

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****SECOND APPEAL NO. 2 OF 2020**

1. Shri Anand V. Karekar, 69 years of age, Son of V. Karekar, r/o H. No. 196/5, Feira Alta, Mapusa, Bardez - Goa.
2. Shri Sandeep V. Karekar, (since deceased)
3. Mrs. Ankita A. Karekar, 59 years of age, Wife of Anand Karekar, r/o H. No. 196/5, Feira Alta, Mapusa, Bardez - Goa.
4. Mr. Suresh V. Karekar, 67 years of age, r/o H. No. 196/5, Feira Alta, Mapusa, Bardez - Goa.
5. Mrs. Sunita S. Karekar, 60 years of age, Wife of Suresh V. Karekar, r/o H. No. 196/5. Feira Alta, Mapusa, Bardez - Goa.

... APPELLANTS

VERSUS

1. Shri Vasanali Isani, Major of age, r/o H. No. not known, Altinho, Mapusa, Bardez - Goa.
- 1(a) Mrs. Jarakhanu Vassanli Isani, Major of age, Wife of Vasanali Isani r/o H. No. not known, Altinho, Mapusa, Bardez - Goa.
2. Mr. Teofilo Barretto (since deceased)
- 2(a) Regina Barretto, Major of age, r/o Gaunsavaddo, Mapusa, Bardez - Goa.

3. Mrs. Hermina Barretto, Since Deceased and represented By legal heir Respondent No. 2(a).
4. Mrs. Maria Agatha D'Souza, Major of age, Wife of Michael D'Souza,
5. Mr. Michael D'Souza, Major of age, Both r/o H. No. 666, Block No. 6, Room No. 7, Gaines Road, Jacob Circle, Bombay.
6. Mrs. Surekha Mohan Revankar, Major of age, Wife of Mohan Revankar, r/o Near Ram Mandir, Bhatlem, Panaji - Goa.
7. Mr. Mohan Revankar, Major of age, r/o near Ram Mandir, Bhatlem, Panaji - Goa.
8. Mrs. Nilangi Umesh Mashelkar, Major of age, Wife of late Umesh Mashelkar, r/o Vasumati Niwasm Sonarpeth, Near Appy Ice Cream, Bicholim - Goa.
9. Mrs. Seema Gurudas Raikar, Major of age, wife of Gurudas Raikar, r/o Kasturi Niwas, H. No. 444, Bordem, Margao - Goa.
10. Mr. Gurudas Raikar, Major of age, r/o Kasturi Niwas, H. No. 444, Bordem, Margao - Goa.
11. Mrs. Roopa Rudraji Tangsali, Major of age, w/o Rudraji Tangsali, r/o Seetayee Niwas, Dongriwaddo, Assonora, Bardez - Goa.
12. Mr. Rudraji Tangsali, Major of age, r/o Seetayee Niwas, Dongriwaddo, Assonora, Bardez - Goa.
13. Mrs. Nisha Naresh Nasnodkar, Major of age, Wife of Naresh

Nasnodkar, r/o Datta Niwas, Near Peddem Sports Complex, Peddem, Mapusa - Goa.

14. Mr. Naresh D. Nasnodkar, Major of age, r/o Datta Niwas, Near Peddem Sports Complex, Pedem, Mapusa - Goa.
15. Mrs. Pratima Pratap Pednekar, Major of age, Wife of Pratap Pednekar, r/o Madhuban Apartment, Ground floor, Shetye Vaddo, Duler, Mapusa - Goa.
16. Mr. Pratap Pednekar, Major of age, r/o Madhuban Apartment, Ground floor, Shetye Vaddo, Duler, Mapusa - Goa.

... RESPONDENTS

Mr. John Abreu Lobo, Advocate for the Appellants.

Mr. Shivan Desai with Ms. Vinita Palyekar and Ms. Tahira Menezes, Advocates for Respondent Nos. 1 and 1(a).

