

**Government of Goa through the Chief Secretary**  
v.  
**Maria Julieta D'Souza (D) & Ors.**

(Civil Appeal No. 722 of 2016)

31 January 2024

**[Pamidighantam Sri Narasimha\* and Aravind Kumar, JJ.]**

**Issue for Consideration**

Whether the High Court, while allowing first appeal against judgment of trial court that dismissed the suit filed by respondent for declaration of title and injunction, had wrongly shifted the burden of proof on to the State (defendant) rather than requiring the plaintiff to prove its title.

**Headnotes**

**Suit – Suit for declaration of title and injunction – Standard of proof – While inquiring into whether a fact is proved, sufficiency of evidence to be seen in the context of standard of proof, which in civil cases is by preponderance of probability.**

**Held:** While it was submitted that the High Court wrongly shifted the plaintiff's burden to prove its own case for declaration on to the State and that the plaintiff must prove its own case, it is found that what was being submitted was not about the burden of proof but the standard of proof – This is a matter relating to the sufficiency of evidence – While inquiring into whether a fact is proved, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability – By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced. [Paras 6, 8]

**Evidence – Common law jurisprudence – Distinction between burden of proof and standard of proof – This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. [Para 8]**

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**Case Law Cited**

*Sebastiao Luis Fernandes (Dead) through LRs. v. K.V.P. Shastri (Dead) through Lrs., [2013] 11 SCR 1076 : (2013) 15 SCC 161 and Union of India v. Vasavi Cooperative Housing Society Limited, (2014) 2 SCC 269 : [2014] 1 SCR 180 – referred to.*

**List of Keywords**

Suit; Declaration of title and injunction; Burden of proof; Common law; Jurisprudence; Burden of proof; Standard of proof; Sufficiency of evidence; Preponderance of probability; Title; Injunction; Evidence.

**Case Arising From**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.722 of 2016

From the Judgment and Order dated 21.10.2010 of the High Court of Bombay at Panaji, Goa in FA No.282 of 2007

**Appearances for Parties**

Ms. Ruchira Gupta, Shishir Deshpande, Ms. Harshita Sharma, Ms. Swati Jain, Ms. Pooja Tripathi, Tejaswin Suri, Advs. for the Appellant.

Huzefa Ahmed, Sr. Adv., U R Timble, Ajay Kumar Jha, Abhishek Chaudhary, Advs. for the Respondents.

**Judgment / Order of the Supreme Court**

**Judgment**

**Pamidighantam Sri Narasimha, J.**

1. This is an appeal against the final judgment of the High Court of Bombay at Goa allowing the first appeal against the judgment of the Trial Court dated 25.07.2007 that dismissed the suit filed by the respondent herein.
2. The suit came to be filed by the respondent(s) herein for declaration of title and injunction. The Trial Court dismissed the suit on two grounds: first, the plaintiff could not establish her title by way of a clear document of title in her favour. Second the suit is itself barred by limitation.

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3. In appeal, the High Court considered the matter in detail and in so far as the first ground is concerned, the High Court referred to various documents including deeds evidencing the presence of title in favour of the plaintiffs' predecessor followed by their continuous possession and came to the conclusion that her title over the property is well-established. So far as limitation is concerned, the High Court held that the suit is within the period of limitation, apart from also noting that the question of limitation was not pressed by the Government before the Trial Court.
4. We heard Ms. Ruchira Gupta, who was well-prepared on law and fact. She prepared a detailed list of dates and has also taken us through the relevant portions of the pleadings in the suit and other documents. She has pointed out the findings of fact as arrived by the Trial Court. Referring to the reasoning of the High Court, she submitted that the High Court had wrongly shifted the burden of proof on to the State (defendant) rather than requiring the plaintiff to prove its title. She further submitted that the High Court wrongly asked for proof of possession of the property rather than for proof of title of the property, which is the only inquiry in a suit for declaration. In support of her submission, she has referred to the precedents of this Court in *Sebastiao Luis Fernandes (Dead) through LRs. v. K.V.P. Shastri (Dead) through LRs.*<sup>1</sup> and *Union of India v. Vasavi Cooperative Housing Society Limited*<sup>2</sup>.
5. Having considered the matter in detail, we are of the opinion that the High Court has correctly reappreciated the facts and evidence while exercising first appellate jurisdiction and has also followed the law as applicable in proving a suit for declaration. The High Court has also examined the plea of limitation and held that the suit is within the period of limitation.
6. While Ms. Ruchira Gupta submitted that the High Court wrongly shifted the plaintiff's burden to prove its own case for declaration on to the State and that the plaintiff must prove its own case, we found that what she was submitting was not about the burden of proof but the standard of proof. We will explain this in the context of fact as well as law.

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1 [2013] 11 SCR 1076 : (2013)15 SCC 161

2 [2014] 1 SCR 180 : (2014)2 SCC 269

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7. On fact, the High Court referred to multiple pieces of evidence, orders, and documents and string them together to come to a clear conclusion that the title subsists in the plaintiff. Suffice for us to say that these pieces of evidence were adduced and proved by the plaintiff alone. The High Court did not solely rely on the lack of evidence by the State to establish its own title in coming to its conclusion. Thus, the burden of proof was well-discharged by the plaintiff and the High Court correctly examined and concluded its findings based on the plaintiff's evidence.
8. On law, the position is as follows. There is a clear distinction between burden of proof and standard of proof. This distinction is well-known to civil as well as criminal practitioners in common law jurisprudence. What Ms. Ruchira sought to point out is that the documents relied on by the plaintiff did not point out the existence of title at all. She is right to the extent that no single document in itself concludes title in favour of the plaintiff, but this is not an issue of burden of proof. This is a matter relating to the sufficiency of evidence. While inquiring into whether a fact is proved<sup>3</sup>, the sufficiency of evidence is to be seen in the context of standard of proof, which in civil cases is by preponderance of probability. By this test, the High Court has correctly arrived at its conclusion regarding the existence of title in favour of the plaintiff on the basis of the evidence adduced.
9. For these reasons, Civil Appeal arising out of judgment of the High Court in First Appeal No. 282 of 2007 dated 21.10.2010 is dismissed.
10. Pending application(s), if any, shall stand disposed of.
11. No order as to costs.

*Headnotes prepared by:* Bibhuti Bhushan Bose

*Result of the case:*  
Appeal dismissed.

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<sup>3</sup> Section 3 of the Indian Evidence Act defines the terms as:

"Proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists