

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**SECOND APPEAL NO.18/2019
WITH
CIVIL APPLICATION NO.45/2019**

**PRADEEP GOPAL PRABHU
DESSAI AND ANR.**

...APPELLANTS

Versus

**RADHA VIRENDRA PAI
KHOT AND 3 ORS.**

... RESPONDENTS

Mr A. D. Bhobe with Ms A. Fernandes, Advocates for the Appellants.
Mr P. Talaulikar, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 2nd MAY 2024

P.C.:

1. Heard Ms A. Fernandes for the appellants/applicants and Mr P. Talaulikar for the respondents.
2. This Second Appeal No.18/2019 was instituted against the concurrent judgments and decrees made by the trial court and the first appellate court ordering the appellants to deliver possession of the suit property to the respondents and for an inquiry into the quantum of mesne profits payable by the appellants to the respondents.

3. Today, Ms Fernandes, on instructions, files a written application of which a copy is given to Mr Talaulikar, stating that the appellants/applicants hereby deliver possession of the suit property to the respondents without prejudice to their rights to contest the inquiry on mesne profits. The application requests that the Second Appeal be disposed of by reserving the right to contest the inquiry on mesne profits.

4. Mr Talaulikar has no objection to the prayers made but he submits that this Court should clarify that the impugned judgments and decrees made by the trial court and the first appellate court have not been interfered with by this Court.

5. Accordingly, by clarifying that this Court has not interfered with the concurrent judgments and decrees made by the trial court and the first appellate court and that the appellants/applicants would be entitled to contest the inquiry on mesne profits and raise all permissible defences as may be available, Second Appeal No.18/2019 is disposed of.

6. The appellants/applicants state that the possession of the open property and the shed therein is now handed over to the respondents and shall now be in the possession of the respondents. This position is also accepted by Mr Talaulikar on behalf of the respondents.

7. By placing the written application filed by the appellants on record after marking the same as 'X' for purpose of identification,

Second Appeal No.18/2019 is hereby disposed of in the above terms.

8. At the request of Ms Fernandes, presence of the first appellant Pradip G. Prabhu Dessai, who has filed an affidavit in support of the misc. civil application marked as 'X' is also noted.

9. Pending Civil Application No.45/2019 does not survive the disposal of the main Second Appeal and the same is also disposed of.

10. Mr Talaulikar, on instructions from the respondents now says that the amounts deposited by the appellants/applicants in this Court may now be paid to the Goa State Legal Services Authority. Although this offer is gracious, the interest of justice would require that this amount is now transferred to the trial court where the inquiry on mesne profits will commence. The Registry to do the needful. This amount will now abide by the orders that the trial court will make in its inquiry on mesne profits.

M. S. SONAK, J.

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