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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 61 OF 2024

SHRI MAHADEV GAJANAN GHADI

AND ANR

... APPELLANTS

VERSUS

THE ADMINISTRATOR OF

THE COMUNIDADE OF

NORTH ZONE AND 16 ORS.

... RESPONDENTS

WITH

CROSS OBJECTION NO. 5 OF 2024

GEETABALA MANOHAR NAIK

PARULEKAR

... APPELLANTS

VERSUS

THE ADMINISTRATOR OF

COMUNIDADE OF NORTH ZONE

AND 13 ORS.

... RESPONDENTS

Mr. Sagar Dhargalkar with Ms. Sushma Vantekar, Advocates for the Appellants in First Appeal No. 61/2024 and for the Respondents in XOB No. 5/2024.

Mr. Shivdatt P. Munj, Additional Government Advocate for Respondent Nos. 1, 16 and 17 in First Appeal No. 61/2024.

Mr. S. S. Kantak, Senior Advocate with Mr. Amey Kakodkar, Ms. Neha Kholkar, Ms. Saicha Dessai and Ms. A. Godinho, Advocates for Respondent Nos. 12, 13 and 14.

Ms. Annelise Fernandes with Ms. Costa Martins, Advocates for Respondent No. 15.

CORAM:- VALMIKI MENEZES, J.

DATED :- 24TH APRIL, 2026.

ORDER

1. This First Appeal takes exception to Judgment, Order and Decree dated 10.01.2024 passed by the District Judge-1, North Goa at Mapusa in Civil Suit No. 28/2017, rejecting the Appellants' plaint. The Appellants are Plaintiffs in the suit, whilst the Respondents are Defendants and shall be referred to by the aforementioned nomenclature.

2. The main ground on which the plaint was rejected was that the suit filed by the Plaintiffs was barred by limitation. The Trial Court has examined the averments in the plaint and has opined that, based on the averments, the cause for filing of the plaint arose, for the Plaintiffs, in the year 2012, when the facts which entitled them to challenge a Decree dated 14.07.2009, passed against the Comunidade of Latambarcem, in the earlier suit instituted by Defendant No. 12 came to the knowledge of the Plaintiffs. The suit was found to be barred by the limitation period of three years prescribed under Article 59 of the Limitation Act, 1963. This First Appeal was admitted on 28.06.2024 and with the consent of all the parties, including Defendant Nos. 12 to 14, who are parties and at whose behest

the plaint was rejected, I proceed to dispose of the present First Appeal. The point that arises for my determination in the First Appeal is as follows:

(1) Whether the impugned Judgment and Decree dated 10.01.2024 is passed contrary to the provisions of Article 59 of the limitation and requires interference.

3. The main submissions advanced by the Plaintiffs, represented by learned Advocate Mr. Dhargalkar, was that the provisions of Article 59 of the Limitation Act make the Plaintiff entitled to have the Decree dated 14.07.2009 to be set aside in the suit only when the Comunidade, refuses, on its own motion, to institute such proceeding to set aside the Decree. It is further submitted that the Plaintiffs gained knowledge that the Decree was passed in the year 2009, in favour of Defendant No. 12, who was Plaintiff in Regular Civil Suit No. 21/2009, with collusion with the Attorney of Comunidade of Latambarcem, who has admitted the plea of Defendant No. 12, on which basis the Decree was passed. It was further submitted that the Plaintiffs gained knowledge of the Decree when it came to their notice in the Mutation Proceeding before the Talathi of the village; according to the Plaintiffs, the mutation entry has been made in the Survey Records of the suit property by deleting the names of the Comunidade of Latambarcem and substituting the name of Defendant No. 12 based on a

fraudulent document. That after obtaining copies of the pleadings in the suit of the year 2009 and the Judgment and Decree, which were obtained in the year 2012, the Plaintiffs approached the Managing Committee of the Comunidade, that called for the General Body Meeting to take a resolution to challenge the said Decree, which according to the Plaintiffs was obtained by fraud.

4. It was then submitted that since the Comunidade took no action, Plaintiffs wrote certain communications in the year 2012 to the Deputy Chief Minister seeking his intervention and once again called for resolution of the General Body of the Comunidade in the year 2014, when the Comunidade refused to proceed with filing of the suit despite taking a resolution. According to the learned Counsel for the Appellants, the provisions of article 59 of the Limitation Act provide that the fact which entitle the Plaintiffs to file a suit in these circumstances was the fact that the Comunidade had refused, despite the resolution, to proceed to file the suit in the year 2014. The suit having been filed in the year 2014, the cause of action was within the period of limitation under Article 59. Reliance has been placed on the following Judgments of the Hon'ble Supreme Court.

1. *Chhotanben and anr. V/s Kiritbhai Jalkrushnabhai Thakkar and ors.*¹.

2. *Salim D. Agboatwala and others V/s Shamalji Oddhavji Thakkar and Others*².

5. Learned Senior Advocate Mr. Subodh Kantak supports the impugned Judgment and Decree based on the averments made in paragraph Nos. 18 to 24 of the plaint, the cause of action clearly arose in the year 2012, when the Plaintiffs gained full knowledge of the Judgment and Decree passed in the year 2009; he further submitted that the Plaintiffs had knowledge of the pleadings in the suit, since they have obtained the plaint and Written Statement and became entitled to file the suit at that point of time itself. He further submits that 3 years from the date that these facts came to their knowledge, i.e. on 26.07.2012, the limitation commenced and the suit was required to be filed by 26.07.2015, the suit is therefore *ex facie* barred by limitation. It is further submitted that the Trial Court has considered these averments and correctly applied provisions of Article 59 of the Limitation Act, which concludes that the suit was barred by the limitation period prescribed therein.

