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STATE OF GOA

v.

NARAYAN V. GAONKAR & ORS.

(Civil Appeal No.1866 of 2020)

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MARCH 04, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

- Suit – for declaration of ownership – The plaintiffs-respondents filed a suit for a direction to delete the name of 'Forest department' from the survey entry No. 11/1 of a Village and to declare the plaintiffs as the exclusive owners of the said property – The defendants-appellant, the State, had filed a written statement-cum-counter claim refuting the claim of the plaintiffs and claimed that entire suit property was in possession and belonged to the Forest Department – In the counter-claim, it was pleaded that plaintiffs were wrongly recorded as co-occupants – The Trial court dismissed the suit filed by the plaintiffs and the counter-claim filed by the defendants- State was also rejected – The plaintiffs having not filed any appeal against the rejection of the claim, the judgment of the Trial Court has become final, however, the defendants filed appeal in the High Court, which was dismissed – On appeal, held: A proceeding sheet of Court for record of rights (correction of records) indicated that on 20.10.1975, one of the plaintiff made a statement that he wished to withdraw his application dated 07.08.1975 regarding a claim that the survey no.11/1 belonged to plaintiffs, it was addressed to Mamlatdar for record of rights and hence, the dispute case was closed – Even after withdrawal of the claim of plaintiff, the names of plaintiffs were added by correcting the Form III in red ink as required by sub-rule (6) of Rule 6 of the Goa, Daman and Diu (Record of Rights and Register of cultivators) Rules, 1969 – When there was no decision in favour of the plaintiffs, applicant on the objection filed by them, there was no question of adding their names in Index of Lands against survey No.11/1 – The recording of names of the plaintiffs in survey no. 11/1 along with the name of the Forest Department was illegal and not per 1969 rules – The plaintiffs failed to justify the continuance of their names against survey No. 11/1 – Further, in the suit, the plaintiffs did not*

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mention/disclose proceeding regarding the correction of records undertaken in 1975 – From the additional evidence brought on the record by the State, it is clear that in record published, it was only the name of the Forest Department – Even though Gazette dated 11.01.1951 does not mention survey no. 11 but forest was declared in the village and the survey no. 11 is forest land is proved by other evidence – Thus, the defendant-State has clearly made out the case for allowing counter-claim – Accordingly, the name of the plaintiffs-respondents from survey no. 11/1 directed to be struck off.

Allowing the appeal, the Court

HELD: 1. The record of proceeding sheet dated 20.10.1975 indicates that after recording the statement of one of the Plaintiff the case was closed. The said proceedings indicate that the objection filed by Plaintiff was withdrawn and hence there was no decision taken in Dispute Case No.3. Even after withdrawal of the claim by the plaintiff, the names of plaintiffs were added by correcting the Form III in red ink as required by sub-Rule(6) of Rule 6. The entry of names of the above persons along with Forest Department was stated to be as per D.C.3 as is clear from Form III Annexure-2 brought on record by the appellant. A coloured print of above Annexure-2 has been placed before this Court by ASG which is taken on record, which indicates that in Form III the addition of names of three persons was by red ink. When plaintiff had withdrawn his claim for deletion of name of Forest Department, this Court fails to comprehend that as to how despite that withdrawal which is duly recorded in the proceedings their names can be added along with Forest Department against survey No.11/1. Thus, the recording of names of the plaintiffs in survey No.11/1 along with the name of the Forest Department was illegal and not as per Rule 6 of Rules, 1969. When there was no decision in favour of the plaintiffs, applicant on the objection dated 07.08.1975, there was no question of adding their names in Index of Lands against survey No.11/1. The addition of the names of the plaintiffs against survey No.11/1 was completely without jurisdiction and the said entry cannot be allowed to be continued. [Para 18][539-D-H; 540-A]

2. That in the suit filed by the plaintiffs, there is no mention of entire proceedings regarding correction of records undertaken

