

SECOND APPEAL NO. 9 OF 2002

Nazareth Duarte Valles,  
resident of Batim,  
Ilhas-Goa (since deceased)  
represented by:

1. Mrs. Ana Rosa Valles,
2. Arnaldo Valles,
3. Assumpta Valles. ... Appellants.

versus

1. Director of Education,  
Department of Education,  
Government of Goa,  
Panaji, Goa.
2. Zonal Officer,  
Central Education Zone,  
Massano do Amorim,  
Panaji, Goa.
3. Government of Goa,  
Secretariat,  
through Secretary of Education,  
Panaji, Goa. ... Respondents.

Mr. A. F. Diniz, Advocate for the Appellants.

Mr. A. N. S. Nadkarni, Advocate General with  
Mr. P. A. Kamat, Additional Government Advocate  
for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 27TH JUNE, 2002.

ORAL ORDER

The unsuccessful Plaintiff has filed the present Second Appeal challenging the concurrent finding of fact recorded against him by the two Courts below. The Appellants/Plaintiff had filed Special Civil Suit No.57/88/B and the same was dismissed by the

Civil Judge, Senior Division, Panaji by Judgment and Decree dated 28th March, 2000. The Appellants/Plaintiff being aggrieved by the dismissal of the suit, filed Regular Civil Appeal No.73/2000 and the said Civil Appeal came to be dismissed by the IInd Additional District Judge, Panaji, by Judgment and Decree dated 6th December, 2001. Hence, this Second Appeal.

2. Mr. A. F. Diniz, the learned Counsel appearing for the Appellants has urged the following substantial question of law:-

"Whether on the Court's own finding that the appellants were the owners in possession of the suit land, could the relief for fixation of rent/compensation for occupation of a portion of the suit land be rejected merely because the Court held that the suit building was put up by the respondents on the said portion?"

3. The learned Trial Court had framed Issue No.3 which reads as under:-

"Whether the plaintiff proves that the defendants are liable to pay him any rent for the occupation of the said primary school? Not proved".

4. The learned Trial Court at para 15 while answering the Issue has held that the deposition of

D.W.2 indicates that the school building belongs to the Panchayat and had been constructed by them. The Trial Court has further held that as per the deposition of D.W.2 the said school building is existing at Batim in the property which has been purchased by the Panchayat. The learned Appellate Court had framed the points for consideration and point no.1 reads as under:-

<u>Points</u>	<u>Findings</u>
"Whether the plaintiff has proved that he is the owner-in-possession of the suit property including the school building?"	... Partly yes by excluding the School building".

5. The learned Appellate Court has recorded a finding "hence it cannot be said that the Plaintiff has purchased the suit property along with the school building". The learned Appellate Court has again at para 11 held thus:-

"The evidence on record produced by the defendants through DW.1 and DW.2 coupled with the ignorance of the plaintiff, is sufficient to prove that the school building is existing in the suit property, which portion

admeasuring 130 sq. metres was purchased by Village Panchayat of Batim and that the school building was constructed by the said Village Panchayat with the aid of 90% Government grant, and it was entrusted by the Village Panchayat to the Government Education Department".

6. In view of the above findings recorded by the learned Appellate Court, the learned Appellate Court held that the Plaintiff had not been able to prove that he was entitled for a Decree fixing appropriate rent to be paid by the Defendants for running the primary school in the said property. The findings of the two Courts below that the land on which the said school building has been constructed was purchased by the Village Panchayat of Batim is not challenged in the present Second Appeal.

7. Mr. A. F. Diniz, the learned Counsel appearing for the Appellants then urged that the findings of the two Courts below that the suit of the Plaintiff was bad for non joinder of Village Panchayat, Batim is unsustainable. The two Courts below have held that the land on which the school building had been constructed was purchased by the Village Panchayat of Batim. In such circumstances, both the Courts below were correct in holding that Village Panchayat, Batim was a necessary and proper party. In any event, the

question of non joinder of parties is a pure question of facts which cannot be agitated in a Second Appeal.

8. There is no perversity in the finding of fact arrived at by the two Courts below and I see no reason to interfere in the Second Appeal.

9. Hence, Second Appeal No.9/2002 is dismissed in limine with no order as to costs.

P. V. HARDAS, J.