Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 78 OF 2023
WITH
CIVIL APPLICATION NO. 75 OF 2024
IN
SECOND APPEAL NO. 78 OF 2023

1. Mr. Adam Abdul Jumma, Son of Abdul Jamma, Age about 55 years old, and his wife;

2. Mrs. Arzoo Adam Jumma, 52 years, Both Resident of H. No. II/692/I-Ward No Alto, Chicalim, Goa. ... Appellants

Versus

1. Mrs. Laxmi Laxman Usgaonkar, Wife of late Laxman Usgaonkar, Aged 67 years,

2. Mr. Suraj L. Usgaonkar, (since deceased) through LR's, Aged 37 years,
(Amendment has been carried out as per Order dated 12.10.23 in MCA No. 385/2023.)

2(a) Mr. Sanket S.usgaonkar, aged about 20 years, bachelor (unmarried), and

2(b) Yovga S. Usgaonkar, aged 18 years, unmarried, Both resident of Near Central Jail, Sada, Vasco da Gama.

3. Mrs. Sumita S. Usgaonkar, Aged 36 years,

4. Mr. Damodar L. Usgaonkar, Aged 36 years,

5. Mrs. Amisha D. Usgaonkar, Aged 31 years

6. Mrs. Suchana L. Usgaonkar, Aged 28 years,
All Resident of Near Central Jail Sada, Vasco da Gama – Goa.

7. Mrs. Victoria Costa Jacques, (Deceased) wife of late Geraldo Jacques, Aged 61 years

8. Mr Juvency Jeremias Jacques, Aged 38 years,

9. Mrs. Melina Cynthia Jacques, Aged 36 years

10. Mr. Nixon Terence Jacques, Aged 34 years, All resident of H. No. 63, Swantantra Path, Vasco Da Gama, Goa.

11. M/s. Sushma Construction, Represented by its Manager Partner, Shri Rajesh Davne (Deceased) Son of Dhaneshwar D. Davane, Aged 37 years, R/o. H. No. 56, Green Valley, Alto Porvorim, Goa.

11(a) Mrs. Ranjeeta Rajesh Davne, aged 39 years, wife of late Rajesh Davne,

11(b) Mr. Divesh Rajesh Davne, Minor in age, son of late Rajesh Davne

11(c) Miss Shreya Rajesh Davne, Minor in age, Daughter of late Rajesh Davne (Through their Natural Guardian Mrs. Ranjeeta Rajesh Davne),
All residents of H. No. 56, Greeen Valley, Alto Porvorim, Goa.

12. Mr. Ghanshyam V. Fadte, Aged 47 years and his wife,

13. Mrs. Shama G. Fadte, Aged 40 years, Both resident of H. No. -, New Vaddem, Vasco Da Gama, Goa.

...Respondents

Mr. John A. Lobo, Advocate *for the Appellants.*

Ms. Annelise Fernandes, Advocate *for the Respondent Nos. 1, 3 to 6.*

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22nd OCTOBER 2026
PRONOUNCED ON : 3rd NOVEMBER 2026

JUDGMENT

1. The Appellants-Original Defendant Nos. 8 and 9, impugned Judgment and Decree dated 30.07.2019 passed by District Judge-2, South Goa, Margao, in Regular Civil Appeal No. 64 of 2018, whereby learned District Judge allowed Appeal filed by Respondent nos. 1 to 6 i.e. original Plaintiffs, by setting aside Judgment and Decree dated 02.04.2018 passed by Civil Judge, Junior Division at Vasco, in Regular Civil Suit No. 169/2010/D and decreed the suit for cancellation of Sale Deed dated 12.01.2010 and directed original Defendant Nos. 1 to 5 to execute Sale Deed or transfer shop no. 5 in favour of Plaintiffs and hand over vacant possession of shop no. 5 within a period of 30 days.

2. Parties are hereinafter referred as per their original status in the suit for brevity and convenience.

3. Respondent Nos. 1 to 6 are legal heirs of late Laxman Usgaonkar (hereinafter referred to as 'tenant'). They instituted Regular Civil Suit no. 169 of 2016 before Civil Judge Junior Division at Vasco, for specific

performance of the contract, cancellation of Sale Deed, injunction and damages. It was pleaded that Laxman Usgaonkar was tenant in house bearing chalta no. 4, 5, 6 and 7 of P. T. Sheet No. 118 of City Survey, Vasco Da Gama. Upon his death, the tenant's rights were devolved upon his legal heirs/Plaintiffs. The Defendant nos. 1 to 4 had entered into development and sale Agreement dated 15.03.1999 in respect of the said property with Defendant No. 5 (developer). The Defendant no. 5 requested tenant to hand over the tenanted premises and agreed to allot a newly constructed premises admeasuring 36 square metres on ground floor of the building 'Jacques House' in addition to residential flat having built up area of 80/85 square metres. Accordingly, an Agreement dated 24.03.2004 was executed in favour of tenant. The Defendant No. 5 completed construction of building, however, refused to handover possession of suit premises to Plaintiffs. Later on, he executed Sale Deed dated 12.01.2010 in favour of Defendant Nos 8 and 9 (presently Appellants) in respect of suit shop.

4. The Defendant Nos. 1 to 5 appeared in the suit. The Defendant No. 5(a) filed written statement disputing Plaintiffs' claim for specific performance of agreement. The Defendant Nos. 8 and 9, subsequent purchasers (Appellants), filed written statements contending that they have purchased property under registered Sale Deed for valuable consideration without knowledge of any agreement in favour of tenant.

