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IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 36 OF 2026

SHANTADURGA DEVASTHAN & 4 ORS. ...APPELLANTS

~ VERSUS ~

NICOLAU L.S. PEREIRA & 3 ORS. ...RESPONDENTS

APPEARANCES:

for the Appellants

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

for the Respondent

Mr. C. Coutinho, Senior Advocate with Mr. Ivan Santimano

CORAM : AMIT S. JAMSANDEKAR, J.

DATED : 30th April 2026.

ORDER:

1. Heard, Mr. Usgaonkar, the Learned Senior Counsel, for the Appellants and Mr. C. Coutinho, the Learned Senior Counsel, for the Respondents.

2. By the present Second Appeal, the Appellants have challenged the Judgment and Order dated 03.06.2025 passed by the Learned District Judge, Mapusa, Goa, in Regular Civil Appeal No. 21/2022, whereby the First Appeal filed by the Appellants came to be dismissed and the Judgment and Decree dated 21.03.2022 passed by the Learned Civil Judge, Junior Division F Court at Mapusa came to be confirmed.
3. The Respondents (the original Plaintiffs) filed a suit against the Appellants (the original Defendants), *inter alia*, seeking a permanent injunction, recovery of possession, etc. The prayers sought by the Respondents in the civil suit 84/2007/D read as follows:-

(a) Grant a temporary Injunction restraining the defendants no. 1 to 5, their agents, servants, committee members, executors, assignors, legal representatives, successors and, any other person acting upon their behalf, jointly and severally from interfering/ constructing/ digging/ laying pipes/ obstructing the plaintiffs in any manner whatsoever with respect to the, suit property pending the hearing and final disposal of the present suit

(aa) For the declaration at the defendants no. 1 to 5, their agents, servants, committee members, executors, assignors, legal representatives, successors and any other person acting upon their behalf, jointly and severally have encroached into the suit

property to the extent of 108 sq. mts. and have illegally constructed therein the illegal suit structures.

(ab) For the declaration that the defendants no. 1 to 5, their agents, servants, committee members, executors, assignors, legal representatives, successors and any other person acting upon their behalf, jointly and severally have illegally constructed the said rectangular structure.

(ac) for recovery of possession of the area occupied by the said soak pit, inspection chambers shown under letter C, D, E, F, G and H, the rectangle structure as shown in the surveyors plan of the plaintiff.

(ad) For the declaration that the said agreement dated 21/11/1998 is null and void.

(b) Permanent injunction restraining the defendants no. 1 to 5, their agents, servants, committee members executors, assignors, legal representatives, successors and any other person acting upon their behalf, jointly and severally from interfering/ constructing/ digging/ laying pipes/ obstructing the plaintiffs in any manner whatsoever in the suit property.

(c) Mandatory injunction for demolition of the suit structures including the tanks/ inspection chambers shown under letter C to H in the surveyors plan, soakpits and the said newly constructed rectangular structure shown in the surveyors plan under letter A and restore the said area to its original position.

(d) Mandatory injunction for demolition of the defendants compound wall shown under letter I in the surveyors plan and also directing the defendant to leave necessary set back from the northern boundary of their property or in the alternative demolition of the structure shown under the caption building in the surveyors plan.

(e) Ad-interim ex-parte relief in terms of prayer (a)

(f) Any other relief's that this Honourable Court deems fit.

4. The Learned Civil Judge, Junior Division, Mapusa, partly decreed the suit by granting reliefs in terms of prayer clauses (b) and (c), and dismissed the relief in terms of prayer clause (ad). The said Judgment and Decree was challenged by the Appellants before the Learned District Judge in Regular Civil Appeal No. 21/2022. The Learned District Judge has accepted the findings and reasoning of the Learned Civil Judge Junior Division and has dismissed the First Appeal filed by the Appellants.