- A in 1975. The plaintiffs in the suit did not disclose the aforesaid facts which were relevant for determining the issues in consideration in the suit. Plaintiffs thus have completely failed to justify the continuance of their names against survey No.11/1. [Para 19][540-B]
- B 3. From the additional evidence brought on the record by the State, it is clear that in the record which was published of the Village Sulcorna for survey No.11, it was the name of only Forest Department which was mentioned on survey No.11 area 230.45.00 hectares and the addition of the name of Plaintiff and two others were in pursuance of Dispute Case No.3. The Goa, Daman and Diu Land Revenue Code, 1968 was enacted to consolidate and amend the Law relating to Land and Land Revenue in the Union of territory of Goa, Daman and Diu as then existed. [Para 20][540-C-D]
- C 4. The respondents themselves claim that the documents which have been filed are public records and in public domain, only objection raised by the respondents is that it was not difficult for the State to have had knowledge and access to these documents. The veracity of the documents has not been disputed. [Para 22][542-D-E]
- D 5. More so, the plaintiffs ought to have agitated for their claim with regard to survey No.11/1 and ought not to have withdrawn application dated 07.08.1975 before the Revenue Official. It is relevant to notice that in the suit which was filed by the plaintiffs any mention of the proceedings regarding records of rights of survey No.11/1 undertaken earlier were not referred to and the mention of proceedings under Revenue Code, 1968 and Rules, 1969 is conspicuously absent. The trial court having dismissed the suit of the plaintiffs for declaring them owner of survey No.11/1, this Court does not find any justification for continuance of the names of the plaintiffs in survey No.11/1 of Village Sulcorna. [Para 25][543-B-C]
- E 6. The State in its written statement has claimed that Sulcorna has declared as forest by Gazette Notification dated 11.01.1951 which Gazette was filed as Annexure AA-3 filed on the record which mentions Forests Sulcorna and the name of
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Village Sulcorna, the Court below had not placed reliance on the said Gazette only for the reason that the Gazette does not mention any survey number. Survey No.11 was situate in the Forest area is further proved by the documents brought on the record by the appellant i.e. Mining Lease which was granted w.e.f 22.11.1987 for survey No.2 of Village Curpem and survey No.11 of Village Sulcorna. [Para 26][543-D-E]

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7. The suit filed by the plaintiffs was to delete the name of Forest Department from survey No.11 which suit having been dismissed the name of the Forest Department continues with regard to survey No.11/1. Even though Gazette dated 11.01.1951 does not mention survey No.11 but Forest was declared in Village Sulcorna and Survey No.11 is forest land is proved by other evidence. This Court is satisfied that the counter-claim filed by the State deserved to be allowed and the name of the plaintiffs-respondents from survey No.11/1 deserved to be struck off. [Para 28][544-A-B]

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Fabrica da Igreja de N.s. de Milagres v. Union of India and Others (1995) 1 Bom CR 588 – referred to.

Case Law Reference

(1995) 1 Bom CR 588 referred to Para 24 E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1866 of 2020.

From the Judgment and Order dated 30.06.2011 by the High Court of Bombay at Goa in First Appeal No. 115 of 2011.

Madhavi Divan, ASG, Surjendu Sankar Das, Carlos A. Fereira, Ms. A. Subhashini, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. This appeal has been filed by the State of Goa questioning judgment of High Court of Bombay at Goa dated 30.06.2011 dismissing the First Appeal No. 115 of 2001 filed by the appellant. The First Appeal No.115 of 2001 was filed by State of Goa through the Secretary, Forest Department; the Collector South Sub-Division, Margao, Goa; the Director of Survey & Settlement Officer, Panaji, Goa and the Chief Secretary,

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- A Panaji, Goa challenging the judgment and order of the learned Civil Judge dated 23.04.2001 dismissing the Civil Suit No. 64 of 1995 filed by the plaintiffs-respondents 1 to 9 as well as the counter claim filed by defendants- appellant.
- B 2. The brief facts of the case necessary to be noted for deciding this appeal are:
- C 2.1 Special Civil Suit No. 64 of 1995 was filed by Shri Narayan V. Gaonkar, Shri Shivram V. Gaonkar and Shri Rama S.F. Dessai in the Court of Civil Judge, Senior Division at Quepem praying for following: -
- D C “In the aforesaid circumstances, it is prayed to your honour, to direct the survey authorities to delete the name of “Forest Department” from the survey entry No.11/1 of the village Sulcorna from “Name of the Occupant” column of survey Form No.I & XIV and to declare the plaintiffs as the exclusive owners of the property bearing survey No.11/1 known as “CONDA MALL” or “BINDANGAL” or “BINDAN MOLL” or “CARIA MOLL” of Village Sulcorna of Taluka Quepem.”
- E 2.2 In the Suit, the Secretary, Forest Department, Government of Goa; the Collector South Sub-Division, Margao, Goa; the Director of Survey & Settlement Officer, Survey of Land Records, Panaji, Goa and the Chief Secretary, Government of Goa, Panaji, Goa were defendant Nos. 1 to 4. A common written statement-cum-counter claim was filed by all the defendants refuting the claim of the plaintiffs. The defendants claimed that entire suit property under Survey No.11/1 of village Sulcorna of Quepem Taluka, admeasuring an area of 23,04,500 sq. mtrs. is in possession and belongs to the Forest Department and as such the name of the Forest Department has been rightly recorded in occupant’s column in said Survey No.11/1 and the plaintiffs nor any person have any right over the suit property.
- F G 2.3 The plaintiffs claim that they are owners in possession of a landed property known as CONDA MOLL or BINDIGAL or BINDAN MOLL, situated at Sulcorna Village in Quepem Taluka, Goa was disputed. Defendant’s pleaded that entire plantation existing there are planted and enjoyed by the Forest Department.

