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# IN THE HIGH COURT OF BOMBAY AT GOA

## SECOND APPEAL NOS.90 OF 2017, 73 OF 2018, 74 OF 2019, 75 OF 2019, 9 OF 2019, 9 OF 2020 & 19 OF 2020

## SECOND APPEAL NO.90/2017

1. Mrs. Laurenca Siqueira Pinto, w/o Mr. Zacarias Luciano Agostino Pinto, Aged 75 years, Housewife, Constituted Attorney for Appellant No. 2 And her husband;

2. Mr. Zacarias Luciano Agostino Pinto (deceased, through LR's)

a) Mr. Edney Pinto, s/o late Mr. Zacarias Luciano Agostino Pinto, aged 39 years, service, Indian National;

b) Mr. Fredrick Pinto, s/o late Mr. Zacarias Luciano Agostino Pinto, major in age, Indian National;

c) Mrs. Cranna Pinto Ferrao, w/o Mr. Lubov Ferrao, major in age, Indian National;

d) Mr. Lubov Ferrao, major in age, Indian

National;
all r/o H. No. 1590,
Culvaddo, Cuncolim,
Salcete - Goa. … APPELLANTS

*Versus*

1. Mrs. Milan Babani Naik Dessai, w/o Babani Pandhari Naik Dessai, Aged about 50 years, Service.

2. Mr. Prashal Babani Naik Dessai, s/o late Babani Pandhari Naik Dessai, Aged about 37 years, Service.

3. Mrs. Pournima Prashal Naik Dessai, w/o Prashal Babani Naik Dessai, Aged about 30 years, Service.

4. Mr. Tushar Babani Naik Dessai, s/o late Mr. Babani Pandhari Naik Dessai, Aged about 35 years, Service.

5. Mr. Gulab Pandhari Naik Dessai (deceased), through LR's

a) Mr. Gautam Gulab Dessai, s/o late Mr. Gulab Pandhari Naik Dessai, aged 28 years, service,

b) Ms. Gauri Gulab Dessai d/o late Mr. Gulab Pandhari Naik Dessai, aged 25 years, service,
6. Mrs. Geeta Gulab Naik Dessai, w/o Gulab Pandhari Naik Dessai, Aged about 45 years, Service,

All residents of H.No. not Known, Culwado, Cuncolim, Salcete, Goa.

7. Mr. Prabhakar Kashinath Dessai, s/o Mr. Kashinath Dessai, Aged about 50 years, Service, (Deceased)

8. Mr. Manoj Prabhakar Dessai, s/o Mr. Prabhakar Kashinath Dessai, Aged about 38 years, Service.

9. Mr. Anand Prabhakar Dessai, s/o Mr. Prabhakar Kashinath Dessai, Aged about 35 years, Service, All r/o H.No. not Known, Culwado, Cuncolim, Salcete, Goa.

10. Smt. Sangeeta Manoj Dessai, w/o Mr. Manoj Prabhakar Dessai, Aged about 37 years, Service, r/o H. No. Not known, Culvaddo, Cuncolim, Salcete - Goa.

11. Smt. Kalpana Anand Dessai, w/o Mr. Anand Prabhakar Dessai, r/o H. No. Not known, Culvaddo, Cuncolim, Salcete - Goa. … RESPONDENTS

**WITH**
**SECOND APPEAL NO.73/2018**

1. Mrs. Laurenca Siqueira Pinto, w/o Mr. Zacarias Luciano Agostino Pinto, Aged 75 years, Housewife, all r/o H. No. 1590 (old)/ H. No.1595 (new) And her husband;

2. Mr. Zacarias Luciano Agostino Pinto (deceased, through LR's)

a) Mr. Fredrick Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
major in age, Indian National;

b) Mr. Edney Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 39 years, service, Indian National;

c) Mrs. Cranna Pinto Ferrao,
w/o Mr. Lubov Ferrao, major in age,
Indian National;

d) Mr. Lubov Ferrao, major in age,
Indian National;
all r/o H. No. 1590 (old)/
H. No.1595 (new), Culvaddo,
Cuncolim, Salcete - Goa. … APPELLANTS

***Versus***

1.Mrs. Milan Babani Naik Dessai,
w/o Babani Pandhari Naik Dessai,
Aged about 50 years, Service.

2.Mr. Prashal Babani Naik Dessai,
s/o late Babani Pandhari Naik Dessai,
Aged about 37 years, Service.

3.Mrs. Pournima Prashal Naik Dessai,
w/o Prashal Babani Naik Dessai,
Aged about 30 years, Service.

4.Mr. Tushar Babani Naik Dessai,
s/o late Mr. Babani Pandhari Naik Dessai,
Aged about 35 years, Service.

5.Mr. Gulab Pandhari Naik Dessai
(deceased), through LR's

a) Mr. Gautam Gulab Dessai,
s/o late Mr. Gulab Pandhari Naik Dessai,
aged 28 years, service,

b)Ms. Gauri Gulab Dessai
d/o late Mr. Gulab Pandhari Naik Dessai,
aged 25 years, service,

6. Mrs. Geeta Gulab Naik Dessai,
w/o Gulab Pandhari Naik Dessai,
Aged about 45 years, Service,
All residents of H.No. not Known,
Culwado, Cuncolim, Salcete, Goa. … RESPONDENTS

**WITH**
**SECOND APPEAL NO.74/2019**

1. Mrs. Laurenca Siqueira Pinto,
w/o Mr. Zacarias Luciano Agostino
Pinto, Aged 75 years, Housewife,
And her husband;

2. Mr. Zacarias Luciano Agostino Pinto
S/o Mr. Francis Xavier Pinto,
aged 77 years, retired,
Both r/o H.No.1590 (old)/H.No.1595 (new),
Culwado, Cuncolim, Salcete - Goa.
(Expired) represented by

a) Mr. Fredrick Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged about 49 years, service

b) Mr. Edny Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 36 years, businessman,

c)Mrs. Cranna Pinto,

d/o late Mr. Zacarias Luciano Agostino
Pinto, aged about 38 years, service
and her husband

d) Mr. Lubor Ferrao, s/o late Mr. Minino
Jesus Ferrao, aged about 40 years, service;
all r/o H. No. 1590 (old)/
H. No.1595 (new), Culvaddo,
Cuncolim, Salcete - Goa. … APPELLANTS

***Versus***

1. Holy Family Chapel,
Represented by its newly elected
President, Mrs. Tina Rebello,
w/o Mr. Augustio Rebello,
Age 48 years, housewife,
r/o Savorcotto, Cuncolim,
Salcete,Goa.

2. Mr. Malicia Martins (Treasurer),
w/o late Mr. Soccoro Martins,
Age 68 years, housewife,
r/o Savorcotto, Cuncolim,
Salcete, Goa.

3. Mr. Moses Coutinho (Secretary),
s/o Mr. Aulin Coutinho,
Age 63 years, Bussiness,
r/o Buring, Savorcotto, Cuncolim,
Salcete, Goa. … RESPONDENTS

**WITH**
**SECOND APPEAL NO.75/2019**

1. Mrs. Laurenca Siqueira Pinto,
w/o Mr. Zacarias Luciano Agostino
Pinto, Aged 75 years, Housewife,
And her husband;

2. Mr. Zacarias Luciano Agostino Pinto
S/o Mr. Francis Xavier Pinto,
aged 77 years, retired,
Both r/o H.No.1590 (old)/H.No.1595 (new),
Culwado, Cuncolim, Salcete - Goa.
(Expired) represented by

a) Mr. Fredrick Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged about 49 years, service

b) Mr. Edny Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 36 years, businessman,

c) Mrs. Cranna Pinto,
d/o late Mr. Zacarias Luciano Agostino
Pinto, aged about 38 years, service
and her husband

d) Mr. Lubor Ferrao, s/o late Mr. Minino
Jesus Ferrao, aged about 40 years, service;
all r/o H. No. 1596, Culvaddo,
Cuncolim, Salcete - Goa. … APPELLANTS

