



IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.16 OF 2025

1. Shri. Pundalik Narayan Kambli, Since deceased through his legal Reps:
 - a) Smt. Anjani Pundalik Kambli, Aged 74 years, housewife,
 - b) Shri. Kuldeepak Pundalik Kambli, Son of late Pundalik Kambli,
 - c) Kum.Dyandevi Pundalik Kambli, Aged 36 years, unmarried, Daughter of late Pundalik Narayan Kambli,All residents of House No. 80/5, Confrinchem Bhat, Patto- Ribander, Tiswadi, Taluka, Goa.
2. Shri. Kuldeepak Pundalik Kambli, Son of late Pundalik Narayan Kambli, Major of age, unmarried, service.
3. Shri. Sainath Deu Kambli, Son of Deu Kambli, Major of age, married, driver, All residents of House No.80/5, Confrinchem Bhat, Patto, Ribander, Tiswadi Taluka, Goa.

.... Appellants

Versus

Shri. Ulhas Naik, Son of late Sacarama Naik, Aged 80 years, married, driver, Resident of House No.78, Patto, Ribandar, Tiswadi Taluka, Goa

.... Respondent

Mr. Nicholas D'Mello, Advocate with Mr Paresh Vaigankar, Advocate for the Appellants.

Mr Sudesh Usgaonkar, Senior Advocate with Ms Marie Rosette Pereira, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 08th DECEMBER, 2025.

ORAL ORDER:

1. Registry to waive office objections and register the matter.
2. The Judgment and Decree impugned, dated 13.08.2025, has been passed by the District Court in Regular Civil Appeal No.35/2025 in exercise of its appellate jurisdiction, set aside two Orders, the first being Order dated 03.04.2023 rejecting the application for amendment filed by the Plaintiff/Respondent herein and the second being Order dated 18.06.2024 closing the evidence of the Plaintiffs. The Appellate Court, after going through the record, had by reasons justified the setting aside the both these orders; the reasoning of the Appellate Court is based upon the record and does not call for any interference.
3. As a consequence of setting aside these two Orders, the Appellate Court realizing the Suit would have to be remanded and the parties relegated to the stage of allowing the Defendants to file additional Written Statements to the amended pleadings, has done so by a specific order of remand keeping all questions open for the parties to agitate in evidence that they may lead before the trial Court, after additional Written Statement is filed by the Defendants. The Order of remand is as a direct consequence of setting aside the

aforementioned two Orders, which have been passed during the course of the trial.

4. It is argued by the learned Counsel for the Appellants that in effect, the District Court in appeal has agreed with the trial Court's finding that the Suit is without jurisdiction, since the main cause of action as pleaded in the plaint was an encroachment by the Defendants into the area claimed by the Plaintiffs under title of a Mundkar. He further submits that even the order of purchase under Section 16 of the Mundkar Act, has turned out, after evidence was led by the parties, which is an order which has not taken effect, since demarcation was complete but a formal purchase sanad was not issued. This finding was obviously rendered after denying the Plaintiffs an opportunity to amend the plaint and to lead further evidence.

5. The two points for determination set out in the impugned Judgment have been both answered in favour of the plaintiff. Even on perusal of paragraph 60 of the impugned judgment, the Appellate Court has specifically rejected the arguments of the Defendants on the question of cause of action, leaving it open to the parties to file additional Written Statements and lead evidence. All issues are therefore left open for the trial Court to decide. On perusal of the issues framed by the trial Court, which are recorded in the Judgment in paragraph 8, there does not appear to be any preliminary issue framed as to whether the trial Court has jurisdiction to hear the Suit on the

cause of action pleaded in the Plaint. The arguments raised before me on the basis that the trial Court had held that the Suit was without jurisdiction have to be rejected since no such issue was actually struck by the trial Court. For all these reasons, there is no substantial question that arises for determination, and hence, the Appeal is rejected at the threshold. No costs.

VALMIKI MENEZES, J.