

SECOND APPEAL NO. 33 OF 2001

1. Shri Pandurang Shetye(dec.)
represented by his legal
heirs:
 - a). Smt. Tulshirinda Pandurang
Shetye, major, widow,
 - b). Shri Ganpat Pandurang
Shetye, major, son,
 - c). Shri Devendra Pandurang
Shetye, major, son,
 - d). Shri Mahendra Pandurang
Shetye, major, son,
all having address at Pariem
Matt, Sattari, Goa,
 - e). Smt. Ranjita Rohidas Naik,
major, daughter, r/o Navelim,
Bicholim, Goa.
 - f). Smt. Pushpalata Gurudas
Verenkar, major, daughter,
r/o Shantinagar, Ponda,Goa.
 - g). Smt. Deepama Deepak Gaonkar,
major, daughter, r/o Chorao,
Goa.
2. Shri Atmaram P. Shetye,
major, son, Indian National,
r/o Poryem, Sattari, Goa. ... Appellants.

versus

1. Shri Vinayak Govind Thakur,
major, r/o Bordem, Bicholim,
Goa.
2. Shri Anant L. Salgaonkar(dec.)
Sattari, Goa.
 - a). Mrs. Anandi A. Salgaonkar
 - b). Mr. Santosh alias Ladko
A. Salgaonkar
 - c). Mrs. Radhika S. Salgaonkar
 - d). Mr. Shanker A. Salgaonkar

- e). Mrs. Sulekha S. Salgaonkar,
all having address at
Vitalpur, Near Pandurang
Temple, Vazarvaddo, Sanquelim,
Goa.
 - f). Mr. Kamlakant G. Uskaikar
 - g). Mrs. Kalpana K. Uskaikar,
both having address at
Porvorim, Goa.
 - h). Mr. Chandrakant K. Ghadi
 - i). Mrs. Chandrakala C. Ghadi,
both having address at
Shankar waddo, Taleigao, Goa.
 - j). Mr. Suresh Naik,
 - k). Mrs. Sulaksha S. Naik,
both having address at Paikul,
Valpoi, Sattari, Goa.
3. Shri Shankar Anant Salgaonkar,
major, having his address at
Podocem, Vazrawado, Sattari, Goa. ... Respondents.

Mr. Sudin Usgaonkar, Advocate for the Appellants.

Mrs. A. A. Agni with Mrs. N.N. Narvekar, Advocates for the
Respondent Nos. 1 and 3.

CORAM: P. V. HARDAS, J.

DATED: 28TH JUNE, 2002.

ORAL ORDER

The unsuccessful Defendants have challenged the Judgment and Decree passed against them by the two Courts below in the present Second Appeal. The Respondents/Plaintiffs had filed Regular Civil Suit No.67/85 which was renumbered as Regular Civil Suit No.16/90. The said suit was for permanent injunction and demolition. The said suit filed by the Plaintiffs came to be decreed by Judgment and Decree, dated 2nd November, 1991 by the Civil Judge, Junior Division at Valpoi. The Appellants/Defendants being aggrieved by the aforesaid

Judgment and Decree filed Regular Civil Appeal No.78/91 before the II-Additional District & Sessions Judge at Panaji. The learned II Additional District & Sessions Judge, Panaji by Judgment and Decree dated 22nd February, 2001 dismissed the Appeal filed by the Appellants/Defendants. Hence, the present Second Appeal.

2. Mr. Sudin Usgaonkar, the learned Counsel appearing for the Appellants has urged the following substantial questions of law.

1. Whether the suit although styled as for mandatory injunction was also for declaration in view of prayer of recovery of possession and therefore, for want of presence of all the co-owners prayer for recovery of possession was not maintainable.
2. Whether the suit is not maintainable on account of non-joinder of necessary parties i.e. other co-owners of the suit property apart from the Plaintiff No.1, in view of relief of recovery of possession which includes relief of declaration?

3. Both these substantial questions of law can be considered together. According to the learned Counsel appearing for the Appellants, the Plaintiffs in their suit had also prayed that vacant possession be ordered to be delivered to the Plaintiffs. Therefore, according to the

learned Counsel appearing for the Appellants the suit was not merely for injunction and mandatory injunction but was a suit for possession and in a suit for possession the relief of declaration is inherent. The submission of the learned Counsel appearing for the Appellants is completely ill-founded. As per the Decree of the learned Trial Court, the suit of the Plaintiffs was decreed as follows:-

- a). The Defendants, their relatives, agents servants, or any person/s working on their behalf be restrained permanently from constructing any structure of any way interfering into the property of the Plaintiff mentioned in para No.1 of the Plaint.
- b). The suit construction and suit shade be ordered to be demolished forthwith. The vacant possession be ordered to be delivered to the Plaintiff.

4. Thus, it would be seen that though the Plaintiffs had prayed for restoration of possession, the

learned Trial Court had not passed a Decree for restoration of possession. Thus, the two substantial questions of law which are urged before me, whose foundation is the assumption that the Court had passed a Decree for possession, are without any merit.

5. The learned Counsel appearing for the Appellants then urged before me that the suit was bad for non-joinder of parties and also that the learned Trial Court had recast the issues without affording opportunity to the Appellants/Defendants. Both these questions which are agitated in the Second Appeal have been rightly dealt with by the learned Appellate Court. The learned Appellate Court has come to a conclusion that no prejudice was caused to the Appellants/Defendants by the recasting of the issues as the issues which were recast were similar to the issues which were already framed. In fact, according to the learned Appellate Court, the issues which were recast put additional burden on the Respondents/Plaintiffs. In respect of the non joinder of necessary parties, the learned Appellate Court has held that since the suit was for injunction and mandatory injunction, the suit was maintainable at the behest of a co-owner.

6. The grounds which are urged before me, all pertain to the questions of fact which have been decided

by the Courts below and no perversity in the reasoning is pointed out. Therefore, according to me, the present Second Appeal does not involve any substantial questions of law to warrant admission of the said Appeal.

7. In the result, therefore, Second Appeal No.33/2001 is dismissed in limine with no order as to costs.

P. V. HARDAS, J.