***Versus***

1. Holy Family Chapel,
Represented by its newly elected
President, Mrs. Vienna Dias,
w/o Mr. Tony Dias,
major of age, housewife,
r/o near Holy Family Chapel,
Savorcotto, Cuncolim,
Salcete,Goa.

2. Mr. Samarvell Gama (Treasurer),
s/o Mr. Simon Gama,

major of age, business,
r/o Savorcotto, Cuncolim,
Salcete, Goa.

3. Mrs. Liby Fernandes (Secretary),
W/o Mr. Prince Fernandes,
major in age, housewife,
r/o Buring, Savorcotto, Cuncolim,
Salcete, Goa. … RESPONDENTS

**WITH**
**SECOND APPEAL NO.9/2019**

1. Mrs. Laurenca Siqueira Pinto,
w/o Mr. Zacarias Luciano Agostino
Pinto, Aged 75 years, Housewife,
r/o H.No.1590 (old)/H.No.1595 (new),
Culwado, Cuncolim, Salcete - Goa,
And her husband;

2. Mr. Zacarias Luciano Agostino Pinto
(deceased) through LR's

a) Mr. Fredrick Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
major in age, Indian National;

b) Mr. Edney Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 39 years, service, Indian National;

c) Mrs. Cranna Pinto Ferrao,
w/o Mr. Lubov Ferrao, major in age,
Indian National;
d) Mr. Lubov Ferrao, major in age
Indian National;
all r/o H. No. 1590 (old)/H.No.1595 (new),
Culvaddo, Cuncolim,
Salcete - Goa. … APPELLANTS

*Versus*

1. Mrs. Sharon D'cruz,
D/o Filomena D'Costa, &
Mr. Bennedito Dias, Age about
46 years, Housewife, R/o H. No.
Not Known, Culwaddo, Cuncolim,
Salcete, Goa

2. Mrs. Vincy Dias, D/o late
Mr. Bennedito Dias, Major of age,
housewife;

3. Mrs. Lorna Dias, D/o late
Mr. Bennedito Dias, Major of age,
housewife;

4. Mr. Brian Dias,
s/o Late Mr. Bennedito Dias,
Major in age, service,

All r/o Culwaddo, Cuncolim, Salcete,Goa.

5. Gordan Holiday Cottages Pvt. Ltd.
A company having office at S-19,
Second Floor, A-wing, Apna Bazar,
Margao, Goa. … RESPONDENTS

**WITH**
**SECOND APPEAL NO.9/2020**

1. Mrs. Laurenca Siqueira Pinto,
w/o Mr. Zacarias Luciano Agostino
Pinto, Aged 75 years, Housewife,
And her husband;

2. Mr. Zacarias Luciano Agostino Pinto
S/o Mr. Francis Xavier Pinto,

aged 77 years, retired,
Both r/o H.No.1590 (old)/H.No.1595 (new),
Culwado, Cuncolim, Salcete - Goa.
(Expired) represented by

a) Mr. Frederick Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
age about 50 years,

b) Mr. Edney Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 40 years,

c)Mrs. Cranna Pinto,
d/o late Mr. Zacarias Luciano Agostino
Pinto, age about 39 years
and her husband

d) Mr. Lubov Ferrao, s/o late Mr. Minino
Jesus Ferrao, age about 41 years, service;
all r/o H. No. 1590 (old)/
H. No.1595 (new), Culvaddo,
Cuncolim, Salcete - Goa. … APPELLANTS