5. With this background, Mr. Usgaonkar, the Learned Senior Counsel appearing for the Appellants, submitted that the present Second Appeal gives rise to three substantial questions of law. The first one is:

(A) When the Appellate Court even after holding that in a suit for relief of recovery of possession of immovable property, the Respondents/Plaintiffs had to plead the date of dispossession, which was admittedly not pleaded nor evidence was led, whether the Appellate Court was right in recording a finding that it is not fatal and that the suit was filed within the prescribed period limitation?

6. In support of the proposed substantial question of law (A), it is submitted by Mr. Usgaonkar, that, on the basis of the statements made in the plaint, the suit is barred by the law of limitation in pursuance of Article 64 of the Limitation Act, 1963. According to the Appellant, the structure was constructed by the Appellants almost 100 years ago. He submitted that there are no clear statements made in the plaint as to when the disputed structures were constructed by the Appellants and when the Respondents learnt about the same. He further submitted that reading of the plaint as a whole clearly establishes that the Respondents have intentionally not made a clear statement in respect of the cause of action of dispossession of the Respondents from the property by the Appellant. The plaint is drafted bringing out an illusory cause of action so as to avoid making a clear statement in respect of the cause of action.

He submitted that the suit is filed beyond the prescribed period of limitation i.e. 12 years and therefore ought not to have been entertained by the Learned Civil Judge Junior Division. Mr. Coutinho, on this proposed substantial question of law submitted that the Respondents have filed the suit by making clear statements in the plaint and have pleaded the causes of action accordingly. The Respondents have also made clear statements as to when the cause of action arose. Therefore, Mr. Coutinho, submitted that no question of law arises.

7. I am not inclined to accept the submissions made on behalf of the Appellant that the suit was barred by the law of limitation and therefore a substantial question of law arises. Paragraph No. 3 of the plaint states that the Respondents and their ancestors have been in exclusive possession of the property for the last 70 years, and the Respondents have been in exclusive possession of the suit property for the last 40-50 years. Respondent Nos. 3 and 4 are children of Respondent Nos. 1 and 2. Thereafter, paragraph 4 onwards, the details of how the property was acquired by the predecessors of the Respondents and the relationships of the Respondents are stated. In paragraph 6 of the plaint, it is stated that the Respondents and their family/ancestors have been in peaceful

and exclusive possession of the said property for the last more than 70 years.

8. Paragraph 10 of the plaint is a crucial paragraph of the plaint which reads as follows:-

“10. On 21st April, 2007 the daughter of the Plaintiffs, Ms. Ivone Pereira and Miss. Ashley (plaintiff no. 3 and 4) had gone on a routine visit to the suit property in order to visit the property because members of the defendant No. 1 were in a habit of throwing their waste materials into the suit property especially Ice-cream cups etc. from the functions held in the said devasthan. The plaintiffs then noticed for the first time that some persons had encroached into the suit property and commenced with the illegal construction on the southern boundary of the suit property and had constructed a drainage running parallel to the southern boundary of the suit property and the said drainage was constructed almost on the said southern boundary of the suit property. The said drainage was constructed for a length of about 10 to 15 mts. The said drainage was running about 2 to 3 meters from the structure shown under the caption building, in the surveyors plan annexed to the plaint and was running in the western to

eastern direction The said plaintiffs; while going to see the said drainage, also noticed that five tanks/inspection chambers and another newly constructed rectangular structure were being constructed in the suit property. The said tanks inspection chambers are denoted under letter C to H (one of these tanks/inspection chambers was constructed subsequently), in the surveyors plan annexed to the plaint. The said newly constructed rectangular structure is denoted under letter A in the surveyors plan.

(emphasis supplied)

9. Thereafter, in Paragraph 13 onwards, the Respondents narrate the sequence of events and the date of knowledge of the structure in the suit property. It is stated in the plaint that after 21.04.2007, the Respondents filed a complaint before the Administrator of the Village Panchayat of Candolim dated 23.04.2007. On 26.04.2007, the Respondents have also filed a complaint with the P.I. of Calangute Police Station. Thereafter, the entire sequence of events is narrated in the plaint in respect of steps taken by the Police. In paragraph 26, there are statements that on 04.05.2007 there was further construction in the property. In paragraph 30 of the plaint, it is stated that the newly constructed rectangular structure denoted under letter 'A' in the said surveyor's plan, is situated about 2- 3 meters from the said well.