It was pleaded that suit property is a forest property of the Forest Department vide Notification published in the Official Gazette "Repartieao de Femente" dated 11.01.1951. A

2.4 In the counter claim, it was pleaded that plaintiffs have been wrongly recorded as co-occupants in survey No.11/1 of Village Sulcorna, Taluka Quepem, which is owned, enjoyed and in possession of the defendant No.1 - Forest Department for the last many years and reference to the Notification dated 11.01.1951 was made. In the counter claim, following prayers were made by the defendants in paragraph 17:- B

"17. In the circumstances, the Defendants pray:

- (a) That by a decree in the nature of direction, the survey authority be directed to delete the names of the plaintiffs from the occupant's column in respect of survey No.11/1, Sulcorna Village of Quepem Taluka.
 - (b) For any other reliefs in the circumstances of the case may require."
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2.5 Written statement to the counter claim was also filed by the plaintiffs claiming that they are in exclusive possession of Survey No.11/1 and the name of the Forest Department has been wrongly recorded as co-occupants. D E

2.6 The learned Civil Judge framed two issues to the following effect:-

- 1) Whether the plaintiffs prove that they are owners in possession of the suit property as described in paragraph 1 of the plaint?
 - 2) Whether the defendants prove that the plaintiffs name have been wrongly recorded as co-occupant in the property surveyed under No.11/1 of Village Sulcorna and as such their names may be deleted from the occupant's column of Survey No.11/1?
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2.7 While answering Issue No.1, Civil Judge held that plaintiffs have failed to prove that they are owners of the suit property, however, Civil Judge upheld the plaintiffs' possession. Issue No.2 was answered against the defendant. A First Appeal was filed by the defendants in the High Court praying that judgment of the H

- A learned Civil Judge be quashed and set aside to the extent that learned Civil Judge held that respondents (plaintiffs) were in possession and the judgment insofar as it dismissed the counter claim of the appellants, it was prayed that the High Court may delete the name of the respondents in occupant column in Form Nos.I & XIV and also hold that respondents (plaintiffs) are not in possession of the suit land.
- B 2.8 No appeal was filed by the plaintiffs against the judgment of the learned Civil Judge. The High Court dismissed the appeal of the appellants while observing that trial court has rightly rejected the plaintiffs' prayer for title and also dismissed the defendants-appellants counter claim that they are owners of the property. The High Court, thus, affirmed the judgment of the learned Civil Judge. Aggrieved with the judgment of the High Court, this appeal has been filed by the State of Goa.
- C 3. This Court on 05.07.2012 passed following order:-
- D "Issue notice on the application for condonation of delay as well as on the special leave petition.
However, the petitioner is directed to produce the relevant records to show that the property in question is a forest land."
- E 4. In pursuance of the order of this Court dated 05.07.2012, the appellants filed an affidavit dated 17.08.2012 bringing on record Form Nos. I & XIV dated 13.07.2012. The Notification dated 11.01.1951 published in the Government Gazette was also brought on record. A Mining Lease granted by Government of Panaji, Goa dated 09.03.1998
- F has also been brought on record where Mining Lease of an area of 51 hectares in Survey No.2 of Village Quepem and Survey No.11 of Village Sulcorna was granted by State of Goa.
- G 5. An I.A. No. 187381 of 2019 was filed by the appellant seeking permission to file additional documents, i.e., Annexures 1 to 5 to the application. This Court by order dated 10.12.2019 allowed the application and permitted the respondents to file a reply to the application and the documents. On 10.12.2019, following order was passed by this Court:-
"We find sufficient grounds to take additional documents on record. Application is allowed.
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Let the counsel for the respondents file a reply to the application and the documents, which have brought on the record, within four weeks. A

Let records of the Trial Court be also summoned. Registry to take appropriate steps.