***Versus***

1. Mr Francisco Antonio,
Jawahar Borges, s/o Mr. Teotonio
Borges, Aged about 48 years, Service,
And his wife,

2. Mrs. Crispina Borges,
w/o Mr. Francisco Antonio Jawahar
Borges, aged about 46 years,
housewife;

3. Mrs. Maria Rufina Rante Borges,
w/o late Mr. Teotonio Borges,
aged about 50 years, housewife;

4. Mrs. Glency Borges, aged about
33 years, housewife;

5. Mr. Paul Bento Ashok Borges,
s/o late Mr. Teotonio Borges,
aged about 46 years, business,

6. Mrs. Maria Visitacao Fernandes,
Alias Visitacao Fernandes e Borges
(expired);

7. Philip Fernandes, Husband of
Mrs. Anastasia Irene Padma Borges,
Aged about 45 years, service,

8. Mrs. Anastasia Irene Padma Borges,
Alias Irene Anaastasia Padma Borges,
d/o late Mr. Teotonio Borges,
Aged about 42 years, service;
All r/o H. No. 1586, Culvaddo,
Cuncolim, Salcete-Goa. ... RESPONDENTS

**WITH**
**SECOND APPEAL NO.19/2020**

1. Mrs. Laurenca Siqueira Pinto,
w/o Mr. Zacarias Luciano Agostino
Pinto, Aged 75 years, Housewife,
And her husband;

2. Mr. Zacarias Luciano Agostino Pinto
S/o Mr. Francis Xavier Pinto,
aged 73 years, retired,
Both r/o H.No.1590,
Culwado, Cuncolim, Salcete - Goa.
(since deceased through his legal heirs)
represented by

a) Mr. Frederick Pinto, s/o late
Mr. Zacarias Luciano Agostinho Pinto,
age about 50 years,

b) Mr. Edney Pinto, s/o late
Mr. Zacarias Luciano Agostino Pinto,
aged 40 years,

c)Mrs. Cranna Pinto,
d/o late Mr. Zacarias Luciano Agostino
Pinto, age about 39 years
and her husband

d) Mr. Lubov Ferrao, s/o late Mr. M.S.
Ferrao, age about 41 years, service;
all r/o H. No. 1590 Culvaddo,
Cuncolim, Salcete - Goa. ... APPELLANTS

***Versus***

1. Mrs. Lacy Fernandes,
Also known as Lacy Fernandes
e Moraies, w/o Mr. Boussuet
Moraies, aged about 62 years,
service; and

2. Mr. Bossuet Moraies, s/o
late Mr. Silver Moraies,
aged about 67 years, business,
both r/o H. No. Not known,
Culvaddo, Cuncolim,
Salcete-Goa . ... RESPONDENTS

**Mr. J.A. Lobo, Advocate** *for the Appellants.*
**Mr. Jatin Ramaiya, Advocate** *for Respondent No.1 in SA Nos.74 & 75 of 2019.*
**Mr. Adish Halarnkar, Advocate** *for Respondent Nos.4 & 5 in SA No.9/2020.*

**CORAM: M. S. SONAK, J.**

**DATED: 13th January 2023**

**ORAL ORDER :**

**1.** Heard Mr J.A. Lobo for the appellants in all these appeals. Mr Adish Halarnkar appears for respondents nos.4 & 5 in Second Appeal No.9/2020. Mr Jatin Ramaiya appears for respondent no.1 in Second Appeal Nos.74 & 75/2019.

**2.** Second Appeal No.73/2018 is not on Board. However, with the consent of the learned Counsel, the same is taken on Board.

**3.** Except for Second Appeal No.90/2017 and 73/2018, the rest of the appeals are yet to be admitted. However, considering the commonality of the issues involved and also the fact that the similar Second Appeals bearing nos.89/2015, 32/2016, 106/2016 and 56/2018 have already been disposed of, it is only appropriate that all these matters are taken up for disposal together. The learned Counsel for the parties also agree that this would be an appropriate course of action to be adopted in these matters.