Mr. Shankar Phadte, Advocate for Respondent Nos. 8, 9, 10, 15 and 16.

CORAM: BHARATI DANGRE, J.

DATED: 11th JULY 2025

ORAL JUDGMENT:

1. On 23.09.2022, the Appeal was 'Admitted' on the following substantial questions of law:-

(I) Whether in view of the fact that, what was in dispute in the suit was the identity of the suit property and the same would be established by examination of an expert witness, the learned Courts below were duty bound to appoint a court commissioner for the purpose of assisting itself to reach the conclusion to resolve the

question of identity of suit property and whether the failure to do so vitiates the impugned judgement and decrees.

(II) Whether the Appellate Court without analyzing and/or re-appreciating the evidence, was right in dismissing the Regular Civil Appeal No.124/2015 merely by observing that the Trial Court had rightly analyzed the case/documents, thereby amounting to denial of a valuable statutory right of the Appellants.

2. I have heard the learned Counsel Mr. Lobo for the Appellants, Mr. Shivan Desai representing Respondent Nos. 1 and 1(a) and Mr. Shankar Phadte for Respondent Nos. 8, 9, 10, 15 and 16.

3. With the able assistance of the respective Counsel, I have perused the judgment of the Civil Judge Junior Division at Mapusa in Regular Civil Suit No. 249/2012 as well as the findings recorded by the District Judge, Mapusa in Regular Civil Appeal No. 124/2015, both rendering concurrent finding that the Plaintiffs have failed to prove that they along with the heirs of Venkatesh Manguesh Karekar are the lawful owners of the suit property and the sale deed dated 18.05.2006 is null, void and *non est*.

4. The background facts reveal that the Plaintiffs filed a suit for a declaration that they are the owners of the suit property bearing

Chalta No. 1 of P.T. Sheet No. 126 of City Survey Mapusa. A declaration was also sought that the sale deed dated 18.05.2006, by which, the Defendants claimed title to the suit property, be declared as null and void, with a relief being sought for permanent injunction against Respondent Nos. 1 and 1(a).

5. The claim in the suit revolve around a property with the description mentioned in paragraph 1 of the plaint, along with the boundaries set out therein. The Plaintiffs pleaded that the suit property originally belonged to their late father, Venkatesh M. Karekar alias Venctexa Manguexa Caroicar and the Plaintiffs, being his legal heirs, are the co-owners in lawful possession of the suit property. According to the Plaintiffs, Venkatesh M. Karekar had purchased the suit property from its original owners, Roberto Rebelo son of Diogo Joao Rebelo and his wife Maria Amelia de Souza e Rebelo vide sale deed dated 25.08.1969 and this property was shown under old Cadastral No. 2205 of Mapusa and this was asserted by the Plaintiffs, in the wake of the certificate issued by the Directorate of Settlement and Land Records dated 31.10.2008, as in terms of the old cadastral survey plan, the suit property was shown as admeasuring 4,219 square metres, identified by the boundaries on its southern side in form of old Cadastral Survey No. 2204 being known as 'Bhatlem' or 'Batvlem' or 3rd part of

‘Batulem’ or ‘Rumbdachem Galoum’ surveyed under Chalta No. 28 (part) of P.T. Sheet No. 126 of Mapusa city. The Plaintiffs claim that both properties were found recorded under No. 60 of Book Tombo 2nd B Volume No. 1 registered in the name of Diogo Joao Rebelo in the Book Tombo 2nd B Volume 1 of Comunidade of Mapusa.

6. It is with this background, when the Defendants carried on an excavation of about half metre in depth of the northern edge of the suit property and was in the process of laying rubble packing to start construction of the compound wall, with the construction material staked on the suit property, since it appeared that the Defendants were interfering with the suit property, the cause of action accrued to the Plaintiffs. Further, it accrued on 11.04.2012 when the Plaintiffs obtained knowledge of the sale deed and subsequently on 15.10.2012, 30.10.2012 and then on 02.11.2012 with the cause being in continuance.