5. In pursuance to pleadings of parties, Trial Court framed issues below-Exhibit 43, recorded evidence and ultimately dismissed the suit holding that Plaintiffs are not entitled for specific performance of contract dated 24.03.2004. Aggrieved Plaintiffs preferred Regular Civil Appeal No. 64/2018 before District Judge, South Goa, Margao. Learned District Judge allowed the appeal and partly decreed the suit. Hence this Second Appeal by Defendant Nos. 8 and 9/purchasers.

6. Mr. John Lobo, learned Advocate appearing for Appellants, would submit that Appellate Court committed a grave error of facts of law while reversing Judgment of Trial Court. He submits that Appellants purchased suit shop in good faith under registered Sale Deed on payment of entire consideration. They are bonafide purchasers for value without notice of any agreement entered by developer in favour of tenants. He would submit that there is nothing on record to show that developer had entered into Agreement of sale with tenant in respect of suit shop. The identity of property, which was subject matter of agreement between developer and tenants, is not established. Specific performance of so-called agreement dated 24.03.2004 is sought by filing suit in the year 2010. Hence, the suit was barred by limitation.

7. *Per Contra,* Ms. Annelise Fernandes, learned Counsel appearing for Respondents, supports impugned Judgment and Decree.

8. Having considered submissions advanced by learned Advocates appearing for respective parties and after going through evidence and pleadings on record, it can be observed that Plaintiffs have duly proved Agreement dated 24.03.2004 executed by Defendant Nos. 1 to 5/original owners and developer in favour of tenant. As per agreement tenant agreed to vacate tenanted premises in his possession on condition that developer will, upon demolition and reconstruction, allot unto the tenant a newly constructed premises on ground floor admeasuring 36 square metres more particularly described in Schedule III of Agreement. The developer agreed to pay a sum of Rs.5,000/- per month to compensate loss due to closure of tenant's business.

9. Defendant Nos. 1 to 5 have not specifically disputed existence or contents of Agreement or evidence relating thereto. Appellants-purchasers have primarily contended that they are bonafide purchasers for value. However, a perusal of written statement filed by them reveals that they have not specifically pleaded that they are bonafide purchasers for value without notice. They have merely pleaded that they have legally purchased the suit shop and paid entire sale consideration to the developer. They further pleaded that they were unaware of transaction between Plaintiffs and Defendants in respect of suit shop.

10. Section 41 of the Transfer of Property Act indicates that the burden is on the transferee to establish that the transfer was made in his favour in good faith, after taking reasonable care to ascertain that the transferor had the power to transfer the property. In such cases, transferee has to take reasonable care to ascertain that transferor was empowered to transfer the property. In present case, Appellants/Defendant Nos. 8 and 9, have not pleaded about the inquiry made by them regarding encumbrances on property or capacity of developer to transfer the property. It is also admitted in cross examination that they had neither issued any newspaper publication about their intention to purchase suit shop nor caused in depth enquiry prior to execution of Sale Deed. If Defendants failed to make the necessary inquiries or exercise due diligence before purchasing the property, they cannot be said to have acted in prudent manner. Their failure to take reasonable care would amount to negligence. Hence they cannot be treated as bonafide purchasers.

11. Section 19(b) of Specific Relief Act, provides that specific performance of the contract can be enforced against either party to the contract or any other person to the contract or any other person claiming under title arising subsequent contract, except a transferee for value, who has paid his money in good faith and without notice of original contract.

12. Essentially, Section 19(b) provides protection to bonafide purchaser in good faith for value, without notice of original contract. Thus, the onus to prove good faith is upon the purchaser.

13. In present case, Appellants have failed to discharge initial burden to plead and prove that they are bonafide purchasers for value without notice of earlier contract. First Appellate Court elaborately dealt with aforesaid aspects and recorded findings of fact that Appellants could not establish their defence of bonafide purchasers for value without notice.

14. Appellants further contend that identity of property agreed to be given to tenant, is not proved and, therefore, property purchased by them is different from property agreed to be allotted to tenant. However, aforesaid contention holds no water firstly because Trial Court on elaborate consideration of evidence on record observed in paragraph 64 that shop no. 6 is numbered as shop no. 5 after construction plan was approved by competent authority and plan annexed to Agreement at exhibit 46 and Deed of Sale Exhibit 104, shows that shop agreed to be allotted to tenant, is located at same place, which is subject matter of Deed of Sale at Exhibit 104. Pertinently, aforesaid finding of Trial Court was not challenged before District Court on behalf of Defendant nos. 8 and 9, either by filing cross

objection or otherwise. Hence, finding of Trial Court need not be interfered in this appeal.

15. Third contention raised on behalf of Appellants is that suit is barred by limitation. However, Trial Court considered the aspects of limitation and held that on completion of building in all respect, Plaintiffs approached developer for handing over possession of shop and when he refused, the suit is filed. It is matter of record that Occupancy Certificate was issued on 25.01.2013. No specific date was fixed for performance of contract, although 18 months period was broadly given to developer to complete building and put tenant in possession to perform his part of contract.

16. In this backdrop, refusal on part of developer can be considered as cause of action. Therefore, suit is filed well within limitation.

17. It is not disputed that Plaintiffs had already performed their part of contract by handing over tenanted premises to developer in terms of Agreement and, therefore, it was obligation of developer to handover agreed constructed shop to Plaintiffs and comply part of his obligation under contract.

18. This Court finds that Appellate Court has elaborately dealt with legal and factual aspects and recorded findings thereon which are

supported by reasons. The questions those have been raised for consideration before this Court, are essentially based on finding of facts and does not raise substantial questions of law.

19. In result, Second Appeal sans merit, accordingly dismissed. Applications, if any, stand disposed of.

S. G. CHAPALGAONKAR, J.

Signed by: ANDREZA PEREIRA
Designation: Senior Private Secretary
to the Hon'ble Judge
Date: 04/11/2026 12:13:06