**4.** In the admitted Second Appeal No.73/2018, this Court, at the time of admission, framed the following substantial questions of law in its order dated 06.09.2018:

*"A) Whether the learned District Judge and the learned Civil Judge misread the evidence on record of the surveyor, to find that the suit property does not fall within the matriz number stated by the said surveyor?*

*B) Whether the learned District Judge and the learned Civil Judge erred in dismissing the suit relying purely on the revenue certificate ignoring the evidence lead by the appellants and that of the surveyor?"*

**5.** Similarly, in the admitted Second Appeal No.90/2017, this Court, by its order dated 23.02.2018 admitted the same on the following substantial questions of law:

*"(i) Whether the finding recorded by the Courts below that the suit property bearing No.185/25 does not belong to Matriz No.5739, is based on misreading of the evidence and is perverse?*

*(ii) Whether the Courts below were justified in relying upon the revenue certificate by discarding the evidence of the surveyor led by the appellants?"*

**6.** Mr Lobo, the learned Counsel for the appellants in all these appeals, submits that the appellants (original plaintiffs) in the several suits instituted by them claim to be the owners of the suit properties based on Gift Deeds dated 10.07.1969 and 25.11.1971. Mr Lobo pointed out that since these Gift Deeds were executed before the surveys were promulgated, the properties which are the subject matters of these Gift Deeds were described under Matriz Nos.5732, 5737, 5739 and 5755, Cuncolim-Goa. He points out that the suit properties now described by the promulgated survey numbers correspond to those described in the Gift Deeds under the above Matriz numbers.

**7.** Mr Lobo submits that the above two Gift Deeds constitute the appellants' documents of title. Further, the appellants examined the surveyor, who submitted her report and also deposed to the co-relation between the properties described in the Matriz Number and the suit properties now described in the promulgated survey numbers.

**8.** Mr Lobo pointed out that, for example, in the admitted Second Appeal No.90/2017, the evidence was led to show that the suit property bearing Survey No.185/25 corresponds to the property described under Matriz No.5739 in the two Gift Deeds. Likewise, in the unadmitted Second Appeal No.9/2020, the suit property surveyed under no.179/2022 corresponds to a part of the property bearing Matriz No.5755.

**9.** Mr Lobo submits that the respondents had failed to prove their title, and the two Courts erred in relying mainly on certain presumptions concerning promulgated survey records. Based on all this, Mr Lobo submitted that the admitted appeals should be allowed and the unadmitted appeals could be admitted and eventually allowed.

**10.** In the unadmitted appeals, Mr Lobo proposed virtually identical substantial questions of law as were formulated in orders dated 23.02.2018 and 06.09.2018 in Second Appeal No.90/2017 and 73/2018, no doubt with the corresponding changes in the Survey Numbers and Matriz Numbers.

**11.** Mr Ramaiya and Mr Halarnkar, the learned Counsel for the respondents, submitted that this Court, by four separate orders, has dismissed Second Appeal Nos.89/2015, 32/2016, 106/2016 and 56/2018 by detailed speaking orders. They point out that Mr Lobo's current contentions were not significantly different from those raised in these dismissed appeals. Therefore, based on the reasoning in the said orders, even these appeals ought to be dismissed. They pointed out that none of the appeal dismissal orders was questioned by the appellants before the Hon'ble Supreme Court. They submit that since such orders have attained finality, the same should be followed whilst disposing of these appeals.

**12.** Mr Ramaiya and Mr Halarnkar, without prejudice to the above contentions, submitted that these are matters where two Courts have appreciated the evidence on record and arrived at concurrent findings. Accordingly, they submitted that there is no perversity involved in the findings recorded by the two Courts concurrently. Accordingly, no case was made for entertaining the Second Appeals or granting any reliefs in the Second Appeals.