7. During the pendency of the suit, the plaint came to be amended raising a challenge to the sale deed dated 18.05.2006 by pleading that the said document was sham and the Defendants do not have any proprietary or possessory right to the suit property as the possession of the suit property was with the Plaintiffs and

continued with them and therefore, the sale deed could not have been executed by the Defendants without the consent of the Plaintiffs' predecessors and therefore, the same is hit by doctrine of *lis pendens*.

8. The plaint made serious attempts to establish the identity of the property with its boundaries being identified and by making an attempt to correspond it to the sale deed dated 25.08.1969, which refers to the old Cadastral Survey No. 2205.

The Plaintiffs made serious attempts to establish the identity of the property, and this formed the basis of a declaration sought for declaring the Plaintiffs to be lawful owners of the suit property and permanently restraining the Defendants, their agents, servants and labourers from interfering with the said property in whatsoever manner along with all ancillary reliefs.

9. The Defendant, Vasanali Isani filed the written statement, denying the pleadings in the plaint by categorically stating that the litigation pertaining to the suit property in the proceedings is being litigated in the second round, as the earlier round was over twenty years back.

The background was specifically stated by the Defendants when one Kamlavati Nasnodkar had filed a Civil Suit in the Court

of Mapusa in the year 1992 against Teofilo Barreto and others claiming to be the owners of the suit property, as she claimed that the property was purchased by her husband on 09.10.1940. The Defendants in the said suit contested the claim raised by Kamlavati Nasnodkar by stating that the sale deed that was produced does not belong to the said property and the documents which were produced by Teofilo Barreto are also relied upon by the Defendants while contesting the suit. The said suit was dismissed on 04.04.2005, against which, an Appeal was filed by Kamlavati Nasnodkar, which was also dismissed, holding that Teofilo Barreto was the owner of the suit property and the Appeal against this was preferred before the High Court, which was also dismissed in 2011. The Defendants, therefore, pleaded that the house of the father-in-law of Kamlavati Nasnodkar and the ancestral house of the Plaintiffs is opposite to each other, along with the residential house of the Defendants.

10. The Defendants categorically pleaded that the title documents produced by the Plaintiffs are not of the suit property and rather, they have no right of whatsoever nature over the suit property. The description of the suit property vis-à-vis the city survey records was not denied, but it is specifically pleaded by the Defendants that the boundary towards the east is wrongly given,

and on the east, the property, which belonged to Pedro Rebelo, Diogo Rebelo and others. It was specifically pleaded by the Defendants that the suit property described in the Land Registration office under No. 5172 of Book B-14 New along with the other properties and the suit property is known as 'ARADDICHEM BATTA' or 'COLPACHEM BATTA' or 'BHATULEM' and it is inscribed under No. 2969 of Folio 42 of Book G-5 and it is shown in the Matriz Book of Record under Nos. 1182 and 1398 of the second circumscription. The boundaries of the suit property originally were also given in the written statement with a specific pleading that the suit property is surveyed under old survey records, which is called as a cadastral survey under Cadastral No. 2205.

11. It is in the wake of the rival pleadings, the Civil Judge Junior Division settled the issues which cast a burden on the Plaintiffs to prove that they along with their predecessors, are the lawful owners of the suit property. In a detailed discussion founded on facts, since the Plaintiffs had relied upon the sale deed dated 25.08.1969 in favour of VencTexa Manguexa Caroicar, executed between Roberto Rebelo, Landlord, son of Diogo Joao Rebelo and his wife Maria Amelia de Souza e Rebelo and the predecessor of the Plaintiffs, VencTexa Manguexa Caroicar with a declaration that

the Vendors were absolutely seized and possessed of two fractions of the following properties:-

(a) One-third of the hilly plot named 'ARADICHEMBATTA' situated in ward Gaunsavado of Mapusa within the Municipal area of Mapusa, Bardez Taluka, Sub-District of Bardez and District of Goa not described in the Land Registry of Bardez and registered in the Revenue office under No. 1399 of the second Division of Mapusa, bounded on the east by the plot 'ARADICHEMBATTA' of Joao Francisco Vas and Antonio Jeronimo Rebelo on the west by the cashew grove of Mapusa Community and at present by a road, on the north 'ARADICHEMBATTA' of Veradiana de Souza and others and on the south by the plot 'ARADICHEMBATTA' of Nicolau Antonio Caetano Rebelo and Aleixo Vivente de Braganza.

