues no. 7 and 8 in favour of the defendants, dismissing the suit and decreeing the counterclaim of the defendants, by restraining the plaintiff with an order of permanent injunction from interfering with the suit shop and by a decree of mandatory injunction directing the plaintiff to remove the showcase / wooden plank fixed over the door of the suit shop.

(i) Whilst dismissing the suit, the trial court, from the evidence before it, has specifically held that there is neither any documentary proof nor oral evidence of any witness to substantiate the plaintiff's claim of having been inducted into the suit shop by Vishwanath, pursuant to an oral family settlement; whilst arriving at its findings, the trial court has also concluded that there is no document of evidence on record that the MMC had handed over possession of the suit shop to the plaintiff.

(j) On issue no. 2, the trial court has held that the plaintiff was not in possession of the suit shop, or that he was running any business therein, and that the defendants were given possession of the suit shop by Vishwanath and were in physical possession thereof.

(k) As far as issue no. 7 and 8 are concerned, on the admission of the witness for the plaintiff that the plaintiff had affixed a showcase to

the door of the suit shop, and based upon the findings of possession in favour of the defendants, the trial court decreed the counterclaim.

(l) On an appeal wherein, Regular Civil Appeal no. 64/2009, filed by the plaintiff against the defendants before the District Court, the District Court has returned a finding that the defendants are in possession of the suit shop and the claim of the plaintiff of being in possession of the suit premises is not supported by any documentary evidence. It has also held that the lower court has rightly dismissed the suit of the plaintiff.

(m) However, in contrast to its findings, in the later part of the impugned judgment dated 29.01.2010, the Appellate Court arrives at a finding that the plaintiff was in “settled possession” of a small portion of space outside the main door of the shop no. 98, from the year 1984 and decrees the suit and rejects the defendant’s counterclaim.

3. I have heard the submission of the Learned Counsel for the parties. I have perused the records of the trial court, the pleading of the parties and the evidence led by them.

4. It is the submission of Learned Senior Advocate Shri. Nitin Sardesai for the appellants that the entire case of the plaintiff is pitched upon the contention that he came into possession of the suit shop pursuant to an oral deed of family settlement. He has taken me through the specific averments made to that effect at

paragraphs 4, 5, and 6 of the plaint which averse that the deed of family settlement was entered upon roughly in the year 1971, during the lifetime of Vishwanath, who passed away in 1977. The Learned Counsel further contended that the trial court has assessed the evidence of the plaintiff on his claim that he was put in possession pursuant to a family settlement in great detail and has arrived at a categorical finding that the plaintiff has not proved the terms of the deed of family settlement or how he was put in possession of the suit shop.

5. It is further the contention of the defendants that the plaintiff having expired during the course of the suit, it was incumbent upon his wife Tulshi, who was fit to depose in the matter to have actually stepped into the witness box, claiming to be successor to Vishwanath's estate, to depose about the content and terms of the family settlement and how the plaintiff claimed he came into possession of the suit shop. Instead, Tulshi's son who was hardly two or three years old at the time the purported family settlement was contracted, deposed in the matter, he being obviously not in the knowledge of the terms of the settlement.

It is further the submission of the Learned Senior counsel that the appellate court has, apart from not even framing a point for determination, which was required for the purpose of disposing of the appeal, proceeded to decide the matter without adverting to either the claim of possession of the plaintiff nor to accessing the

evidentiary value of the documents sought to be used by the plaintiff to prove possession. The Learned Counsel has contented that the Appellate court has reversed the findings of the trial court that the defendants were in possession of the suit shop pursuant to a lease with MMC without considering any of the evidence on record or referring to the specific findings of the trial court on this aspect of the matter; he submitted that the substantial question of law (i) requires to be answered in favour of the appellant for the reasons that the Appellate court has reversed the order of the trial court allowing the counterclaim for a permanent injunction since the appellate court has infact concurrently accepted the findings of the trial court on possession in paragraph 12 of its judgment.

