

FIRST APPEAL NO. 86 OF 1996

Biku Sinai Usgaonker  
(deceased) through his  
legal representatives:

- a). Shri Prakash B.Usgaonker,
- b). Smt. Mathura P.Usgaonker,
- c). Smt.Nita V.Karapurker,
- d). Shri Vijay D. Karapurker  
alias Vijay B.Sukhtanker,
- e). Shri Santosh B. Usgaoker,
- f). Shri Shanta S. Usgaonker,
- g). Shri Subash B. Usgaonker,
- h). Smt. Pushpa S. Usgaonker,  
all residents of Rajmahal  
building, Mala Panaji, Goa,  
through Power of Attorney  
Holder Prakash B. Usgaonker. ... Appellants.

versus

- 1. Shri Vinaeca Xamba Dalvi,  
since deceased, now repre-  
sented by his legal heirs:
  - a). Shri Shamba V. Dalvi,
  - b). Smt. Suman S. Dalvi,
  - c). Shri Manohar V. Dalvi,
  - d). Smt. Sunanda M. Dalvi,
  - e). Shri Diwakar V. Dalvi,
  - f). Smt. Sunita D. Dalvi,
  - g). Shri Gurudas V. Dalvi,
  - h). Smt. Neeta G. Dalvi,  
all residents of Pale,  
Usgao, Goa.
  - i). Smt. Jayanthi Ramesh  
Mulgaonkar and her  
husband,
  - j). Shri Ramesh Mulgaonkar,  
both residents of  
Assonora, Bardez, Goa.
- 2. Shri Dattatraya Naguesh  
Dalvi, resident of  
Ambegal, Pale, via Ponda.
- 3. Vishnu Sadassiva Dalvi,  
resident of Ambegal,  
Pale, via Ponda.
- 4. Manguesh Ramchandra Dalvi,  
resident of Navelim,  
Sirvodem.
- 5. Mahadeo Shridar Dalvi,  
resident of Ambegal, Pale.

6. Heramb V. Dalvi (since deceased) now represented by his legal heirs:
  - a). Sufal Vithaldas Kunkolienkar,
  - b). Vithaldas Kunkolienkar, both residents of St. Inez, Opposite St. Inez Church, St. Inez, Panaji, Goa.
  - c). Supriya Pradeep Azrenkar and her husband.
  - d). Pradeep Azrenkar, major, both residents of Ansabhat, Mapusa, Goa. ... Respondents.

Mrs. A. A. Agni, Advocate for the Appellants.

Mr. S. S. Kantak, Advocate for the Respondent Nos. 7(a) to 7(d).

CORAM: P. V. HARDAS, J.

DATED: 25TH FEBRUARY, 2002.

#### ORAL JUDGMENT

This Appeal arises against the Judgment and Award passed by the District & Sessions Judge, South Goa, Margao, dated 6th November, 1995, on a reference made to the learned Trial Court, under Section 30 of the Land Acquisition Act, 1894 by the Deputy Collector, South Sub Division, Margao, the reference being registered as Land Acquisition Case No.128/81. The learned District & Sessions Judge, South Goa, Margao, while deciding the reference under Section 30 of the Land Acquisition Act, 1894 had held that the Respondents herein were entitled to the compensation and the claim for compensation of the Appellants was rejected.

2. For a decision of this Appeal, a reference to

facts is necessary, which are set out hereunder:-

The Deputy Collector, South Sub Division, Margao, made a reference on 17th March, 1994, under Section 30 of the Land Acquisition Act, 1894 to decide the entitlement to the compensation of Rs.1,367.90 for acquisition of land admeasuring 2379 sq. metres, acquired for the Ganjem-Bondla road, inbetween the present Appellants and the Respondents. The reference under Section 30 of the Land Acquisition Act, 1894 was registered as Land Acquisition Case No.12/1975 and thereafter, in 1981, it was renumbered as Land Acquisition Case No.128/1981. The Respondents herein filed their written statement and claimed to be the owners of the property 'Xeulem' or 'Xeulem Tican' situate at Ganjem, Ponda taluka. In the written statement, it was further stated that the suit property was granted on a permanent lease to Tatoba Raghunath Dalvi by Mahadeu Suryarao Dessai and Narayan Suryarao Dessai by a Deed dated 24th July, 1861, which is at Exh.36. It was further the case of the Respondents herein that the said Tatoba Raghunath Dalvi presented the Deed of permanent lease to the Civil Court of Bardez and applied for a sanad, which was granted to him by that Court after enquiry. Accordingly, the possession of the said property 'Xeulem Tollem' was handed over to Tatoba Raghunath Dalvi. In the written

statement, it is averred regarding the individual shares of the Respondents herein. It was also averred in the written statement that the Respondents herein have always been in peaceful and continuous possession and the Appellants herein have no right, title or interest in the property. In the proceedings before the learned District Judge, the Respondents herein were described as the Applicants and the Appellants herein were described as the Respondents.

