



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 111 OF 2004

(1) Shri Lucas Remedios, major, Panch Member of Village Panchayat of Saligao, residing at Tabravaddo, Saligao, Bardez-Goa.

(2) Mrs. Flory Sequeira e Remedios, residing at Tabravaddo, Saligao, Bardez-Goa.

... Petitioners

Versus

Miss Theresa Josephine Mathilda Remedios alias Theresa Remedios aged 65 years, daughter of late Benjamin Joseph Remedious alias Joe Remedious alias Jose Remedious, retired, residing at Molem Bhat, Tabravaddo, Saligao, Bardez-Goa.

...Respondent

Mr. Parikshit Sawant, Advocate *for the Petitioners.*

Mr. Gaurang Panandiker, Advocate *for the Respondent.*

CORAM: BHARATI H. DANGRE, J.

DATE: 17th March, 2025

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.

Regular Civil Suit No.139 of 1996 was instituted in the Court of Civil Judge, Senior Division at Mapusa praying for declaration and mandatory/permanent injunction. In the backdrop of the pleadings that

the Plaintiff's great grandmother had applied for perpetual lease as the suit property belonged to Comunidade of Saligao, the same came to be granted on 17.05.1979 and a house was constructed which was occupied.

The pleadings further reveal that the brothers and sisters of the Plaintiffs were residing out of Goa and one lady was inducted as caretaker who continued to reside in the property for last 10 years. When she vacated the house and put it under lock, one of the relatives who was desirous of securing hold of the property, unlawfully trespassed the same.

When the Plaintiff who was in Australia returned back, she approached the Panchayat as she wanted to carry out some repairs and at that time she found that the name of defendants has been recorded on the said property. By specifically pleading that the suit property was allotted to her in inventory proceedings and the Sale Deed on the basis of which the property was claimed by the defendant was illegal and null and void, the suit was filed. It also makes a reference to a cowshed being illegally constructed.

2. The suit was contested by the defendant and though the application for amendment was carried out while the evidence was in progress, no issue as regards to the two points which were sought to be included in the plaint with reference to a gift deed and as regards

construction of cowshed were never framed and the parties did not lead any evidence in that regard.

On culmination of the proceedings, the suit of the Plaintiff was decreed against the defendants in terms to prayer clause (a) to (c) which specifically read as follows:

'a) This Court be pleased to declare that the defendant has no right, title, interest in the suit property and that the name of the defendant has been erroneously entered in the occupants column of Form Nos. I and XIV in respect of the suit property and the name of the defendant be ordered to be deleted from the record of Rights/Form I and XIV in respect of the suit property.

b) The defendant be directed to remove the hay, bamboos and palm leaves kept by the defendant towards the northern side of the suit property.

c) The defendant be restrained from carrying out any construction in the suit property and from altering/changing the status quo of the suit property, more particularly towards the northern side of the suit property as well as from interfering in any manner whatsoever with the possession of the plaintiff in respect of the suit property.'

3. Being aggrieved, the original defendant preferred an appeal numbered as RCS No.17/2002 and the Appellate Court in which cross-objection was filed by the Plaintiff, specifically raising the two points which were not adverted to during the course of trial by framing any particular the issue in respect of the deed of gift and the cowshed and therefore when the matter came before the Appellate Court, the first point the Court framed was "whether it is necessary to frame these issues and prayers 'bb' and 'bbb'. My attention is invited to the observations of

the Appellate Court as regards the aforesaid point when the Court recorded thus:

“10. Point (a).

Shri Sardessai Ld. Advocate for the appellants has conceded that it is necessary to frame the issues raised in the cross-objections since they arise out of pleading of the parties. It is his contention that upon framing the issues this court will have to remand the matter back to the Trial Court since the appellants are entitled to lead evidence on these additional issues. On the other hand Shri D'Souza Ld. Advocate for the respondent has contended that both the proposed issues are required to be proved by the plaintiff and that plaintiff does not wish to lead any evidence on these issues. In that view of the matter it is his contention that the defendants are not entitled to lead any further evidence. In any case he submitted that he does not have any objection if the matter is remanded back for allowing parties to lead any further evidence on these issues and for recording findings on said issues by the Trial Court.

11. Although the defendants have conceded that it is necessary to frame issues, it is pertinent to note that an application to frame the issues raised in cross-objection was filed by the respondents at Exh.8. The appellants have vehemently contested said application. By an order dated 8th November, 2002 Ld. District Judge had dismissed said application. It is contention of Ld. Advocate D'Souza that said application was dismissed on some different grounds. It cannot be forgotten the application was for framing additional issues as are proposed in the cross-objection. It was necessary for the respondent to take or raise all the grounds that were available to the respondent at the time when the application was filed. Since said application has already been dismissed I am afraid that the issue of framing the same issues cannot be re-opened before me in the same proceedings as it is barred by principle similar to res-judicata. It has been held by the Hon'ble Supreme Court in the case Hope Plantations Ltd. V/s Taluk Land Board, Peermale and another 1999 (5) SCC 990 as under:

“The principle of res-judicata applies as between two stages in the same litigation so that if an issue has been decided at an earlier

stage against a party, it cannot be allowed to be agitated by him at a subsequent stage in the same suit or proceedings.”

In view of said settled position, this Court cannot allow framing of the proposed issues as the application for framing said issues has already been disallowed once by this Court.”

4. In the wake of the aforesaid observations, the Court arrived at the conclusion that it is not permissible to allow framing of the proposed issues as the application for framing of the issue was already rejected and the Court had declined to frame these issues.

5. In exercise of its power under appellate jurisdiction, the Appellate Court recorded that the plaintiff had succeeded in proving that she in possession of the suit property and also that the cowshed was constructed by defendant no.1 during the pendency of the suit. However, the basis for arriving at such an inference is not to be traced except on the basis of pleading as no evidence was lead on this issue. As far as the issue of gift deed is concerned, the Court had specifically recorded that no evidence has been lead to prove the same and therefore the relief claimed by the Plaintiff in that regard was declined. Conclusion of the appeal clearly record that the appeal was dismissed, however, the cross-objection was partly allowed thereby directing the defendants to demolish the cowshed and restore the land occupied by the suit cowshed to its original state and condition.

6. Learned Counsel for the appellant is extremely critical about the approach adopted by the Additional District Judge while deciding the appeal as on one hand the Court has categorically declined to frame the issues raised in the cross-objection, on the ground that since an application for framing the issues was rejected, it was recorded that it is hit by res-judicata but on the other hand while examining the issues on the basis that the pleadings to that effect are already on record and the Plaintiff has specifically stated at the outset that she is not required to lead any evidence to that effect, the Court proceeded to determine the two issues and even rendered a finding in that regard; one in favour of the Plaintiff and one against the Plaintiff.

7. Learned Counsel has focused upon the observations on the Court when both the contenders had agreed that they had no objection in the matters remanded back for allowing the parties to lead further evidence on these issues so that an opportunity can be afforded to the trial Court to record finding on the solution.

8. Learned Counsel for the Respondent (original Plaintiff) is still agreeable to such proposition since even he is aggrieved by one issue decided against him without any evidence being permitted to be led on that aspect.

9. In the wake of the understanding reached between learned Counsel for the parties, I deem it appropriate to remand the matter to

the Additional Civil Judge, Senior Division, Mapusa for determination the two issues which were first time raised before the Appellate Court. Though an amendment was allowed in the plaint since no issue was framed in that regard, they were not tried.

10. Respective Counsels are at a consensus that the pleadings in regard to the two points are already completed since an application for amendment was allowed and a written statement is also filed by defendant in that regard. Therefore, I deem it appropriate to direct the trial Court to frame the two specific issues and permit the parties to lead evidence before them. Upon the evidence being lead, the issues shall be tried and conclusion shall be drawn. It is however made clear that the Court shall not reopen the issues which are already decided vide the judgment dated 09.11.2001 and shall restrict itself only to the two issues which shall be additionally settled, in the wake of the pleadings which are already on record.

11. The additional issues which are to be framed by the Court are permitted to be tried as expeditiously as possible and in no case later than 8 months from the issues being framed.

With this direction the Second Appeal is disposed of.

BHARATI H. DANGRE, J.