List on 28.01.2020.” B

6. By the above order, the record of the trial court was also summoned, which was duly received by this Court and was perused by the Court. In pursuance of the order dated 10.12.2019, counter reply affidavit in reply to the application have been filed by the respondents dated 10.01.2020. C

7. We have heard Ms. Madhavi Divan, learned ASG for the appellant and Shri Carlos A. Fereira, learned counsel for the respondents.

8. Learned counsel for the appellants in support of the appeal submits that the trial court having rejected the claim of the plaintiffs of ownership and the plaintiffs having not filed any appeal, the findings that they are not the owner of Survey No.11/1 has become final and no right or title can be claimed with regard to Survey No.11/1 by the plaintiffs. It is submitted that by Gazette Notification dated 11.01.1951 published in the Government Gazette by the then Government of Goa the description of the National Forests in District Goa was published wherein in Village Sulcorna forest was declared and published. It is submitted that the additional affidavit which have been brought on the record clearly indicate that according to the Goa, Daman and Diu Land Revenue Code, 1968 and Rules framed therein, when land survey was made with regard to Survey No.11 of area 230.54 hectares, name of Forest Department only was recorded. A complaint was submitted by Vishnu Shivram Gaonkar, one of the plaintiffs to the **Mamlatdar** complaining that land from Survey No.11 are recorded in the adjacent area in the name of the Forest Department. It was claimed that land does not belong to the Forest Department but belongs to the applicant. Request was made to conduct a survey again and hand over applicant's land to them. On the complaint filed by the plaintiff Vishnu Shivram Gaonkar, Dispute Case No.3, Sulcorna was registered and notice was issued to Vishnu Shivram Gaonkar to appear on 20.10.1975 on which date, he appeared before the **Mamladatar** and withdrew his application dated 07.08.1975. It is submitted that despite the withdrawal of the application by Vishnu H

- A Shivram Gaonkar in Form III, name of Vishnu Shivram Gaonkar, Shri Narayan Vishnu Gaonkar and Shri Rama S.F. Dessai were added alongwith the Forest Department referring to Dispute Case No.3. It is submitted that when the complaint was withdrawn by the plaintiff, there was no occasion of their names to be added alongwith the Forest Department in the Survey No.11/1, hence their name was wrongly entered which deserves to be expunged. It is submitted that it was the Forest Department, who was in possession of the Survey No.11/1. The State has granted Mining Lease on the Survey No.11/1, which clearly proves that it was the State of Goa, which was in possession of Survey No.11/1 and there was no possession of the plaintiffs.
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- C 9. Learned counsel appearing for the defendants refuting the submission of the appellants contends that the names of plaintiffs' ancestors were recorded in matriz document No.4, which clearly proves that it was the plaintiffs' forefathers, who were owners of the suit property. It is submitted that the complaint was filed by one of the plaintiffs
- D dated 07.08.1975, which was the complaint with regard to adjoining land of the plaintiffs and not with regard to suit land. He submits that withdrawal of the complaint shall have no adverse effect on the right of the plaintiffs. He further submits that insofar as lease granted by the State of Goa is concerned, it is the State, which has right to grant the lease, even if the land is owned by a tenure holder. He submits that grant of mining lease by the State has no effect on the rights of the plaintiffs. He has relied on a judgment of the Bombay High Court dated 10.12.2013 in Writ Petition No. 158 of 2005 – Smt. Maria Teresa Philomena D'Rocha Pegado Vs. State of Goa and Others.
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- F 10. We have considered the submissions of the learned counsel for the parties and have perused the records. We have also gone through the original record of the trial court received in pursuance of the directions of this Court's order dated 10.12.2019.
- G 11. The suit filed by the plaintiffs for seeking direction to delete the name of "Forest Department" from the survey entry No.11/1 of the village Sulcorna and to declare the plaintiffs as the exclusive owner of the property bearing survey No.11/1 having been dismissed by the trial court and no appeal having been filed by the plaintiffs against the said judgment the rejection of the claim of the plaintiff's ownership of survey No.11/1 has become final. In the suit filed by the plaintiffs the appellant had filed the counter-claim which was rejected by the trial court against
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which appeal was filed by the appellant which has been dismissed by the High Court against which judgment the appellant has come up in this appeal. A

12. The only question to be answered in this appeal is as to whether the counter-claim filed by the appellant had rightly been rejected by the courts below. For answering the above question, we need to notice the sequence of the events and the evidence on record filed before the courts below as well as the additional evidence filed by the appellant in this Court. B

13. The plaintiffs' case before the trial court was that the names of the plaintiffs' ancestors i.e. Essu Gauncar, Horry Gauncar, Mocunda Gauncar, Gonoba Gauncer, Siva Gauncar, all of Sulcorna were recorded in the Matriz document. C