(b) One-third of the property names 'BHATVLEM' also situated at Gaunsavado, Mapusa with the Municipal area of Mapusa Municipality, Bardez Taluka, Sub-District of Bardez and District of Goa, not described in the Land Registry of Bardez and not registered in the Revenue Office of Bardez, bounded on the east by the Municipal road, on the west by Sebastiao Rebelo and Diogo Pedrino Rebelo, on the north by Damiao Baptista Lobo and on the south by Antonio Caetano Rebelo.

12. The Matriz under which the property was registered was set out in the indenture as Matriz No. 1399, but surprisingly, in both

the proceedings, the Plaintiffs never produced the said Matriz nor did they examine any Surveyor to establish the corresponding entries in the preceding cadastral survey and the subsequent survey records as it was necessary for the Plaintiffs to establish the continuity. The Plaintiffs, all the while, claimed that their late father had purchased the property bearing Cadastral Survey No. 2204 vide sale deed dated 18.04.1970, but the Trial Judge, upon perusing the sale deed at Exhibit-79, recorded that the property sold therein is not identified by its cadastral survey numbers. Recording that the Plaintiffs have not produced any evidence to show that Maria Amelia de Souza e Rebelo and Ana Maria Pereira are one and the same person and that there was no evidence to show that Diago Joao Rebelo and Diago Pedrino Rebelo are also one and the same person, the Trial Judge proceeded to examine the foundation of the case of the Plaintiffs in the wake of the deposition of Plaintiff No. 1 (PW-1) Anand Karekar.

13. By taking a clue from the deposition of Plaintiff No. 1, the Court recorded thus:

“35. Anand Karekar claims that on the North of the suit property lies the property bearing chalta no. 2 of PTS 126 and the property of Liberata D'Souza. A bare perusal of cadastral survey plan of cadastral survey no. 2205 (exhibit 68 colly) and the cadastral survey plan (exhibit 81), one can gather that Anand Karekar

is referring to cadastral survey no. 2206. The Registo de Agrimensor (exhibit 94) reveals that cadastral survey no. 2206 belongs to Liberata De Souza Pinto and Jose Maria Pinto. The plaintiffs have not pleaded any linkage between Liberata De Souza Pinto (and her husband Jose Maria Pinto) with the said Verediana D'Souza, whose name appears in the Sale Deed dated 25.08.1969 (exhibit 67). In other words, the plaintiffs have failed to establish that this property bearing cadastral survey no. 2206 belongs to the said Verediana D'Souza.

36. Upon perusing the new survey plan (exhibit 66), produced by the plaintiffs, I can gather that the property bearing cadastral survey no. 2206 corresponds to property bearing chalta no. 2 of PTS 126 (part). This can be confirmed from the certificate issued by Directorate of Settlement and Land Records, Panaji (exhibit 113). The plaintiffs have produced at exhibit 80 colly, the Form D of various surrounding properties. I have observed that very conveniently, the plaintiffs have chosen not to produce Form D of chalta no. 2 of PTS 126. Therefore, here again, the plaintiffs have failed to tally the property bearing chalta no. 2 of PTS 126 with the property of Verediana D'Souza, whose name appears in the Sale Deed dated 25.08.1969 (exhibit 67).”