¹ (2018) 6 Supreme Court Cases 422

² (2021) 17 Supreme Court Cases 100

6. I have perused the plaint and documents annexed thereto. In para 18 of the plaint, the Plaintiffs aver that Defendant No. 12, who was the Plaintiff in Regular Civil Suit No. 21/2009 had conspired with the Attorney of Defendant No. 2/ Comunidade of Latambarcem, and without complying with the prescribed directives or getting approvals from the Administrator of the Comunidade, consented to the passing of the Judgment and Decree dated 14.07.2009. In para 19, the Plaintiffs state that they gave their representation dated 28.12.2012 to the Deputy Chief Minister and Revenue Minister, Government of Goa, bringing to his knowledge the fact that the suit property, which belongs to the Comunidade, was allowed to be taken by Defendant No. 12 by act of fraud committed by their attorney. Further averments in para 20 and 21 of the plaint are to the effect that the Comunidade of Latambarcem, has refused to take any action in the matter despite the Plaintiffs application dated 12.12.2012 to that effect and despite its resolution passed in the meeting of 18.11.2012. The plaint then avers that the Plaintiffs subsequently approached the Deputy Collector after they received notice for land acquisition proceedings in the year 2013 and ultimately on calling for the extra ordinary General Body Meeting of the Comunidade which was held on 09.12.2014, the resolution was taken to challenge the Decree in Regular Civil Suit No. 21/2009 before the Civil Court. Due to the refusal of the

Comunidade to file civil suit, the Plaintiffs were forced to approach the Civil Court when they came across a Public Notice dated 23.01.2015, where the suit property was put up for sale.

7. On perusing the representation made by the Plaintiffs to the Deputy Chief Minister, which is dated 20.12.2012, which is relied upon and annexed to and referred to the plaint, the Plaintiffs have stated therein that they saw entries in the survey record maintained by Talathi of the village on first week of July, 2012, after which they obtained certified copies of the plaint, written statement and the Judgment and Decree in Regular Civil Suit No. 21/2009 from the Civil Court at Mapusa. According to the statement made in the said letter annexed to the plaint, the same were obtained on 26.07.2012, after which they approached the managing committee of the Comunidade and sought for a General Body Meeting. From these averments and statements made in the letter to the Deputy Chief Minister, which is annexed to and relied upon in the plaint, it is clear that the Plaintiffs were armed with all the facts required i.e. the contents of the plaint, written statement and the Judgment and the Decree in the said suit, on the basis of which they claimed that a fraudulent Decree was obtained. These facts, which if taken cumulatively would entitle the Plaintiffs, in the year 2012 itself to file a suit on the very grounds raised in the present suit, one of which the Comunidade had admitted the claim of

Respondent No. 12 in the said suit without having obtained the prior permission of the Administrator of the Comunidade, the cause of action therefore, for the purpose of reckoning the limitation under Article 59 of the Limitation Act was complete, immediately on obtaining the certified copies of the record in the Regular Civil Suit No. 21/2009 in July, 2012. In my opinion, therefore the limitation period would have to be considered/reckoned from 26.07.2012 and would end on 26.07.2015. The suit, having been filed in the year 2017, would be *ex facie* barred by limitation.

8. Learned Counsel for the Plaintiffs has argued on the basis of the Judgment of this Court *in Raghupati R. Bhandari V/s Comunidade of Bardore*³, that this Court has held that a Decree obtained before the Civil Court on the basis of an admission, at the behest of the Comunidade without obtaining prior permission of the Administrator of the Comunidade under Article 349 and 350, would be contrary to the provisions of the Code of Comunidade. He has further submitted that on this count alone, the Judgment and Decree is required to be set aside.

9. Whilst there is no quarrel with the aforementioned proposition, it has been further accepted in the said Judgment, what I am concerned with here is, whether a suit to declare that

³ (2021) SCC OnLine Bom 155

the Judgment and Decree passed in Regular Civil Suit No. 21/2009 is a product of fraud, and to cancel the said Decree, is within limitation in terms of Article 59. The plaintiffs have not chosen to challenge the Decree by any other proceeding, but by way of a suit in which limitation under Article 59 would squarely apply. The averments made in the plaint clearly demonstrate that the facts which entitled the Plaintiffs to have the Decree in Regular Civil Suit No. 21/2009 be set aside, either on the grounds of fraud or on the ground that the Decree was passed contrary to Articles 349 and 350, were to the knowledge of the Plaintiffs in the year 2012 itself. The suit, therefore, had to be filed by the Plaintiffs in the year 2015. On this count itself, the suit was barred by limitation. Consequently, I answer the point for determination in the negative.

10. Having gone through the impugned Judgment, the conclusions of the Trial Court after examining the plaint would not call for any interference. The conclusion that the suit was barred by limitation is based on the averments made in paras 18 to 24 of the plaint, and on reading documents annexed to and relied in the plaint and which are referred to in the plaint itself; if all these read in conjunction, there is no doubt that the facts which entitled the Plaintiffs to file a suit to seek the setting aside of the Decree on grounds of fraud were available to the

Plaintiffs in the year 2012. The suit was filed in the 2017, beyond the period of limitation.

11. For the aforesaid reasons, the rejection of the plaint and impugned Judgment and Decree dated 10.01.2024 does not call for any interference and the same is therefore confirmed.

In view of the dismissal of the First Appeal No. 61/2024, consideration of cross objections would not arise, and the same are rejected.

12. The Appeal stands dismissed. The Registry to draw up the Decree accordingly. No costs.

VALMIKI MENEZES, J.