Niti

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.35 OF 2007
WITH
MISC. CIVIL APPLICATION NO.43 OF 2021 AND 59 OF 2024
AND
SECOND APPEAL NO.36 OF 2007
WITH
MISC. CIVIL APPLICATION NO.44 OF 2021 AND 125 OF 2024(F)

SECOND APPEAL NO.35 OF 2007
WITH
MISC. CIVIL APPLICATION NO.43 OF 2021 AND 59 OF 2024

Mr. Remedios Fernandes,
(Since Deceased)
R/o Bogmalo,
Mormugao, Goa.

(a) Mrs. Monica Cunha e Fernandes
w/o late Remedios Fernandes
aged 70 years, landlord,
r/o H. No. 477, Cantor,
Bogmalo, Goa.

(b) Mr. Darrel Fernandes
s/o late Remedios Fernandes
aged 39 years, Service,
r/o H. No. 477, Cantor,
Bogmalo, Goa.

(c) Miss Oliya Ubaldina Fernandes
d/o late Remedios Fernandes
aged 38 years, r/o H. No. 477,
Cantor, Bogmalo, Goa.

(d) Mr. Volney Fernandes
s/o late Remedios Fernandes

aged 35 years, Service,
r/o H. No. 477, Cantor,
Bogmalo, Goa.

(e) Mr. Edrich Fernandes
s/o late Remedios Fernandes
aged 29 years, landlord,
r/o H. No. 477, Cantor,
Bogmalo, Goa. ….Appellants

Versus

1. Dr. Alfred Costa,
r/o Altinho, Mapusa,
Bardez, Goa.

2. Mrs. Maria Beatriz Costa
r/o Altinho, Mapusa,
Bardez, Goa.

3. Eng. Antonio Pedro Alcantara,
Deceased by LR's

3a) Manuel Salvador Quadros D'Costa
and his wife

3b) Manuela Quadros D'Costa,

both residents of Montes
Velho-Aljustrel, Portugal

4. Mrs. Maria Antonio Camacho da Silva Canijo de Quadros Costa,

Both r/at Montes Velho Aljustrel, Portugal.

5. Eng. Manuel Antonio do Padre
Jose Vaz Sacramento Peres de

de Quadros e Costa alias
Manuel Antonio Quadros e Costa,

6. Mrs Maria Elsa Gomes Sanches,

Both r/at Rua General Silva Freine,
Lisbon 6, Portugal

7. Mr Romeo Alvares,
r/at H.No.282, Paliman,
Bogmalo, Mormugao, Goa. ….Respondents

AND
SECOND APPEAL NO.36 OF 2007
WITH
MISC. CIVIL APPLICATION NO.44 OF 2021 AND 125 OF 2024(F)

Mr. Remedios Fernandes,
(Since Deceased)
R/o Bogmalo,
Mormugao, Goa.

(a) Mrs. Monica Cunha e Fernandes
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Silva Canijo de Quadros Costa,
r/at Montes Velho-Aljustrel, Portugal.

4. Eng. Manuel Antonio do Padre (deceased)
Jose Vaz Sacramento Peres de
De Quadros e Costa alias Manuel
Antonio Quadros e Costa

5. Mrs Maria Elsa Gomes Sanches,

Both r/at Rua General Silva Freine,
Lisbon 6, Portugal

6. Mr Romeo Alvares,
r/at H.No.282, Paliman,
Bogmalo, Mormugao, Goa. ….Respondents

Mr C.A. Coutinho with Mr Ivan Santimano, Advocates for the Appellant.
Mr Sudin Usgaonkar, Senior Advocate with Mr George Pereira, Ms Pooja Naik and Ms Divya Parab, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

Reserved on: 16th FEBRUARY 2024
Pronounced on: 22nd FEBRUARY 2024

JUDGMENT :

1. Heard Mr C.A. Coutinho with Mr Ivan Santimano for the appellant in both the appeals and Mr Sudin Usgaonkar, Senior Advocate, with Mr George Pereira and Ms Pooja Naik for the respondents in both appeals.