14. The Rules were framed, namely, the Goa, Daman and Diu (Record of Rights and Register of Cultivators) Rules, 1969. Public notice in Form II was issued with regard to village Sulcorna in which survey No.11/1 was recorded in the name of "Forest Department" only. In the additional documents notice published in Form II has been brought on record as Annexure-1 to I.A.No. 187381 of 2019. Notice in Form II was published as per Rule 5. Rule 5 of the Rules, 1969 is as follows: D

"5.Issue of notice. - (1) When the Record of Rights is to be introduced in any village for the first time, the Talathi shall issue a public notice in Form II calling upon all persons who have any interest in the lands in the village to furnish to him either in writing or orally information on all or any of the following points within one month from the date of the public notice: E

- (i) Survey number and sub-division number, if any, of the land (or where the lands are not surveyed, the name of the field and its boundaries) in which he has any interest as holder, occupant, owner, tenant, landlord, mortgage, Government lessee or in any other manner. F
- (ii) The nature of interest in the land. G
- (iii) The tenure on which the land is held, that is to say whether the land is held as owner, occupant class I or II or Government lessee.
- (iv) The encumbrance or charge, if any, on the land and the name of the holder of such encumbrance or charge. H

A (2) The aforesaid notice shall be published in the village by beat of drum and by affixing copies thereof in a conspicuous place in the village and where there is a village panchayat in the office of the village panchayat."

B 15. When the notice was published in Form II mentioning the name of the 'Forest Department' against survey No.11/1, Vishnu Shivaram Gaonkar one of the plaintiffs filed an application to Mamlatdar stating following:

"Sub: Application regarding the incorrect land survey."

C This is to inform you that the Records of Right are surveyed in our village Sulkarna. I have seen the maps prepared by the Cadastral Survey. The maps are not correct i.e. our land is excluded from the map.

D The land adjacent to some of our land is recorded in the name of Forest Department. But the land from our survey No.11 Kanyamal, Survey No.16 Charbhat, Survey No.21 Mutfond, 22/1, 22/2 Patondem these Bimbad, Survey No.43, Chanode, Survey No.44 Chanode, all from these lands are recorded in the adjacent map and that land is recorded in the name of Forest Department.

E But land owned by us is existing in that land and the documents regarding the place (land) are in the name of my father Shivaram Vishnu Gaonkar and Narayan Vishnu Gaonkar. We state that the land does not belong to the Forest Department but belongs to us. Kindly conduct a survey again and hand over our land to us.

F Regards,

G Yours faithfully,

H Vishnu Shivaram Gaonkar"

I 16. On the basis of the application filed by Vishnu Shivaram Gaonkar a notice was issued in Form VI to Vishnu Shivaram Gaonkar who had raised the dispute asking him to present on 20.10.1975 in reference to his application. The said Form VI i.e. notice dated 01.10.1975 has been brought on record as Annexure-5 to I.A.No.187381 of 2019. Vishnu Shivaram Gaonkar appeared before the Revenue Authority on 20.10.1975 and stated that he wished to withdraw his application dated 07.08.1975 addressed to Mamlatdar for correction of records of rights.

This is further to be noted that on the application filed by Vishnu Shivaram Gaonkar. Dispute Case No.3, Sulcora was registered. Rule 6 of Rules, 1969 provides a detailed procedure for preparation of Index of Lands which contains the entire procedure from preparation of draft of the Index of Lands in Form III and subsequent procedure including individual notice in Form VI to those who have raised objections. Rule 6 for ready reference is extracted below:

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“6. Preparation of Index of Lands.— (1) The Talathi shall on the basis of the information received under Section 96 and 97 or such information as he may collect by making local inquiry prepare a draft of the Index of land in the village in Form III.

(2) The draft of the Index of Lands prepared under sub-rule (1) shall, after being checked by the Revenue Inspector or a Survey Officer not below the rank of a Revenue Inspector, be published by issuing a notice in Form IV and publishing the notice in the manner provided in sub-rule (2) of rule 5. The notice shall call upon all persons having interest in the lands in the village to inspect the draft, which shall be kept open for inspection for a period of thirty days on the dates and times and at a place (which shall be convenient to the villagers) to be specified in such notice and to submit to him in writing within one month from the last date for inspection specified in the said notice * [or within such date the Government by Notification at any time before the promulgation may specify] their objections, if any, to any of the entries in the draft. The notice shall also mention the date (such date being not earlier than one month from the expiry of the period specified for submission of objections) on which the entries in the draft will be read aloud in public and the objections received within the prescribed period shall be inquired into decided by a Survey Officer or as the case may be, a Revenue Officer not below the rank of an Awal Karkun and call upon the persons having interest in lands to be present at the aforesaid occasion.