**13.** The rival contentions now fall for my determination.

**14.** The appellants' (plaintiffs) case in each of these appeals is essentially that the suit properties which are now described by the promulgated survey numbers are the same properties described under Matriz Nos.5732, 5737, 5739 and 5755 in the Gift Deeds dated 10.07.1969 and 25.11.1971 upon which the appellants heavily rely.

**15.** The above question is essentially a question that will have to be decided based on the evidence led by the parties. Both parties have led evidence in this matter. Even a Surveyor was examined in this matter. The two Courts have appreciated and evaluated the evidence on this factual aspect and concurrently held that the appellants/plaintiffs failed to prove that the properties described under Matriz Numbers in the two Gift

Deeds correspond to the suit properties now described in the promulgated survey numbers. These are essentially findings of fact concurrently recorded by the two Courts. Therefore, unless perversity is demonstrated, no questions of law would arise.

**16.** The record does not support the contention that the document or the evidence has been misread or that the surveyor's evidence was not considered. Both Courts have considered the evidence led by both parties and recorded concurrent findings of fact. In such a situation, no question of any perversity arises to give rise to any substantial question of law. Perversity would arise if material evidence were not to be considered at all or findings were to be based on no evidence or, in any case, contrary to the weight of the evidence on record. Upon examination of the record, no case of such a degree has been made out by the appellants. Besides, this is also not a case of misreading any document or documentary evidence. Instead, the two Courts have evaluated and appreciated both documentary and oral evidence and arrived at concurrent findings of fact. Therefore, no case is made to grant any relief in the admitted appeals, and no case is made to admit the unadmitted appeals.

**17.** Yet another strong reason for dismissing the admitted appeals and not admitting the unadmitted appeals is the dismissal of identically placed Second Appeal No.89/2015, 32/2016, 106/2016 and 56/2018 by reasoned orders. The subject matter of the said appeals was almost identical to the subject matter of the present appeals (except that the suit properties and the Matriz Numbers to which they were alleged to correspond were different). However, the present appellants, who were also the appellants in the said Second Appeals, had relied entirely on the Gift Deeds dated 10.07.1969 and 25.11.1971 to contend that the suit properties corresponded to the Matriz Numbers described in the said Gift Deeds. Accordingly, the orders dismissing the said four Second Appeals would have to be followed. Based upon the same, these Second Appeals will have to be dismissed by adopting the reasoning recorded in the four orders dismissing the said four Second Appeals. Admittedly, the appellants never challenged these orders before the Hon'ble Supreme Court; therefore, such orders have attained finality. Nevertheless, no good reason was pointed out to deviate from the view taken in all such orders, assuming that such deviation by a coordinate bench is proper.

**18.** For example, in the order dated 21.10.2016 in Second Appeal No.32/2016, learned Single Judge of this Court (F.M. Reis, J.) in paragraphs 4 & 5 observed as follows :

*"4. I have considered the submissions of the learned Counsel and I have gone through the records. The suit filed by the appellants is for declaration. The burden is, therefore, on the appellants to establish whether the subject property bearing Survey No.185/24 is included in the Gift Deed relied upon by the appellants. Both the Courts below, upon appreciating the evidence on record, have concurrently come to the conclusion that the appellants have failed to establish their claim over the subject property. Apart from that, from the perusal of the survey records in respect of Survey No.185/24, it cannot be disputed that the subject property stands in the name of the respondent. That apart, the perusal of the Gift Deed inter alia discloses that 2/3rd of the property "Anvanllem" was gifted in favour of appellant No.1 herein. PW.2 who is the surveyor examined by the appellants has not identified 2/3rd of the suit property from 1/3rd which was not gifted to the appellant. The learned Lower Appellate Court whilst examining the appeal preferred by the appellants has also taken note of the inconsistency of PW.2 recorded in his cross-examination. Both the Courts below have, upon appreciating the evidence on record, come to the conclusion that the appellants have failed to establish their claim over the subject property bearing Survey No.185/24 which is admeasuing 175 sq.metres. There is no material on record produced by the appellants to disclose that the said property was included in the said gift deed. The evidence brought on record does not disclose that the subject property survey No.185/24 is included in the property gifted to the appellants. Once*