- 14.** Recording further that the Plaintiffs had failed to satisfy the Court that the properties at eastern, northern and southern

boundaries purchased by them at Exhibit-67 correspond to the eastern, northern and southern boundaries bearing Cadastral Survey No. 2205, it was held that the Plaintiffs have failed to rebut the presumption available to the contesting Defendants under Section 105 of the Land Revenue Code and in absence of any proof being tendered by the Plaintiffs to establish that they are lawful owners of the suit property bearing Chalta No. 1 of P.T. Sheet No. 126 of Mapusa city, the first issue was answered in the negative.

15. As far as the second issue as to whether the Plaintiffs were successful in proving that the sale deed dated 18.05.2006 is null and void and non est in the eyes of law, the Trial Judge recorded that since the Plaintiffs have failed to rebut the presumption available to the Defendants under Section 105 of the Land Revenue Code, they do not have any locus to challenge the sale deed dated 18.05.2006 (Exhibit-135).

16. It is in the light of the aforesaid findings, the suit came to be dismissed by the Civil Judge Junior Division with costs.

17. An Appeal came to be preferred before the District Judge, the finding by the Trial Court was confirmed as the Appellate Court also noted discrepancies in the evidence of the Plaintiffs

with specific reference to the cross examination of PW-1, and in particular, by appreciating the response of PW-1 to the question that the boundaries of the property claimed in the suit did not tally with the boundaries of the property, which is the subject matter of the sale deed dated 25.08.1969 at Exhibit-67, PW-1 had responded by stating that the sale deed at Exhibit-67 was executed, the property claimed in the suit did not have any boundaries. Further, in the cross-examination, PW-1 had admitted that from Exhibit-89, it could be gathered that there were residential houses in the property, whereas in the sale deed at Exhibit-67, there is no reference to any house. Further, he has admitted that the sale deed at Exhibit-67 did not mention the area of the property, the cadastral survey number of the property and the inscription and description number of the property purchased, and particularly, when asked about the same, he has deposed that he had no idea about the same. The Appellate Court therefore, once again, after appreciating the evidence brought on record and recorded by the Plaintiffs and the cross examination, confirmed the finding recorded by the Trial Court that the Plaintiffs had failed to satisfy the Court that the eastern, northern and southern boundaries of the property purchased vide sale deed dated 25.08.1969 at Exhibit-67 correspond to the eastern, northern and southern boundaries of the property bearing Cadastral No. 2205. It is in the

light of this clear-cut finding that the Appeal was also dismissed by confirming the findings rendered by the learned Trial Judge.

18. On hearing the learned Counsel, Mr. Lobo for the Appellants, he is also unable to establish the identity of the property, for which the declaration was sought in the suit. Since the Plaintiffs have failed to prove that the suit property was the same which was shown under cadastral survey, merely by relying upon the certificate issued by the Directorate of Settlement of Land Records and that too at a much later stage i.e. on 31.10.2008, the Plaintiffs failed to discharge the burden establishing that they are the lawful owners of the suit property.

19. Since the Plaintiffs had failed to establish the identity of the area, the boundaries, its inscription and description so as to establish their claim and also to establish the name of the predecessors in the title, with those appearing in the old cadastral survey, both the Courts have rendered concurrent findings against them. The gross anomaly in the property described in the sale deed dated 25.08.1969 as compared with the old Cadastral Survey No. 2205 has surfaced on record and even if the properties attempted to be compared with reference to the boundaries, since it did not match with the properties mentioned in the sale deed

dated 25.08.1969, the findings rendered by two Courts below cannot be said to be perverse. It is trite position in law that the burden of proof to establish the title lies on the Plaintiffs as it is the party who asserts the existence of a particular state of things, on the basis of which he claims, must establish the necessary facts to prove the said assertion, but in absence of the Plaintiffs to establish so, the Courts below were completely justified in granting the relief resulting in dismissal of the claim of the Plaintiffs that they are the owners of the suit property. With the concurrent findings being rendered by the two Courts below in the absence of any perversity brought to my notice, I do not see any scope for interfering with the said finding, and therefore, the Second Appeal is dismissed.

Decree is directed to be drawn accordingly.

BHARATI DANGRE, J.