(3) If from the objection received by the Talathi under sub-rule (2), he finds that disputes exist relating to entries in respect of certain lands, he shall enter such disputes in a register of disputed cases, which shall be maintained for each village in Form V. He shall simultaneously give individual notice in Form VI to each

- A person who appears to him to be interested in the disputed entry, informing him of the dispute and calling upon him to be present on the date the dispute is to be heard and decided.
- (4) On the date specified in the notice issued under sub-rule (2), the Revenue or Survey Officer concerned shall at the appointed place and time read aloud in the presence of the persons assembled, the draft of the Index of Lands for the village. He shall then inform them of the lands in respect of which disputes have been raised and ask them whether they admit the entries in respect of the remaining lands. If they admit such entries the officer shall make a remark to that effect in the remarks column of the draft. If in respect of any entry any error is pointed out and is admitted by all concerned, the entry shall be corrected and a remark made to that effect in the remarks column. If a dispute is raised in respect of any entry it shall be entered in the register of disputed cases.
- (5) Thereafter the officer concerned shall, after verifying whether the Talathi has given individual notices under sub-rule (3), proceed to decide the disputed cases entered in the register of disputed cases and record therein his decision in respect of each dispute. The decision shall be announced to the persons assembled.
- (6) The entries in the draft of the Index of Lands shall be corrected in red ink by the Talathi in the light of the decisions given under sub-rule (5)."
17. We have noticed above that as per Rule 5 in Form II notice F was issued inviting all persons who have any interest in the lands in the village to furnish to him either in writing or orally information and objection. In the present case after draft of the Index of Lands prepared under Rule 6 objection was filed by Vishnu Shivram Gaonkar as noted above on which individual notice was also issued to him in Form VI asking him G to appear on 20.10.1975. On 20.10.1975 proceeding sheet of Court of Aval Karkun for record of rights indicates that on 20.10.1975 applicant Vishnu Shivram Gaonkarmade a statement which is brought on record at page 17 of I.A.No.187381 of 2019 which is to the following effect:
- "BEFORE AVAL KARKUN**
- H I shall speak the truth and say*** *****

Name : Vishnu Shivram Gaonkar A
Age : 21 yrs – bachelor
Profession : Agriculturist
Resident : Sulcorna

** state that I wish to withdraw my application dated 7-8-75 B
addressed to Mamlatdar for record of rights.

Sd/-
Vishnu Shivram Gaonkar C
Pirla
20/10/75
Before me
Sd/-"

18. The record of proceeding sheet dated 20.10.1975 indicates D
that after recording the statement of Vishnu Shivram Gaonkar the case
was closed. The above proceedings indicate that the objection filed by
Vishnu Shivram Gaonkar was withdrawn and hence there was no
decision taken in Dispute Case No.3. Even after withdrawal of the claim
by the plaintiff, the names of plaintiffs, Vishnu Shivram Gaonkar, Narayan
Vishnu Gaonkar and Rama S.F. Dessai were added by correcting the E
Form III in redink as required by sub-Rule(6) of Rule 6. The entry of
names of the above persons along with Forest Department was stated
to be as per D.C.3 as is clear from Form III Annexure-2 brought on
record by the appellant. A coloured print of above Annexure-2 has been
placed before us by learned ASG which is taken on record, which F
indicates that in Form III the addition of names of three persons was by
red ink. When Vishnu Shivram Gaonkar had withdrawn his claim for
deletion of name of Forest Department, we fail to comprehend that as to
how despite that withdrawal which is duly recorded in the proceedings
their names can be added along with Forest Department against survey G
No.11/1. Thus, the recording of names of the plaintiffs in survey
No.11/1 along with the name of the Forest Department was illegal and
not as per Rule 6 of Rules, 1969. When there was no decision in favour
of the plaintiffs, applicant on the objection dated 07.08.1975, there was

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A no question of adding their names in Index of Lands against survey No.11/1. The addition of the names of the plaintiffs against survey No.11/1 was completely without jurisdiction and the said entry cannot be allowed to be continued.

19. That in the suit filed by the plaintiffs being Special Civil Suit

B No.64 of 1995, there is no mention of entire proceedings regarding correction of records undertaken in 1975. The plaintiffs in the suit did not disclose the aforesaid facts which were relevant for determining the issues in consideration in the suit. Plaintiffs thus have completely failed to justify the continuance of their names against survey No.11/1.

