

SECOND APPEAL NO. 61 OF 2002.

Shri Jose Francisco Pinto
alias Joao Francisco Pinto,
House No. 469, Pedda, Near
the Chapel, Margao, Salcete.

... Appellant.

Versus

1. Dy. Collector & S.D.O.,
Land Acquisition Officer,
Quepem, Goa.
2. State of Goa through its
Chief Secretary, Secretariat,
Panaji, Goa.
3. Shri Placido Francisco Pinto,
r/o House No. 470, Pedda,
Near the Chapel,
Margao, Salcete.

... Respondents.

Mr. J. Godinho, Advocate for the Appellant.

Mr. H.D. Naik, Addl. Govt. Advocate for the Respondents
1 and 2.

Mr. C.A. Coutinho, Advocate for the Respondent No. 3.
Coram: P.V. HARDAS, J.
Date: 28th November 2002.

ORAL ORDER.

This Second Appeal arises against the Judgment and Decree passed by the IInd Additional District Judge, South Goa, Margao, dated 30th April 2002, in Regular Civil Appeal No. 63 of 2000, confirming the Judgment and Decree passed by the Civil Judge, Senior Division, Margao, dated 14th March 2000, in Regular Civil Suit No. 259/89/I.

2. The respondent no. 3 had filed the suit claiming that the present appellant had received compensation for the acquisition of the land, though not entitled to. According to the respondent no. 3 he was

the owner of the suit land, which came to be acquired in Land Acquisition Proceedings, by virtue of a Sale Deed dated 14th September 1970, which is at Exhibit 23. The present appellant had set up a defence that respondent no. 3 had obtained his signatures on the Sale Deed by practising fraud and by misrepresenting that the signatures were required on some documents in connection of some amount of Rs. 12,000/-, which was to be paid to the creditors of the present appellant.

3. The learned trial Court, after the parties led their evidence, by the aforesaid Judgment and Decree, held that the appellant/original defendant had failed to establish that the Sale Deed dated 14th September 1970 was obtained by the respondent no. 3/original plaintiff by fraud and misrepresentation. The learned trial Court further held that the respondent no. 3/original plaintiff was the owner of the acquired land and, therefore, was entitled to receive the compensation. The trial Judge, therefore, decreed the suit. The appellant being aggrieved, preferred an appeal, that is, Regular Civil Appeal No. 64 of 2000 before the District and Sessions Judge, South Goa, Margao. The learned lower appellate Court, after re-appreciating the facts, came to the conclusion that the appellant had not adduced any evidence to prove that the Sale Deed was obtained by respondent no. 3 by fraud and misrepresentation and,

further, held that the finding of the learned trial Judge was proper that the Sale Deed was not vitiated by fraud or misrepresentation. The learned lower appellate Court also held that the possession of the present appellant and his wife could not be considered as lawful. The learned lower appellate Court then adverted to the fact that the Land Acquisition Officer had called upon the respondent no. 3 to produce title documents and respondent no. 3 had failed to produce the same and, as such, the Land Acquisition Officer had chosen not to make any reference under Section 30 of the Land Acquisition Act. The learned lower appellate Court has held that merely because the respondent no. 3 had not produced any documents of title before the Land Acquisition Officer, his claim could not be rejected on that count as he was not a party in the Land Acquisition Proceedings. The learned lower appellate Court held that the evidence on record amply proved that the respondent no. 3 was the owner of the property and being the owner, was entitled to receive compensation in respect of the acquired land. Thus, the learned lower appellate Court dismissed the appeal.

4. Mr. Godinho, the learned counsel appearing on behalf of the appellant, has urged before me that the suit as filed by the respondent no. 3 was bad for non-joinder of necessary parties. It is needless to

mention that no issue in this regard was framed nor did the appellant seek to frame an issue regarding non-joinder of parties. From the Memo of Appeal, which was filed before the appellate Court, it is clear that the plea of non-joinder was not raised nor was it urged before the appellate Court. In such circumstances, it cannot be allowed to be urged for the first time in Second Appeal.

5. The only substantial question of law, which was urged before me in this Second Appeal, is whether the suit to recover compensation, which was awarded by the Land Acquisition Officer after adjudicating the rights of the parties, was maintainable? In support the learned counsel for the appellant has placed reliance on the Judgment in **Comunidade of Bambolim v. Manguesh Betu Kankonkar**, 2000 (2) Goa L.T. 374. In the said Judgment the learned Single Judge of this Court has held that if a party is not served with a notice either under Section 9 or notice of award under Section 12(2) and is not before the Land Acquisition Officer, but has certain interest in the property or has a share in the property acquired, he is not precluded from filing a civil suit in respect of compensation for his share against the person who has received compensation amount. In the present case, in response to a notice under Section 12(2), the present respondent no. 3 had raised his objection but, as

observed by the learned lower appellate Court, the plaintiff had no other option but to file a suit for recovery of the compensation which was paid to the appellant when he was not entitled for it.

6. Mr. Coutinho, the learned counsel appearing for the respondent no. 3 has placed before me a certified copy of the Order dated 25th June 1998 where the learned trial Court had framed a preliminary issue regarding jurisdiction. The learned trial Court has held that the Civil Court has jurisdiction to entertain the suit. This Order of the learned trial Court was not brought to the notice of the Presiding Judge, who decided the Civil Suit nor was this Order challenged by the appellant. Thus, this issue stood concluded and, therefore, the appellant, who was not entitled to receive the compensation but received the same, cannot be allowed to urge before the Court that the suit was not maintainable. In any event, there was no adjudication whether the respondent no. 3 was lawfully entitled to receive the compensation. Reference may usefully be made to the Judgment in **Shri Deo Sansthan Chinchwad and others v. Chintaman Dharnidhar Deo and another**, A.I.R. 1962 Bom. 214. The learned Judges of the Division Bench have held as under:-

"Unless the claim of a person who is lawfully entitled to a share in the compensation money, is already

adjudicated upon under the provision of the Land Acquisition Act or such person having had notice of such proceedings, appears therein and fails to assert and prosecute his claim to a share in accordance with the provisions of that Act, he would be entitled under Section 31(2) Proviso 3, to file a Suit to recover his share from the person who may have received the whole or any part of the compensation amount awarded under the Act."

In the present case there was no adjudication of the entitlement of the respondent no. 3. He had not asserted his claim and, therefore, the learned trial Court by its aforesaid Order dated 25th June 1998 had held that under Section 31(2) Proviso 3 the suit was maintainable.

7. Thus, according to me, there is no substance in the Second Appeal and the same deserves to be dismissed.

8. Second Appeal is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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