> *2/3rd of the property has not been clearly identified by PW.2, the question of claiming any declaration on the basis of such evidence in favour of the appellants would not arise at all. Both the Courts below have rightly come to the conclusion that the appellants have failed to establish their claim over the subject property. Merely because the respondent has not established their case, would not mean that the appellants would be entitled for a declaration. Apart from that, in a suit for declaration simplicitor, a plaintiff would not be entitled for such declaration under Section 34 of the Specific Relief Act, without claiming any further relief in accordance with law. No consequential relief has been sought by the appellants.*
>
> *5. In such circumstances, I find no merit in the above appeal, which stands accordingly rejected."*

**19.** Similarly, in the order dated 19.01.2017 dismissing Second Appeal No.89/2015, the learned Single Judge of this Court (F.M. Reis, J.) at paras 6,7,8 & 9 observed as follows:

> *"6. Upon perusal of the records, I find that the learned Trial Judge based on the pleadings of the parties has framed five issues. While deciding the first issue, the learned Judge noted that the case of the Appellants is that the property surveyed under no. 179/10 corresponds to the property inscribed under Matriz nos. 5732, 5737 and 5755. The learned Judge also noted that thereafter the case was changed by amending the plaint and claimed*

*that the property surveyed under no. 179/10 of Village of Cuncolim, corresponds only to the property inscribed in the Matriz under no. 5739. The learned Judge also noted the inconsistency in the evidence of Pw.1 in the cross examination with regard to the identity of the subject property. The learned Judge also appreciated the evidence of such surveyor and found that he was not reliable considering the inconsistent statement in the cross examination. The learned Judge also considered the Gift Deed at exhibit 29 to note the Matriz numbers mentioned therein. Upon appreciating the material on record, the learned Judge noted that the Appellants/Plaintiffs have miserably failed to establish their claim and rebut the presumption under Section 105 of the Land Revenue Code and consequently decided the issue nos. 1 and 2 against the Appellants. The learned Judge also found that the suit was bad for not seeking a consequential relief considering the material on record.*

*7. In the Appeal preferred before the Lower Appellate Court by the Appellants, the learned District Judge whilst disposing of the Appeal by Judgment dated 06.08.2014, has framed two points for determination. Whilst examining whether the Appellants have established their claim that the suit property was in possession of the Appellants, the learned Judge after re-appreciating the material on record has noted that the burden of proving the ownership was on the Appellants herein being the Plaintiffs. The learned Judge found that the presumption in favour of the Respondents has remained unrebutted as the oral* *evidence adduced by the Appellants was not satisfactory.*

*8. On going through the findings arrived at by the Courts below, it is evidence that the Appellants have failed to establish their case over the property surveyed under no. 179/10. There is no cogent evidence on record to establish that the said survey number corresponds to matriz no. 5739 as claimed by the Appellants. The evidence of Pw.2 has been concurrently discarded by the Courts below based on inconsistent replies in the cross examination. Pw.1 has also not categorically given the exact identity of the suit property. These concurrent findings of facts arrived at by the Courts below cannot be re-appreciated by this Court in a Second Appeal. There is no perversity in the findings which would call for interference of this Court in the above Appeal as there is a presumption under Section 105 of the Land Revenue Code in favour of the Respondents herein.*

*9. In such circumstances, there are no substantial questions of law for consideration in the present Appeal. The Appeal stands accordingly rejected."*

**20.** To the same effect are the observations in the order dated 07.07.2017 in Second Appeal No.106/2016 delivered by the learned Single Judge of this Court (F.M. Reis, J.). Paragraphs 2 & 3 of this order read as follows:

*"2. On perusal of the Judgment of the learned Trial Judge, I find that the learned Judge has*

> *rightly appreciated the evidence on record to come to the conclusion that the appellants have failed to establish their claim that the suit property claimed by the appellants is included in the property inscribed in the Matriz record as stated therein. The said findings of fact cannot be reappreciated by this Court in a second appeal. The Appellate Court, whilst dismissing the appeal filed by the Appellants, cannot re-appreciate the concurrent findings of fact, unless perversity in such findings is shown by the appellants. On perusal of the substantial questions of law as proposed, I find that they essentially entail reappreciation of the evidence on record which is not permissible in a second appeal.*
>
> *3. In the Judgment dated 21st October 2016 passed in Second Appeal No.32 of 2016, filed by the appellants on the same grounds against some other parties, this Court had dismissed such appeal. For the reasons stated therein, I find that there are no substantial questions of law for consideration in the present appeal. The appeal stands, accordingly, rejected."*

**21.** Second Appeal No.56/2018 was disposed of by another learned Single Judge of this Court (Prithviraj K. Chavan, J.) by order dated 11.07.2019. The relevant observations in paragraphs 7,8,9 & 10 read as follows:

> *"7. I have considered the submissions of the learned Counsel and have gone through the records.*

*8. The suit filed by the appellants is for declaration, burden, is, therefore, on the appellants to establish whether the subject property bearing survey no.179/7 is included in the gift deed relied upon by the appellants. Both the Courts below, upon appreciation of evidence on record, have concurrently come to the conclusion that appellants have failed to establish their claim over the suit property. Apart from that, from the perusal of the survey record in respect of survey no.179/7, it cannot be disputed that property stands in the name of the respondents. That apart, perusal of the gift deed inter alia discloses that 2/3rd of the property known as "Anvanllem" was gifted in favour of the appellant no.1. PW2 Vaikunth Keshav Kamat, who is a surveyor has identified 2/3rd of the suit property from 1/3rd which was not gifted to the appellants. The Lower Appellate Court, while examining the appeal preferred by the appellants has also taken note of the inconsistency in the evidence of PW2 recorded in his cross examination. Both the Courts below have upon appreciation of the evidence on record, come to the conclusion that appellants have failed to establish their claim over the suit property bearing survey no.179/7. There is no material on record produced by the appellants to disclose that the suit property was included in the gift deed. Once 2/3rd of the property has not been clearly identified by PW2, the question of claiming any declaration on the basis of such evidence in favour of the appellants does not arise. Both the trial Court as well as the Lower Appellate Court have rightly concluded that the appellants have failed to*

> *establish their claim over the subject property. Merely because the respondents have failed to establish their case would not mean that the appellants would be entitled for declaration.*
>
> *9. As already stated above, it is a suit for declaration simpliciter wherein plaintiffs would not be entitled for the same under Section 34 of the Specific Relief Act without claiming any further relief in accordance with law. No consequential reliefs have been sought by the appellants.*
>
> *10. In such circumstances, I find no merits in the above appeal which accordingly stands dismissed."*

**22.** As noted above, all the above four speaking orders have attained finality. Based on the reasoning therein and the independent reasoning reflected in the earlier paragraphs of this order, these appeals will have to be dismissed. Accordingly, the substantial questions of law framed in Second Appeal No.73/2108 and 90/2017 will have to be answered against the appellants. Mr Ramaiya and Mr Halarnkar are justified in contending that the questions framed ex-parte do not constitute substantial questions of law. Even after evaluation of the evidence, no case of perversity or misreading of the documentary evidence is made out. All these are good and weighty reasons to dismiss all these appeals.

**23.** For all the above reasons, all these appeals are dismissed. However, there shall be no order for costs.

**24.** Miscellaneous applications, if any, do not survive the dismissal of all these appeals and are accordingly disposed of.

**M. S. SONAK, J.**

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2023.01.16 10:36:14 +05'30'