

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA**

**SECOND APPEAL NO.56 OF 2023**

SAHARA MUSLIM WELFARE  
EDUCATION SOCIETY OF FATORDA  
THR PRESIDENT MURAD ABDUL  
LATIF MULLA AND ANR ..... Appellants.

*Versus*

COMMUNIDADE OF DAVORLIM THR.  
ATTORNEY LEONCIO J RAIKAR ... Respondents.

Mr. Rohit Bras De Sa with Mr Prataprao Mahadev Naik, Advocates  
for the Appellants.

**CORAM: VALMIKI SA MENEZES, J.**

**DATED: 19<sup>th</sup> October, 2023**

**ORAL ORDER**

1. This is a second appeal at the behest of the unsuccessful Plaintiffs, who had filed a suit claiming adverse possession and a prescriptive title against the Defendants.

2. The substantial questions of law proposed by the Appellants, are as under :

A) Whether to prove Prescriptive Possession under Articles 528 to 529 of the Portuguese Civil Code, 1867 that the Possession Should be with title?

B) Whether the Amendment of the issue at the time of Judgment would require that the parties be given an opportunity to produce evidence to discharge the onus of proof cast upon the Plaintiff?

3. It is the Appellants/original Plaintiffs' claim in the plaint that they were in possession and enjoyment of the suit property for 35 years prior to the filing of the suit. However, there appears to be no pleading in the plaint as to the starting point of their possession and the facts necessary to show that their possession was open and adverse to the title of the Defendants so as to claim title of prescription.

4. The Trial Court, while dismissing the suit, has re-framed the issue and now the issue framed by it was to the effect as to whether the Plaintiffs prove that they have acquired the suit property by prescription.

It is the submission of the learned Advocate for the Appellants that re-framing of the issue, without giving the Plaintiffs an opportunity to lead evidence on the re-framed issue, has caused the Plaintiffs prejudice.

5. The fact of the matter is that the Plaintiffs were well aware when they instituted the suit and that there was requirement from them to prove their title on adverse possession, which according to them, has

ripened into prescription. In other words, they had to prove the starting point of adverse possession and the manner in which they claimed to be in adverse possession. I see no prejudice is caused to the Plaintiffs by re-framing this issue in the manner that the Trial Court did. In fact, the Trial Court appears to have correctly framed the issue and the Plaintiffs ought to have been aware that the real issue/controversy in the suit was the factum of adverse possession claimed by them. There are concurrent findings of fact in the judgments of the Courts below, both, on the absence of specific pleadings and the proof of the date on which adverse possession of the Plaintiffs commenced, as well as on the absence of proof on facts of the possession of the Plaintiffs being adverse to the title of the Defendants.

6. Considering that the Courts below have come to concurrent findings of fact on the issues, the two substantial questions of law proposed for the admission of this second appeal do not arise.

7. Consequently, this second appeal is dismissed. There shall be no costs.

**VALMIKI SA MENEZES, J.**

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