6. The Learned Counsel for the appellant has further submitted that the findings of the Appellate court that the plaintiff was in settled possession of a small portion of a space outside the main door of the suit shop since 1984, is perverse and not based on any legal evidence. It was further contended that the concept of the settled possession of law is one quite contrary to the one set out by the Appellate court in the impugned judgment; reliance was placed on the judgment of the Supreme court in *Maria Margarida Fernandes V/s Erasmo Sequeira* reported in (2012) 5 SCC 370 wherein it has been held that a person claiming to be in settled possession is the possessor or in occupation of property other than the holder of the legal title, and it is for him to give sufficiently

detailed pleadings and particulars to support his case to continue in possession.

7. Per Contra, Shri. Shivan Desai, Learned Counsel for the plaintiffs submits that the trial court has clearly erred in rejecting various documents produced by the witness PW1, which includes two receipts of house tax, challans for payment of registration fees under Shops and Establishment Act, challans showing assessment of sale tax and rent receipts in the name of M/s Vishwanath Amonkar, only on the premise that their content was not proved or that the witness was not competent to depose in the matter. He contended that all these documents are issued by public authorities and were correctly considered by the appellate court to arrive at its conclusion on settled possession. He contends that there is no prohibition at law for arriving at a family settlement with future successors even during the lifetime of the holders of the property, and there were sufficient pleadings and proof of the execution and existence of such a family settlement, pursuant to which the plaintiff claimed possession of the suit property. The Learned Counsel submits that the findings given by the trial court if upheld in this appeal would affect several pending disputes between the parties as the orders passed herein may be misused to prejudice the minds of the concerned authorities dealing with such disputes.

8. In order to answer the three substantial questions of law on which this appeal has been admitted, certain undisputed facts which appear from the records would have to be considered.

On a reading of the averments made in paragraphs No. 2 to 8 of the plaint, the following facts become evident;

- a) That according to the plaint, the owner of the suit shop is MMC and the shop was leased to Vishwanath Amonkar; the lease subsists and continued till the demise of Vishwanath in 1977.
- b) The oral family settlement alleged by the plaintiff took place in 1971; the lessee Vishwanath was alive at the relevant time, and the shop being a public premises, could not have been transferred by an oral “family settlement” by Vishwanath, without the participation of the MMC.
- c) There are no pleadings in the plaint setting out the terms of the family settlement, or the details of allotment of other assets of Vishwanath made to his other children.
- d) That the plaintiff, who otherwise was not a direct successor of Vishwanath (being his son-in-law), was not making his claim on the basis of succession or being a member of Vishwanath’s family but was claiming title/possession on the basis of the family settlement.

To obtain a decree of permanent injunction, which is the only relief sought in the plaint, it was incumbent upon the plaintiff to prove his title to the suit shop, being his claim of allotment of the same under the oral family settlement. In other words, the terms of the oral family settlement were required to be pleaded in detail and the same proved by the plaintiff.

9. In the present case, the original plaintiff had stepped into the witness box, but had passed away before completing his evidence, which had to be discarded. After the plaintiff's demise, Tulshi would obviously have been the best person to depose on the terms of the family settlement. It is a matter of record that even Tulshi did not step into the witness box to prove the oral family settlement and instead the plaintiff's son, who from the record was just two years old in the year 1971 has deposed in the matter. He was obviously not a witness to the oral terms of family settlement which are claimed to be the basis for filing the plaint.

Even otherwise, the son of the original plaintiff, in terms of the Evidence Act, could not be a witness to the terms of the settlement or to any of the transactions pleaded in the plaint and could not be competent to depose as to these facts.

10. PW1 has produced two receipts at Exhibit PW1/A, drawn in the name of "M/s Vishwonath Gunaji Amonkar", which is not in the name of the plaintiff, claiming the same to be towards payment of rent to a shop No. 98. The execution of neither of these receipts

has been proved by examining any witness on behalf of the MMC. These receipts are dated 06.01.1999 and 12.01.1999, which pertain to a period just before the date of filing the suit. Not a single receipt of rent in the name of the plaintiff has been produced from 1971, the time when the family settlement was allegedly entered into, and the date of the suit.