C 20. From the additional evidence brought on the record by the State, it is clear that in the record which was published of the Village Sulcarna for survey No.11, it was the name of only Forest Department which was mentioned on survey No.11 area 230.45.00 hectares and the addition of the name of Vishnu Shivaram Gaonkar and two others were in pursuance of Dispute Case No.3. The Goa, Daman and Diu Land

D Revenue Code, 1968 was enacted to consolidate and amend the Law relating to Land and Land Revenue in the Union of territory of Goa, Daman and Diu as then existed. Section 14 of the Code, 1968 which is relevant for the present case is as follows:

E **“14. Title of Government to lands, etc.—** (1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the Government subject to right of way, and all other rights, public and individual, legally subsisting.

G **Explanation:**— In this section, “high water-mark” means the highest point reached by ordinary spring tides at any season of the year.

H (2) Unless it is otherwise expressly provided in any law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the Government and it shall have all the powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or 11 [an officer authorised by the Government in this behalf. A

(4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties. B

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order. C

(6) Any person shall be deemed to have had due notice of an inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Government." E

21. The respondents had filed reply to I.A.No.187381 of 2019 and the additional documents which have been filed along with IA, the objection has been taken with regard to said documents being filed after long delay. With regard to the documents filed by the State along with IA following averments have been made in paragraphs 3.1 to 7: F

"3.1 I respectfully state at the outset that these documents are public records and in public domain and consequently it was not difficult for the State Government/Forest Department to have had knowledge and/or access to these documents. G

4. I say that the entire proceedings in the Trial Court and the High Court have been defended for the State by the Forest Department and surely the Forest Department knew of these documents and cannot feign ignorance at this belated stage. H

- A 5. I say that the affidavit does not even reveal why these documents were not available with the Department and why were not produced in the proceedings, specially considering that the Civil Suit in the Civil Court, Quepem, South Goa, Goa was filed way back in 1995 – almost quarter of a century.
- B 6. Without prejudice to what is stated hereinabove, I say that the copy of the undated Application of Vishnu Shivram Gaonkar (referred as Application dated 07.08.1975) when perused would show that the claim in this application makes one plea- that the maps are not correct since land of Vishnu Shivaram Gaonkar has been excluded from the map and recorded in the adjacent map “and that land is recorded in the name of Forest Department”.
- C 7. I therefore respectfully submit that the application of 1975 has no bearing with the suit property which is subject matter of the SLP and is totally irrelevant for consideration in facts and circumstances of the present case.”
- D 22. The respondents themselves claim that the documents which have been filed are public records and in public domain, only objection raised by the respondents is that it was not difficult for the State to have had knowledge and access to these documents. The veracity of the documents has not been disputed.
- E 23. We have already noticed our order dated 10.12.2019 where these additional documents have already been accepted with direction to the respondents to file a reply to the application. The respondents do not dispute of having raised the objection after Revenue records were published mentioning “Forest Department” against the survey No.11/1,
- F when the plaintiffs-respondents have withdrawn their application on 20.10.1975, they cannot be allowed to object the Entry of Forest Department regarding survey No.11/1 as published in Form II.
- G 24. The matriz document which is claimed to be the basis of rights by the plaintiffs-respondents is not the document of title. The Bombay High Court in ***Fabrica da Igreja de N.s. de Milagres vs. Union of India and others, (1995) 1 Bom CR 588*** dealing with matriz document laid down following in paragraph 14:
- H “14.....It is a settled position that a matriz document is neither an instrument of title nor a source of possession and that the organisation of the “matriz predial” is a mere administrative

exercise aimed at collecting tax revenues from the land. As such no legal evidentiary value can be attributed also to the said registration for the purpose of establishing ownership title or presuming possession on the land.”

25. More so, the plaintiffs ought to have agitated for their claim with regard to survey No.11/1 and ought not to have withdrawn application dated 07.08.1975 before the Revenue Official. It is relevant to notice that in the suit which was filed by the plaintiffs any mention of the proceedings regarding records of rights of survey No.11/1 undertaken earlier were not referred to and the mention of proceedings under Revenue Code, 1968 and Rules, 1969 is conspicuously absent. The trial court having dismissed the suit of the plaintiffs for declaring them owner of survey No.11/1, we do not find any justification for continuance of the names of the plaintiffs in survey No.11/1 of Village Sulcorna.