2. The learned Counsel for the parties agree that both these Second Appeals can be disposed of by a common judgment and order. They point out that Second Appeal No.35 of 2007 is directed against the judgment and decree dated 29.12.2006 made by the District Judge, South Goa (First Appellate Court) in Regular Civil Appeal No.14 of 2005 to the extent it upholds judgment and decree dated 31.12.2004 made by the Civil Judge Junior Division, Vasco (Trial Court) in Regular Civil Suit No.14/1997/D dismissing the appellant's counterclaim raised therein. The Second Appeal No.36 of 2007 is directed against the judgment and decree dated 29.12.2006 made by the First Appellate Court in Regular Civil Appeal No.13 of 2005, reversing the judgment

and decree dated 31.12.2004 made by the Trial Court in the very same Regular Civil Suit No.14/1997/D.

3. Accordingly, these two appeals arise out of the Trial Court's decree dated 31.12.2004 in Regular Civil Suit no.14/1997/D by which the Trial Court had dismissed the suit and the counterclaim. The First Appellate Court, by the impugned judgments and decrees, has now decreed the suit but upheld the dismissal of the counterclaim. Hence, it is only appropriate to dispose of both these appeals by a common judgment and order.

4. Both these appeals were admitted on 30.03.2007. Second Appeal No.35 of 2007 was admitted on questions (a) to (d), which are common to Second Appeal No.36 of 2007. However, there was an additional substantial question of law (e), in Second Appeal No.36 of 2007.

5. Accordingly, the order dated 30.03.2007 in Second Appeal No.36 of 2007 is transcribed below for the convenience of reference:

> *"(a) Whether the appellate Court could have construed the Agreement of Sale dated 4-2-1921 as a Sale Deed and in any event, when it was the case of the respondents themselves that consequent thereupon a Sale Deed dated 21-11-1921 was executed which was thereafter rectified by Deed dated 27-7-1923 and these Deeds were not produced?*
>
> *(b) Whether the purported transfer of half right to the property bearing description number 8327 (with the exclusion of four parts to the southern side), purportedly contained in the said document of 4/2/1921, is not void*

in view of article 2177 of the Portuguese Civil Code and when there is no partition made by metes and bounds?

(c) Whether in the absence of production of the document of auction purportedly pertaining to the other half of the property bearing description number 8327, and moreover the provisional registration under inscription number 24613 having admittedly laps in view of article 11 of the then registration law under decree no.43525, the Court could yet uphold the respondents' claim of title to the said half property?

(d) Whether when the inscription number 51649 pertaining to property described under number 8327 was definitively inscribed in the name of the appellants' mother Peregrina Ubaldina da Cruz, and article 8 of the said registration law presumed that the rights registered exist and belong to the person in favour of whom they are registered, and in view of article 953 of the Portuguese Civil Code to the effect that inscription by itself operates as transfer of possession in favour of the person in whose name the inscription stands, the appellate Court could still hold against the appellant in relation to the title and possession of the said property bearing description number 8327 which description was relied upon by both the parties in relation to survey number 70/1?

(e) Whether the appellant's claim that the name of Ubaldina de Cruz (mother of the appellant no.1) was fraudulently deleted from the survey record could be held by the appellate Court to be barred by limitation thereby refusing to decide the same?"

6. By further order dated 28.06.2013 made in Misc. Civil Application No.1092/2012 and 1095 of 2012 in Second Appeal No.36

of 2007 and 35 of 2007, respectively, this Court framed the following additional substantial question of law in both appeals:

> *Whether the suit for injunction simpliciter was maintainable, without seeking declaration of title, when the title was disputed by the appellant/defendant in his written statement and the appellant/defendant clarified title to the suit property?*

7. At the stage of the final hearing of both the appeals before me on 15.02.2024, Mr C.A. Coutinho, learned Counsel for the appellant, urged two further substantial questions of law, which, according to him, would also arise in these two appeals, which read as follows:-