10. Thereafter, the Respondents have disputed the purported Agreement for Sale dated 21.11.1978 and it is stated that the said agreement is a false and fabricated document for reasons more particularly stated in paragraph 30(a) and (b) of the plaint. Therefore, according to the Respondents, the cause of action for the first time arose on 21.04.2007, and thereafter, the cause of action continued thereafter.

11. In view of these statements made in the plaint, the Respondents have stated in paragraph 40 that the cause of action for the present proceedings arose somewhere on 01.05.2007, when the Appellants commenced illegal construction of the suit structure and illegal drainage and the cause of action also arose on 04.05.2007 when the Appellants commenced construction of additional structure and sought to complete the illegal suit structures in the suit property and the cause of action is continuing one.

12. Therefore, reading of the plain as a whole clearly makes out a cause of action, and in view of the statements made in the plaint, it is clear that the cause of action arose on 01.05.2007 and 04.05.2007 and thereafter it continued. As far as the cause of action to declare the agreement dated 21/11/1978 null and void, is concerned, the Plaintiffs have stated that

the cause of action arose when the Defendants disclosed and relied upon purported agreement in the written statement.

13. The limitation begins when the cause of action arises. In the present case, as stated in the plaint, to seek the reliefs as sought for, the cause of action is said to have arisen on 21.04.2007, 01.05.2007 and 04.05.2007 thereafter it continued. Therefore, I reject the submissions made by the Appellants that the plaint brings out an illusory cause of action and is cleverly drafted to conveniently avoid the date of the cause of action. The suit was filed on 17/05/2007 on the basis of the cause of action which arose as stated in paragraphs 10 and 40 of the plaint.

14. Further, the defence of the Appellants in the suit was that the structure (Chavata) was in existence for more than a hundred years. That claim of the Appellant has been rejected by the Trial Court after considering the evidence led by the Appellants. The findings of fact in respect of the claim of the Appellants has also been confirmed by the District Judge in the First Appeal. There are concurrent findings of fact on the issue. Therefore, I reject the submissions of the Appellants that the substantial question of law arises because the suit is barred by the law of limitation.

15. According to Mr. Usgaonkar, the second question of law that arises in the matter is that:

(A) Whether the Courts below have committed manifest error in law in granting relief of mandatory injunction for demolition of structure of the Appellant, namely, "Chavata" or rectangular structure without considering that except pleading at para 10 of the plaint that it is "newly constructed" and examining Respondent/Plaintiff No.3, who had no personal knowledge of the fact of date of its erection, no evidence was lead to discharge the initial burden?

16. Mr. Usgaonkar submitted that the evidence led by the Respondents is hearsay evidence because the deponent has no personal knowledge of the fact, and therefore, the Respondents did not discharge the burden of proof.

17. I do not agree with the submissions of Mr. Usgaonkar. This is purely a factual aspect. The burden to establish that the Chavata was in existence for more than a hundred years was on the Appellant. The Appellants have failed to discharge that burden. The Respondents have discharged

their burden in respect of the causes of action pleaded in the plaint. There are concurrent findings of fact against the Appellant on the issue. Therefore, I reject the submissions made on behalf of the Appellant.

18. Mr. Usgaonkar further submitted that there are four Plaintiffs in the suit.

The property is admittedly owned by the 1st and 2nd Respondents. The Respondent Nos. 3 and 4 are daughters of the 1st and the 2nd Respondent. The property is owned by the 1st and 2nd Respondent; therefore, Respondent Nos. 3 and 4 have no right to sue in view of the provisions of Order I Rule 1(a) read with Order VI Rule 15 of the Code of Civil Procedure, 1908. According to the Appellant, the entire proceeding is vitiated in view of the provisions of Order VI Rule 15 of the Code of Civil Procedure, 1908. Therefore, Mr. Usgaonkar submitted that the following question of law arises:-

Whether Order 1 Rule 1(a) of Code of Civil Procedure is to be read with Order 6 Rule 15 thereof for the purpose of eligibility of Plaintiff verifying the plaint and the Courts below erred in law in ignoring the same inasmuch as it is held that verification by Plaintiff No.3 and her deposition as a

witness is based on her knowledge and therefore, not vitiated

or liable to be discarded?

19. I do not agree with the submissions of Mr. Usgaonkar even on this proposed question of law suggested by Mr. Usgaonkar. The submissions of Mr. Usgaonkar are based on Order I Rule 1(a) r/w Order VI Rule 15 of the Code of Civil Procedure, 1908.

20. Order I Rule 1(a) of the Code of Civil Procedure, 1908 reads as follows:

“Order I Rule 1. Who may be joined as plaintiffs.— All persons may be joined in one suit as plaintiffs where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative;

21. On plain reading of provisions of Order I Rule 1(a) of the Code of Civil Procedure, 1908, makes it clear that a civil suit can be filed in respect of any right or relief in respect of, or arising out of, same act or

transaction or series of act or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative.

22. The provisions of Order VI Rule 15 of CPC. The order 6 Rule 15 of the code of Civil Procedure 1908 reads thus:-

“Order VI Rule 15. Verification of pleadings.—

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

(emphasis supplied)

23. It is clear from plain reading of the Rule 15 of Order VI is that the pleadings shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court is acquainted with the facts of the case. The plaint is verified by the 3rd Respondent, who is entitled to verify the plaint in view of the provision of Order VI Rule 15 of the Code of Civil Procedure, 1908.

24. The Verification Clause verified by the Third Plaintiff reads as follows:

VERIFICATION

I, Miss Ashley Theresa Pereira, daughter of Mr Nicolau L S Pereira, major in age spinster, service, resident of House no 98, P.O. Siquerim, Bardez-Goa, do hereby affirm and swear that the contents of the above said paras are true to my knowledge except the contents of para 33, 34 and 39 which are legal submissions and I believe the same to be true.

25. Therefore, the proceedings were well within the provisions of Order I Rule 1(a) r/w Order VI Rule 15 of the Code of Civil Procedure, 1908. Accordingly, I reject the submissions of the Appellant that the proceedings are vitiated in view of the provisions of Order VI Rule 15 of the Code of Civil Procedure, 1908.

26. In any case, all these issues are dealt with by the Trial Court after considering the rival facts and submissions. These issues are also considered by the Court in the First Appeal. There are concurrent findings of fact on the issues. Therefore, I am not inclined to interfere with the judgement and order dated 03.06.2025 passed by the learned District Judge, Mapusa Goa in Regular Civil Appeal of 21/2022.

27. In view thereof, there are no substantial questions of law arising in the present Second Appeal.

28. Consequently, the **Second Appeal stands dismissed.**

29. However, there shall be no order as to cost.

30. Mr. Usgaonkar, on behalf of the Appellants, submitted that the interim relief granted on 22.08.2025 be continued because it has been continuing since the First Appeal stage. The request of Mr. Usgaonkar, is opposed by Mr. Coutinho.

31. This is a Second Appeal which can be entertained under Section 100 of the Civil Procedure Code, 1908, only where a substantial question of law arises. I have taken the view that no substantial question of law arises in the present Second Appeal. Therefore, this Court has no jurisdiction to grant and/or to continue the interim relief granted earlier. In any case, the litigation must end at least at this stage. Accordingly, the request made by Mr. Usgaonkar, the Learned Senior Counsel, is rejected.

32. No order as to cost.

[AMIT S. JAMSANDEKAR, J.]