

SECOND APPEAL NO. 47 OF 2001

1. Smt. Sumitra alias Bhagu  
Budo Velip, major;
2. Shri Gurudas Budo Velip,  
major; both residents of  
Dharguinim, Bhati,  
Taluka Sanguem, Goa. ... Appellants.

versus

1. Krishna Babi Velip(dec.)  
a). Sandeep Krishna Velip;  
b). Smt. Kuisu Krishna Velip;
2. Smt. Shevanto Babusso Velip,  
major;
3. Babi Krishna Velip,  
aged 45 years;
4. Surya Krishna Velip,  
aged 42 years;
5. Vilas Krishna Velip,  
aged 40 years;
6. Shashi Krishna Velip,  
aged 32 years;
7. Kushali Babusso Velip,  
aged 38 years;
8. Dastrath Babusso Velip,  
aged 36 years;
9. Suresh Babusso Velip(dec.)
10. Harichandra Babusso Velip,  
aged 30 years;
11. Shakuntala Surya Velip,  
aged 35 years;
12. Smt. Manjula Kushali Velip,  
aged 35 years;  
All residents of Dharguinim,  
Bhati, Taluka Sanguem, Goa;
13. Satywan Budo Velip,  
major;
14. Shivaji Budo Velip, major;

15. Ravidas Budo Velip,  
major; and

16. Tulsidas Budo Velip, major;  
All residents of Dharguinim,  
Bhati, Taluka Sanguem, Goa. ... Respondents.

Mr. S. S. Kakodkar, Advocate for the Appellants.

Mr. M. B. D'Costa with Mr. J. A. Lobo, Advocate for  
the Respondent Nos.2, 7, 8, 10, 12, 3, 5, 1(A), 4 and 11.

CORAM: P. V. HARDAS, J.

DATED: 28TH FEBRUARY, 2002.

### ORAL JUDGMENT

This Second Appeal has been filed challenging the Judgment and Decree passed by two Courts below dismissing the suit filed by the Plaintiffs. The Appellants in the Second Appeal are the Original Plaintiffs who had filed Special Civil Suit No. 44 of 1991 which came to be dismissed by the Civil Judge, Senior Division, Quepem by Judgment and Decree dated 31st December, 1998. The Appellants/Original Plaintiffs being aggrieved by the dismissal of the suit filed Regular Civil Appeal No. 13 of 1999 which also came to be dismissed by the Additional District Judge, Margao by Judgment and Decree dated 14th May, 2001. Hence, the Second Appeal at the instance of the Original Plaintiffs.

2. With the assistance of the learned Advocates appearing for the parties, I had perused the Judgments of the two Courts below. The learned Trial Court while

dismissing the suit of the Plaintiffs had recorded a finding that the document Exh.P.W.1/A, which was produced by the Plaintiffs, was merely a revenue record and was not a document of title and hence, the Plaintiffs could not prove that the suit property was granted to their ancestor Gudo Babi Velip. The learned Trial Judge had also recorded a finding that the survey presumption was in favour of the Defendants and the Plaintiffs had not been able to dislodge the presumption by the evidence which had been produced by the Plaintiffs. The learned Trial Judge had, therefore, concluded that the Plaintiffs could not prove exclusive possession and the learned Trial Judge had relied on the Land Registration document Exh.D-1 to hold that the Defendants had also title to the property.

3. The document at Exh.D-1, which was produced by the Original Defendants, showed that the property was purchased by Kusad Ezzo Velip. The Plaintiffs' witness No.1 in his cross-examination had admitted that Ezzo Velip is the ancestor of the Plaintiffs and the Defendants and that Kusad Ezzo Velip and Babi are the sons of the said Ezzo.

4. The learned appellate Court has reappreciated the evidence and while endorsing the findings recorded by the learned Trial Court, has held that the document at Exh.D-1 being a Land Registration document bears the

inscription in the name of Cussodo Ezzo Velip of the year 1914. The appellate Court also held that the entry in the register of land surveyor i.e. document at Exh.P.W.1/A in the name of Budo Babi Velipo is of the year 1953 and, therefore, according to the learned appellate Court the entry in Exh.P.W.1/A cannot extinguish the title document Exh.D-1. The appellate Court, therefore, recorded a finding that the Defendants had proved the joint title of the Plaintiffs and the Defendants to the suit property.

5. The appellate Court in para 9 of the Judgment has held that unless the Plaintiffs were able to produce some document of title, exclusively in their favour by virtue of the document at Exh.D-1, the joint title of the Plaintiffs and the Defendants was established. The appellate Court in the same para has also adverted to the other evidence that the Defendants had in their favour namely the promulgated survey records which showed the names of the husband of the Plaintiff No.1, the deceased Defendant No.1 and the Defendant No.2 as co-occupants. The learned appellate Court, therefore, came to the conclusion that the presumption under Section 105 of the Land Revenue Code supports the case of the Defendants. The appellate Court also held that the mere filing of such survey objection would not rebut the presumption. The learned appellate Court reappraised the evidence of the witnesses examined by the rival parties and came to the

conclusion that the Plaintiffs had failed to prove that they are the exclusive owners in possession of the suit property. The learned appellate Court also came to the conclusion that the Plaintiffs had been unable to prove that a year prior to the filing of the suit, the Defendants were giving threats and tried to pluck cashew apples forcibly from the suit property. The appellate Court, therefore, by its Judgment and Decree dismissed the Appeal filed by the Plaintiffs.

6. In the present Appeal, no substantial questions of law have been urged. The grounds which have been urged in the present Appeal relate to the appreciation of the evidence particularly in respect of the documents at Exhs.P.W.1/A, B and C. Both the Courts below have appreciated the aforesaid documents and have recorded their findings. No perversity in the reasoning of the two Courts below has been pointed out nor it is pointed out that any evidence has been overlooked or not taken into consideration by the two Courts below. The Second Appeal involves pure questions of fact which have been decided by the two Courts below.

7. In the result, therefore, I find that the Second Appeal does not involve any substantial questions of law requiring interference of this Court in Second Appeal.

The Second Appeal is, therefore, accordingly dismissed with no order as to costs.

( P. V. HARDAS, J. )