The same witness also produced a certificate of verification dated 17.01.2003 issued by the Controller of Legal Metrology marked Exhibit PW1/B, a date much after the filing of the suit. This document has not been proved by the author. The next document that he produced was a set of orders of assessment by the Sales Tax Authorities which are for the period 26.11.1986 to 31.03.1987, 01.04.1989 to 31.03.1990 along with sales tax challans from the year 1997, 2001 and 2002, all of which referred to the assessee as Raghuvir S. Amonkar & sons. Here again, none of the authors of these documents have been examined. Even assuming that these documents should be considered though their content was not proved, it is clear that of all these, only two documents pertain to the period prior to the filing of this suit and there seems to be no documentary evidence produced by the plaintiff to show that he was in possession of the suit shop since 1971 as claimed by him until the filing of the suit.

11. A reading of the plaint makes it clear that it was never the plaintiff's case that he claimed to be in settled possession of the suit

shop, but he came forward with a case that he was inducted into the suit shop through an oral family settlement. Once, that was his stand, it was incumbent upon him to prove all the terms of this family settlement and demonstrate his acts of possession pursuant to be inducted into the suit shop. A reading of the evidence of PW1 not only leaves one with the clear impression that the claim of possession is not supported by any documents, which ought to have been in possession of the original plaintiff, but also that there was no family settlement at all amongst Vishwanath Amonkar and his children.

12. The trial court has specifically dealt with both these issues as to proof of the terms of the oral family settlement and the question of possession exercised by the plaintiff over the suit shop. As to the issue of proof of the settlement, the trial court has rightly arrived at a conclusion that there was neither any documentary proof nor any oral evidence of any person who witnessed the family settlement on record, to support the plaintiff's case that he was put in possession of the suit shop in pursuance of such as settlement. The trial court, on the basis of evidence led by PW1, has also rightly concluded that Vishwanath Amonkar was admittedly the lessee of the suit shop and there was no documentary evidence produced by PW1 from the MMC to demonstrate the handover of possession of the suit shop to the plaintiff from its original owner.

13. Digressing for a moment from the evidence on record, it must be noted that the terms of the lease from MMC to Vishwanath Amonkar, its lessee, are governed by the provisions of the Goa Municipalities Act, 1968, wherein, in terms of sub Section 3 of Section 88 of that Act, the council may lease its immovable property; under Sub Section (25a) of Section 2 of this Act, “a member of family of lessee” means the lessee’s spouse or son or unmarried daughter or father or mother or grandson or unmarried granddaughter, thereby excluding a married daughter and her husband. In the present case, even on the demise of the original lessee Vishwanath, neither the plaintiff or his wife could claim to be a member of the family / original lessee in terms of this Act. Thus, even if the plaintiff sought to claim possession by virtue of being a member of the original lessee’s family, after 1977 when Vishwanath passed away, he could not be considered a member of the lessee’s family under this Act, a married daughter being clearly excluded from the definition.

14. Be that as it may, no fault can be found with the findings of the trial court on the aspects of the plaintiff’s having failed to prove possession as also his failure to have prove his title through an oral family settlement.

The Appellate court proceeded with the hearing of a challenge on these findings, without formulating any point for determination. Even so, assuming it was aware that these two issues were the real

points that had to determine in the appeal, it has, after holding that the respondents are in possession of shop No. 95 and 98 and after holding that the plaintiff's claim of being in possession of shop No. 98 was not supported by documentary evidence, has strangely then arrived at an inference that the plaintiff was in "settled possession of a small portion of a space outside the main door of shop No. 98 from the year 1984".

15. I fail to understand the basis on which the Appellate court could apply the concept of "settled possession" of a property, in the light of the facts pleaded and case set up in the plaint and based upon evidence led by the plaintiff's witness.

The concept of settled possession primarily requires a person making such a claim to be in possession as a trespasser, and such possession matures into settled possession only when such actual physical possession of a property is shown to be over a sufficiently long period. Further, in a proceeding which is based on a title of settled possession, the real owner of the property in question ought to be made a party to the proceeding. In the present case, it is not in dispute that the MMC is the owner of the suit shop and ought to have been made a party to the suit if the plaintiff's claim was one of settled possession, which clearly it is not.

