

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 67 OF 2022**

MARIO ALEIXO GAURDALUPE
DCOSTA AND 3 ORS APPELLANTS.

Versus

THE VILLAGE PANCHAYAT OFRESPONDENTS
CURTORIM, AND 11 ORS

Mr J.A. Lobo, Advocate for the Appellants.

**Mr Gaurish Agni, with Mr Kishan Kavlekar, Advocates
for Respondent No.1.**

CORAM : M. S. SONAK, J.

DATE : 27th January 2023

P.C.: -

1. Heard Mr Lobo for the Appellants and Mr Gauresh Agni for Respondent No.1/Panchayat.
2. The Appellants herein were Plaintiffs No.1, 2, 5, and 6 in Regular Civil Suit No.42/2015, which was mainly instituted against the Village Panchayat (Defendant No.1). The Judgement dated 13/3/2019 made by the Trial Court records that the Defendants No.2 to 9 in the suit were family members of the Plaintiffs and their interest were not adverse to that of the Plaintiffs. Possibly, that was why none of these Defendants chose

to contest the suit.

3. The Trial Court decreed the suit and restrained the Panchayat from interfering with the suit road or asphaltting the same based on its resolution dated 8/6/2012. However, the Panchayat appealed, and its Regular Civil Appeal No.50/2019 was dismissed by Judgment and Decree dated 25/3/2021.

4. Thus, the Appellants have concurrent decrees in their favour. To the query as to why the Appellants have still instituted this second appeal, Mr Lobo, learned Counsel for the Appellants, pointed out that the Appellants were aggrieved by the following observations in the last three lines of paragraph 47 of the judgement dated 25.03.2021, which read thus :

"Thus, findings of Learned trial Court that such use is an exclusive use for plaintiffs is without any material on record and cannot be accepted."

5. Mr Agni, learned Counsel for the Panchayat, points out that no second appeal would lie only to challenge a finding. Therefore, this is ordinarily a proper submission to make.

6. However, the above finding was not at all necessary for determining whether the suit road was a public or a private road. Both the Courts have recorded a finding about the suit road being private. The observations of the Trial Court that this road

was meant for the exclusive use of the Plaintiffs had to be construed in the context of the dispute between the Plaintiffs and the Panchayat. This finding of the Trial Court was not intended to prejudice or affect the rights of other private parties who may or may not have had some right to use this road. The Trial Court possibly meant that this was not a public road.

7. Therefore, the above finding of the Appellate Court must also be construed as a clarification that the Trial Court was not required to comment on whether the suit road was for the exclusive use of the Plaintiffs or whether some other private parties also have a right to use the same. That question should not have been decided in this suit or the appeal because such other private persons were not even parties to the suit.

8. Whether the suit road was, a public or a private road was the main issue. Both the Courts have held that the suit road was not a public road but a private road. Based on this, an injunction had to follow. There was no further necessity to determine whether the suit road was meant for the exclusive use of the Plaintiffs or whether some other private parties also had some private rights to use the same. Therefore, that issue did not arise and should not have been decided. Consequently, it is clarified that such an issue is kept open and may not be taken as decided.

9. Mr Agni pointed out that if the Panchayat wishes to appeal the Decree dated 25/3/2021, the observations now made should not come in the Panchayat's way. The observations would not come in the Panchayat's way because what is being clarified is that the two Courts were not required to decide whether the Plaintiffs' right to use the suit road was exclusive or whether some other private parties also had some right to use the same.

10. The only issue to be decided was whether the suit road was a public road or a private road. By this order, the Court is also not going into the issue of whether the findings recorded by the two Courts on whether this was a public road or a private road are correct. Thus construed, none of the observations in this order would prejudice the Panchayat. The Panchayat's appeal would be considered on its own merits and in accord with the law if and when the same is instituted.

11. This appeal is disposed of with the above clarifications since no appeal would lie against a mere finding.

12. There shall be no orders for costs.

M. S. SONAK, J.