3. The Appellants herein/Original Respondents filed their written statement in which it was claimed that the suit land belonged to Bicu Sinai Usgaonker, his brothers and his cousins. It was also contended in the written statement that the family of Dalvis (meaning the Respondents herein) had no right to the said property. It was also stated that the suit property was surveyed under new certificate nos. 30/1 and 31/1. It was also stated in the written statement that the suit property was in possession of Bicu Sinai Usgaonker, his brothers and his cousins.

4. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:-

1. Do the Respondents herein prove that the land acquired by the Government for the construction

is part of their property  
'Xeulem' or 'Xeulem Tican'  
situate at Ganjem of Ponda  
Taluka and belonging to Dalvis  
as shown below:

1. Prabhakar Shanker Dalvi ... 1/2
  2. Vishnu Sadashiv Dalvi ... 1/16
  3. Dattatray Naguesh Dalvi ... 1/16
  4. Manguesh Ramchandra Dalvi ... 1/16
  5. Madhav Shridhar Dalvi ... 1/16
  6. Vinayak Shamba Dalvi ... 1/12
  7. Heramba Venctexa Dalvi ... 1/12
  8. Ananta Shamba Dalvi ... 1/12
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2. Do the Respondents herein prove that the acquired piece of land has always been peacefully, continuously and publicly and without opposition of the Applicant and/or his relatives in the possession of the Dalvis' family?
  3. Do the Respondents herein prove that the land was surveyed under survey no.69 in the cadastral map of Ganjem organised in 1905?
  4. Do the Respondents prove that whenever any cultivation was done in the acquired portion of land it was done by or under permission from the Dalvis and no one else?
  5. Do the Appellants herein prove that the land belongs to him, his brother and his cousins and is surveyed under nos.30/1 and 31/1?
  6. Do the Appellants prove that the land acquired has been in his possession and of his brother and his cousins throughout?

5. The learned Trial Judge after appreciating the testimonies of the witnesses and after appreciating the documentary evidence recorded his finding in the affirmative in respect of Issues No.1 to 5 and recorded his finding in the negative in respect of Issue No.6.

6. The Respondents herein who were the Original Applicants before the Trial Court examined three witnesses. The Applicants witness No.1, Heramb Dalvi, who is heir of the Original Applicant Vinayak Shamba Dalvi, states that he knows the property 'Xeulem' also known as 'Xeulem Tican' situate at Ganjem in Ponda Taluka. He further states that the property bears new survey nos.30/1 and 31/1 of Ganjem village. He also states that in the survey enquiry in respect of the suit property the Mamlatdar had originally decided in favour of the Original Respondent. This decision of the Mamlatdar was reversed by the Deputy Collector and also by the Collector. The Original Respondent thereafter had filed a Writ Petition before the Judicial Commissioner's Court at Panaji which was dismissed on 15th July, 1983. According to him, the survey records have been promulgated and the same stands in the name of the Original Applicants. He also states that the suit property was given on perpetual lease to his ancestor named Tatoba Dalvi and the possession of the suit property has been in their

possession since the year 1864 onwards when the Bicholim Court had handed over the possession of the suit property in pursuance to the perpetual lease. A.W.1, Heramb Dalvi, then states regarding the individual shares of the Original Applicants. He then states that the Original Respondent Bicu Sinai Usgaonker had no right in the said property and was also not in possession of the suit property or any part thereof. He states that the Original Applicants have always been in possession of the said property which has been exclusive all throughout. He further states that the said property actually belonged to Comunidade of Ganjem and it was given as aforamento to Mahadev Surya and his family and from him, it came to Tatoba Dalvi. He has filed the document at Exh.36 showing that the possession of the same was handed over to Tatoba Dalvi by the Civil Court at Bicholim. He filed document at Exh.37 to show that the suit property is registered in the Land Registration Office under No.14676 and the same was inscribed in the name of Ramabai Tatoba Dalvi. Vide Exh.37, the said property is also notified in the Land Revenue Office under matrix no.14. He had also filed a certificate issued by the Head of Taluka Review. The said certificate is at Exh.38. He also produced record from the Book of Registration of survey of Village Ganjem which is Exh.39 and in the said record old cadastral survey

no.69 is shown in the names of Tatoba Dalvi, Balchandra Manguesh Dalvi and Shamba Raghoba Dalvi.