26. The State in its written statement has claimed that Sulcorna has declared as forest by Gazette Notification dated 11.01.1951 which Gazette was filed as Annexure AA-3 filed on the record which mentions Forests Sulcorna and the name of Village Sulcorna, the Court below had not placed reliance on the said Gazette only for the reason that the Gazette does not mention any survey number. Survey No.11 was situate in the Forest area is further proved by the documents brought on the record by the appellant i.e. Mining Lease which was granted w.e.f 22.11.1987 for survey No.2 of Village Curpem and survey No.11 of Village Sulcorna. The conditions of the Lease Deed indicate that survey numbers on which Lease was granted situate in the Forest area, the relevant condition No.4 of the Lease is as follows:

“To enter upon reserved forests.

4. Notwithstanding anything in this Schedule contained the lessee/lessees shall not enter upon any reserve forests included in the said lands without previous sanction in writing of the District Forest Officer nor fell cut a use any timber or trees without obtaining the sanction in writing of that Officer nor otherwise than in accordance with such conditions as the State Government may prescribe.”

27. In the Chapter of General Provisions, Clause 15 requires “Lease status of forest land will remain unchanged”.

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- A 28. The suit filed by the plaintiffs was to delete the name of Forest Department from survey No.11 which suit having been dismissed the name of the Forest Department continues with regard to survey O.11/1. Even though Gazette dated 11.01.1951 does not mention survey No.11 but Forest was declared in Village Sulcorna and Survey No.11 is forest land is proved by other evidence. We are satisfied that the counter-claim filed by the State deserved to be allowed and the name of the plaintiffs-respondents from survey No.11/1 deserved to be struck off.
- B 29. Learned counsel for the respondents relying on the judgment of the Bombay High Court at Goa in Writ Petition No.158 of 2005 (**Smt. Maria Teresa Philomena D'Rocha Pegado vs. State of Goa and others**), has submitted that Portuguese Colonial Mining Law was in force prior to Goa becoming Union Territory and the State was owner of proprietorship of all deposits of minor minerals etc. which was so noted in the above case by the Bombay High Court. Learned counsel for the respondents has referred paragraphs 14 and 31 of the judgment D which are to the following effect:
- “14. It would be relevant to refer to Article 2 of Decree dated 20.09.1906 which was a Portuguese Colonial Mining Law in force during the erstwhile regime, which reads thus:
- E “The proprietorship of deposits of metals and metalliferous minerals, including bismuth, arsenic, antimony, sulphur, graphite, combustible minerals with the exception of peat, bituminous substances and mineral oils, precious stones, alkalis, phosphates, mica and amianthus belongs to the State; such beds cannot be prospected or worked without licence and concession by Government in the terms of the present Decree.”
- F A perusal of Article 2 of the aforesaid decree would reveal that all metals and metal-liferous minerals belong to the State and such beds cannot be prospected or worked without licence and concession by the Government.
- G 31. We are, therefore, of the considered view that in view of the provisions of sub-section (2) of Section 14 and Section 36 of the Land Revenue Code, read with the provisions of Article 2 of Decree dated 20.09.1906 which was a Portuguese Colonial Mining Law, the right in the minor minerals vests solely in the State Government and the State Government has all powers necessary
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for the purpose of enjoyment of such rights. We find that this position is fortified by the provisions of Section 24A of the said Act, which is applicable to all minerals, including minor minerals.” A

30. The above judgment of the Bombay High Court reiterated that it is the State which is the proprietor of all minerals beneath the land. There can be no dispute to the above proposition. For the purpose of this case what was relied by the appellant was that Mining Lease granted for survey No.11, Lease conditions clearly mention the area as forest area with the requirement to maintain the status of land as the forest land. The grant of Lease by the State is not disputed by the plaintiffs-respondents also. We, thus, are of the considered opinion that the name of the Forest Department recorded in survey No.11, deletion of which has been refused and the name of plaintiffs-respondents in the record in the manner and circumstances in which it came on the records of rights does not establish any claim of the plaintiffs-respondents and defendant has clearly made out the case for allowing counter-claim. The additional evidence brought on record by the State before this Court which has been accepted on record fully support the counter-claim of the defendant. We, thus, are of the view that counter-claim of the defendant-appellant deserves to be allowed and the judgment of courts below is to be modified to the above extent. B

31. In view of the foregoing discussion, the appeal of the appellant is allowed, the counter-claim filed by the defendants in Suit No.64 of 1995 is allowed. The name of plaintiffs-respondents be deleted from the occupant’s column in survey No.11/1 Sulcorna Village of Quepem Taluka, District Goa. Parties shall bear their own costs. C