The Supreme Court of India in *Puran Singh V/s State of Punjab*, reported in (1975) 4 SSC 518 has considered the nature of what constitutes settled possession, entitling the possessor of a

property to protection and has laid down certain attributes in these terms:

“In this case, there was a concurrent finding of fact that Jamuna was in effective possession of the field on the date of occurrence and the prosecution had alleged that P.Ws 17 and I had taken possession of the property but the finding of the Court was that P.Ws 17 and 19 had not been put in possession by virtue of the delivery of possession given by the Court. It was against this context that the observations referred to above were made. This Court clearly pointed out that where a trespasser was in settled possession of the land he is not entitled to be evicted except in due course of law and he is further entitled to resist or defend his possession even against the rightful owner who tries to dispossess him. The only condition laid down by this Court was that the possession of the trespasser must be settled possession. The Court explained that the settled possession must be extended over a sufficiently long period and acquiesced in by the true owner. This particular expression has persuaded the High Court to hold that since the possession of the appellant's party, in this case, was only a month old, it cannot be deemed to be a settled possession. We, however, think that this is not what this Court meant in defining the nature of the settled possession. It is indeed difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into a settled possession. But what this Court really meant was that the possession of a trespasser must be effective, undisturbed, and to the knowledge of the owner or without any

attempt at concealment. For instance, a stray or a casual act of possession would not amount to settled possession. There is no special charm or magic in the word 'settled possession' nor is it a ritualistic formula which can be confined in a straitjacket but it has been used to mean such clear and effective possession of a person, even if he is a trespasser, who gets the right under the criminal law to defend his property against attack even by the true owner. Similarly, an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession. Thus in our opinion, the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

(i)that the trespasser must be in actual physical possession of property over a sufficiently long period;

(ii)that the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case ;

(iii)the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and'

(iv)that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown

any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

These principles logically flow from a long catena of cases decided by this Court as well as other High Courts some of which have been referred to in the judgment of this Court in Munshi Ram's case (supra).”

16. From the facts pleaded in the plaint and the nature of the evidence led by the plaintiff, it was never the plaintiff's claim that he was a trespasser in actual physical possession of the suit shop for a sufficiently long period as against the MMC or against the lessee Vishwanath. Thus, the plaintiff has never set up a title of settled possession but has set up a case of being inducted into the suit shop under a Deed of family settlement. Thus, the finding of the Appellate court that the plaintiff was in settled possession of the suit shop is neither borne from the pleadings, nor from the evidence on record, and is therefore clearly perverse and contrary to the records. In fact, there is neither a pleading nor evidence to support a title of settled possession.

Based upon the findings referred to above, and the ratio laid down by the Supreme Court in *Puran Singh (Supra)*, the plaintiff has never claimed and could not be said to be in settled possession

of the suit shop, as erroneously held by the Appellate court. Thus, I am of the considered view that the substantial questions of law (i) and (iii) are required to be answered in favour of the appellants.

17. Having held that the plaintiff has neither proved his possession over the suit shop pursuant to a family settlement nor proved actual possession over the suit shop since 1971 till the date of filing of the suit, which are in fact the findings given by the trial court based upon evidence, the suit had to be dismissed. However, the trial court, having considered the evidence of the parties in great detail and arrived at specific findings that the defendants were in possession of suit shop, thus decreeing their counterclaim, and having held that the Appellate court's findings that the plaintiff was in settled possession of the suit shop was in fact perverse and borne from the evidence on record, the substantial question of law (i) has to be answered in favour of the appellants. Consequently, once it is held that the defendants are in possession of the suit shop, the reliefs sought in the counterclaim must be granted, as has been done by the trial court. No fault can be found with the relief granted in the counterclaim.

18. Accordingly, I answer all three substantial questions of law framed by this court on 15.10.2010 in favour of the appellants. As a consequence, the second appeal is allowed and the impugned judgment and decree dated 29.01.2010 passed by the court of Ad-

hoc District Judge, Mapusa, in Regular Civil Appeal No. 64/2009 is hereby quashed and set aside and the judgment and decree dated 30.04.2009 passed by the Civil Judge, Junior Division at Mapusa in Regular Civil Suit No. 68/1999/F is confirmed. No order as to costs.

19. Registry to draw a decree in the above terms accordingly.

VALMIKI SA MENEZES, J.