7. A perusal of the said document also reveals that the suit property under old cadastral no.69 had been granted on perpetual lease to Tatoba Raghunath Dalvi by Surya Sardessai and Narayan Surya Sardessai. Exh.40 shows the property 'Xeulem' situated at Ganjem inscribed under no.14 in favour of Ganaxma Suryarao Sardessai and shows one property 'Xeulem Tican' as belonging to Narayan Suryaram and others with an annual quit rent of 1.41 paise. The certificate further states that it was not possible to identify the same property with the boundaries as the Book Tombo 2nd B is almost damaged.

8. A.W.1, Heramb Dalvi, further stated that the suit property was surveyed during the old cadastral survey no.69 and in the recent survey nos.30/1 and 31/1. The suit property, according to A.W.1, Heramb Dalvi, is registered in the name of the Original Applicants in the Record of Rights as occupants and they have paid the foros in respect of the suit land to the Comunidade of Ganjem. In the cross-examination, he has admitted that he cannot say what are the boundaries of the suit property as per the registration of the property. He admits that the property is



bounded on three sides by Gaonkars of Ganjem whose property is outside the stone wall while on the fourth side lies the property of Government. He states that the property is bounded on three sides by hill and on one side by morod.

9. In respect of title to the property, the Original Respondent Bicu Sinai Usgaonker, expired during the pendency of the proceedings, and the names of the present Appellants were substituted, examined Puranand K. S. Usgaonker. He states that he was deposing on behalf of the Original Respondents as their Power of Attorney because he was dealing with the suit land and was much conversant than any of the other heirs of deceased Bicu Sinai Usgaonker. He states that originally the property belonged to two brothers namely Krishna Sinai Usgaonker and Ram Sinai Usgaonker. He further states that the suit property was surveyed in old cadastral survey under no.69 and in the recent survey, the suit property is surveyed under nos.30/1 and 31/1. He produced a certificate issued by the Land Registration Office in respect of the inscription of the property in the name of Ram Sinai Usgaonker and Krishna Sinai Usgaonker at Exh.56. Exh.56 further shows that the suit property is registered under no.13335. He has also produced Exh.57, a certificate stating that the first closure of the revenue records

of the said village of Ganjem was done on 31st July, 1941. He has also produced a certificate at Exh.58 which states that the certificate of village Ganjem was not exposed and was not finalised. He has also produced a receipt at Exh.59 regarding payment of foro in the name of Narayan Suryarao and the same is dated 2nd November, 1973. He had also produced at Exh.57 a plan of the old cadastral survey where the suit property is shown as no.69. He has further stated that in the new survey, the suit land was shown initially in the name of the Original Applicants. This witness Puranand K.S.Usgaonker states that they had filed objection and the Aval Karkun decided the decision in their favour. The Original Applicants being aggrieved filed an Appeal to the Deputy Collector and the Deputy Collector had reversed the Order of the Aval Karkun and had decided the case in favour of the Original Applicants. He further states that the Original Respondents had filed Second Appeal to the Collector but the Second Appeal before the Collector was not tenable. He also states that the Original Respondents had filed a Writ Petition but the Writ Petition on account of the death of Vinayak Dalvi was declared abated.

10. In the cross-examination, he admitted that in the new survey, the suit land is surveyed under

nos.30/1 and 31/1. He was also asked in the cross-examination that in respect of survey nos.30/1 and 31/1, it is shown as occupied by Vinayak Shamba Dalvi, Prabhakar Shanker Dalvi and Dattatray Naguesh Dalvi. He denied the aforesaid suggestion and was confronted with the certificate in form Nos.I and XIV which were marked as Exhs.R1 and R2. He also admitted in the cross-examination that after the dismissal of the Writ Petition, no suit or petition was filed by them in respect of the suit property. In the cross-examination, he was asked what does he mean by saying that he was looking after the property and in response to the aforesaid questions, he stated that now and then he goes to the property, walks for a while on it and then comes back. He admitted the suggestion that the suit property was registered in the Revenue Office in 1842 under the name of Narayan Suryarao Dessai. He also admitted in the cross-examination that in the Comunidade, the property is registered in the name of Narayan S. Sardessai. He stated that the suit property had been given on lease to one Shenvi Usgaonker in 1899 and the said Sanvlo Usgaonker was his great great grandfather. Incidentally, it may be mentioned that the so-called document of lease was not produced.

