

SECOND APPEAL NO.34/2001

1. Mr. Anant Purshuram
Chavan, major, primary
school teacher, r/o
Nachinola, Bardez, Goa, and
2. Mr. Sadanand S. Lotlikar,
major, r/o Arady,
Parra, Bardez, Goa. ...Appellants.

Versuss

1. Mr. Aniceto Manuel Martins,
s/o Napoleon Martins,
married, r/o Salvador do
Mundo, Ubbo Vaddo,
P.O. Betim, Bardez, Goa,
2. Mrs. Ana Maria Silveira,
wife of Aniceto Manuel
Martins, Government Servant,
r/o Salvador do Mundo,
Ubbo Vaddo, P.O. Betim,
Bardez, Goa,
3. Mr. Isidoro Joao Belchor
Martins (since deceased),
through his legal represent-
atives:
 - a) Anthony Joao Martins,
 - b) Placito Joao Martins,
 - c) Mrs. Ciliya Salu Marques,
 - d) Mr. Salu Marques,
 - e) Miss Maria Joao Martins,
respondents no.3(a) and
(b) r/o Paitona, Salvador
do Mundo, Post Betim,
Bardez, Goa.

Respondents 3(c), (d) and (e)
residing near Vithal Temple,
Sanquelim, Goa, and
4. Mrs. Lourdes Eufregina Martins,
major, r/o Paitona, Salvador
do Mundo, P.O. Betim, Bardez,
Goa. ...Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Ms. R. Thakur, advocate for the appellants.

Mr. Sudin M. Usgaokar, advocate for the respondents no. 1 & 2.

CORAM: P. V. HARDAS, J.

DATE: 21st February, 2002.

ORAL ORDER

Heard Mr. S. D. Lotlikar, learned Senior Advocate appearing with Ms. R. Thakur, for the appellants and Mr. Sudin Usgaokar, learned counsel appearing for the respondents no. 1 & 2.

2. The respondents no. 1 and 2 in the present Appeal who are the original plaintiffs, had filed Regular Civil Suit No.99/85/D in the Court of the Civil Judge, Junior Division, Panaji, seeking a declaration that they were the owners of the suit property. The basis for filing of the said civil suit was that the original defendants no.3 and 4/respondents no.3 and 4 herein, had sold the property to the original defendants no.1 and 2/present appellants and while describing the property, inadvertently the survey no.107/5 was mentioned instead of survey no.107/9.

3. The learned trial Court framed issues which are as under:-

1. Whether the plaintiff proves that the plaintiff no.1 is absolute owner in possession of the suit property as stated in para 3 of the plaint?

2. Whether the plaintiff proves that the sale dated 31.7.75 registered under no.563 with sub registrar in Ilhas is null and void?
3. Whether the defendants no.1 to 4 prove that the division sale deed is null and void as has been already decided in Spl.C.S.No.69/78/A by the Civil Judge Senior Division at Panaji?
4. What relief? What Order?

4. On the basis of the evidence led by the parties, the learned trial Court decreed the suit of the plaintiffs. The appellants/original defendants no.1 and 2, being aggrieved by the Judgment of the learned trial Court, filed an appeal i.e. Regular Civil Appeal No.2/1993 before the Additional District Judge at Panaji. The learned Additional District Judge by his Judgment dated 18th December, 2000, dismissed the appeal of the present appellants/original defendants no.1 and 2. Hence the present Second Appeal.

5. The learned counsel appearing for the appellants has urged before me that the Appellate Court has totally ignored the factum of possession. It is also submitted before me that the respondents no.1 and 2/original plaintiffs have not been able to produce any document of title and the document that was produced was a matriz survey which was admittedly, not a document of title. It is also urged before me that there was no evidence whatsoever in respect of the identification of the property bearing matriz no.445 and, as such, the

courts below were in error in coming to the conclusion that the property bearing matriz no.445 corresponds to survey no.107/5.

6. With the assistance of learned counsel for the parties, I have perused the judgment of the learned Appellate Court. My attention has been drawn by the learned counsel for the appellants to paragraph 7 at page 7 of the judgment, in which the learned Appellate Judge has held that the properties having matriz no.442 or 445 are long strips and narrow on the Northern side as well as on the Southern side and they start on the Eastern side and go towards the Western side which means that the property under matriz no.442 is on the Eastern side and property having matriz no.445 is on the Western side and there are two properties in between the property bearing matriz no.442 and matrtriz no.445, which is first matriz no.443 on Western side followed by matriz no.444. The learned Appellate Judge has also held that taking into consideration that the property having matriz no.442 is on the Eastern side and property having matriz no.445 is on the Western side and that there are two numbers in between matriz nos. 442 and 445, taking into consideration that the property surveyed under no.107/5 is on the Western side, in all probability the property having matriz no.445 corresponds to the property surveyed under no.107/5 and not to the property having matriz

no.442. The learned Appellate Judge has also held that since both the parties were unable to produce the documents of title, by preponderance of probabilities and oral and documentary evidence, the learned Appellate Judge came to the conclusion that the property surveyed under no.107/5 corresponded to the property bearing matriz no.445. The Appellate Judge, therefore, endorses the findings recorded by the learned trial Judge.

7. The survey plan of the suit property which is exhibited and marked as Exh.P.W.1/F and the certified copy of the 'tombacao' plan exhibited and marked as Exh.P.W.1/G, are heavily relied upon.

8. In the absence of the parties producing the relevant documents of title, the Courts below, according to me, were perfectly justified in taking into consideration the oral evidence led by the plaintiffs. The reliance placed on the aforesaid two plans also, according to me, is justified. The respondents no.1 and 2/plaintiffs, have claimed themselves to be in possession. The predecessors-in-title of the present appellants, though they were parties to the proceedings, had not defended the suit which was filed against them.

9. Taking an overall view of the matter, particularly, since the two Courts below have based their

findings by placing reliance on the oral and documentary evidence, I am not inclined to interfere with the findings of fact recorded by the two Courts below in the present circumstances. The Second Appeal is dismissed with no order as to costs.

P.V. HARDAS, J.

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