11. In respect of the various documents of title

produced by the Original Applicants and the Original Respondents, the learned Trial Judge, after appreciating the evidence in that behalf came to the conclusion that the Original Applicants have succeeded in establishing that the acquired land is part of the property 'Xeulem' belonging to them and the Original Respondents, the Appellants herein had failed to prove that the acquired land was a part of their property. In respect of the receipt, dated 2nd November, 1973, Exh.59, regarding the payment of foro in the name of Narayan Suryarao Dessai, the learned Trial Judge refused to rely on it on the ground that the said payment of foro had been made after the Acquisition proceedings had commenced. The learned Trial Judge also held that payment of foro can be made by anybody and the payment is accepted by the Comunidade without any verification. The learned Trial Judge also came to the conclusion that the document at Exh.56, produced by the Original Respondents, cannot be connected to either cadastral no.69 or to new survey nos.30/1 and 31/1. The learned Trial Judge also held that the document of lease by which the suit property was taken on lease by Bicu Sinai Usgaonker was not produced by the Original Respondents.

12. On consideration of the oral and documentary evidence, the learned District & Sessions Judge, South

Goa, Margao had come to a conclusion that the present Respondents had succeeded in establishing that the acquired land is part of property 'Xeulem' belonging to them and the present Appellants had failed to prove that the acquired land is part of their property. I have reappreciated the documentary as well as the oral evidence on record and I agree with the aforesaid finding recorded by the learned District Judge.

13. It is next urged before me that the present Appellants are in possession of the suit land. The learned District Judge, taking into consideration that the present Respondents had filed Appeal before the Deputy Collector in respect of the entries in form Nos.1 and XIV. The Deputy Collector allowed the Appeal filed by the present Respondents and the said properties were ordered to be surveyed in the name of the present Respondents. The Appellants herein filed an Appeal before the Collector which was dismissed. The present Appellants also filed Writ Petition in the High Court which was dismissed. The Order in favour of the present Respondents passed by the Deputy Collector attained finality.

14. Mrs. A. A. Agni, the learned Advocate appearing for the present Appellants has urged before me that the Appeal filed by the present Appellants

before the Collector came to be dismissed on the ground that no Second Appeal lay to the Collector. The Writ Petition filed by the Appellants was declared as abated in view of the death of Vinayak Dalvi. Thus, according to her, there has been no adjudication on merits and, therefore, the entries in Form Nos.I and XIV cannot be said to have attained finality. I am unable to agree with the submissions as the present Appellants had neither filed any suit or other proceedings for challenging the Order of the Deputy Collector which was in favour of the present Appellants. Thus, the survey entries have attained finality and the presumption which is available under Section 105 of the Land Revenue Code is in favour of the present Respondents.

15. The learned District Judge on appreciating the evidence of the other witnesses of the parties has come to the conclusion that on preponderance of the evidence specially on the entries in Form Nos.I and XIV, he was of the opinion that the present Respondents have been able to establish their possession over the suit property. It may incidentally be mentioned here that the present Appellants did not enter the witness box to establish their possession. Their possession was established through the evidence of R.W.1, Puranand K. S. Usgaonker, who was holder of the Power of

Attorney. He claims that he is one of the heirs of Krishna Sinai Usgaonker who was the original owner of the property along with Ram Sinai Usgaonker. In the cross-examination, in response to the question what he meant by saying that he was looking after the property, this witness has replied that now and then he goes to the property, walks a while on it and then comes back. The learned District Judge has held that it does not amount to proving possession or that the property was being looked by him. The learned District Judge has also held that this witness also did not know the boundaries of the property adjoining the suit property.

16. The survey entries in favour of the present Respondents in Form Nos.I and XIV have strong presumptive value. The present Appellants have not been able to disprove the claim of the Respondents in respect of possession. The learned District Judge has appreciated the evidence and has come to a conclusion that the present Respondents have been able to establish their possession over the suit property. I do not find any perversity in the reasoning of the learned District Judge and, therefore, according to me, this Appeal is devoid of any merit and deserves to be dismissed.

17. In the result, therefore, First Appeal  
No.86/96 is dismissed with costs.

( P. V. HARDAS )  
JUDGE