> *"(i) Whether suit for injunction simplicitor, without seeking cancellation of inscription is not maintainable when half of the suit property is inscribed in favour of mother of the defendant Peregrina Ubaldina Cruz under No.51649 in light of Article 12 of the Land Registration Code?*
>
> *(ii) Whether the First Appellate Court could have taken into account Exhibit PW1/E (page 53) of the paper book was marked as Exhibit subject to production of the original document and the original document was never produced?"*

8. Besides, the appellant and the respondents have filed Misc. Civil Applications in these appeals, seeking production of additional evidence by resort to Order 41 Rule 27 of CPC. Learned Counsel pointed out that such applications have to be considered at the stage of the final

hearing of the appeals given the law laid down in ***Union of India V/s. Ibrahim Uddin & Anr.***[1].

9. Misc. Civil Application No.43 of 2021 in Second Appeal No.35 of 2007 and Misc. Civil Application No.44 of 2021 in Second Appeal No.36 of 2007 are filed by the first respondent seeking leave to produce on record the following documents:

> *"a. Court Auction Proceedings dating to 08.06.1925*
> *i. Cause title of the proceedings No.12729 of 1920 (page 1)*
> *ii. Copy of advertisement indicating proposed auction of ½ of property bearing description 8327 besides other properties (pages 94 - 95v)*
> *iii. Order/Notice of Court Auction date fixed for 08.06.1925 and notices to creditors. (pages 99-100v)*
> *iv. Proceedings of the Auction dated 8/06/1921 (pages 102-103v) where property was allocated to Manuel Salvador Costa (predecessor in title of the Respondents).*
> *v. Deed of rectification, cancellation and deposit dated 27/07/1923 rectifying the deed of 4/2/1921 attached to the court proceedings. (pages 104 to 107)*
> *vi. Delivery of Challan and deposit of Auction money and registration fees (Pages 125 to 130)"*

10. Misc. Civil Application No.59 of 2024 in Second Appeal No.35 of 2007 and Misc. Civil Application No.125 of 2024(F) in Second Appeal No.36 of 2007 is also filed by the first respondent seeking leave to produce the records and proceedings in Civil Suit No.2499/1962 in both appeals.

[1] (2012) 8 SCC 148

11. Misc. Civil Application No.373 of 2018 in Second Appeal No.35 of 2007 is filed by the appellant seeking to produce on record the following documents:

> *(a) First Decision/judgment and order dated 27.09.1929 by the Judicial Commissioner of Goa, Daman and Diu in Case No.23.570 Civil Appeal registered on Book No.115 at page no.136;*
>
> *(b) The document under the caption of "Certificate" in respect of the Deed, recorded at folio thirty-six onwards by the notary in the Judicial Division of Salcete, Constancio Roque Bernardo Salvador da Costa, in his Register of Deeds number two hundred and twenty-eight, existing in this Historical Archives of Goa, Panaji, in its volume number thirteen thousand two hundred and twenty-five concerning Public Deed of Gift dated 23.12.1904.*

12. Order XLI Rule 27 of CPC provides that parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined. Whenever additional evidence is allowed to

be produced by an Appellate Court, the Court shall record the reasons for its admission.

13. The provisions of Order XLI Rule 27 apply primarily to first appeals or appeals against decrees made by the Trial Court. However, Order XLII Rule 1 of CPC provides that the rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees, i.e. Second Appeals. Accordingly, the provisions of Order XLI Rule 27 shall apply, so far as may be, even to Second Appeals. No dispute was raised regarding this proposition particularly since both the appellant and the respondents had applied for the production of additional evidence by resort to the provisions of Order XLI Rule 27 of CPC.

14. Admittedly, this is not a case where the Court from whose decree the appeals are preferred had refused to admit evidence which ought to have been admitted. The evidence/documents now sought to be produced were not even attempted to be produced by any of the parties, either before the Trial Court or First Appellate Court. Therefore, the learned Counsel for the parties rely on sub-clause (aa) and (b) of Order XLI Rule 27(1) of CPC.

15. In Misc. Civil Application No.43 and 44 of 2021, all that the applicants have stated is that during the course of the trial, "*due to non-availability of the aforesaid documents*", the plaintiffs were constrained to produce in evidence the two documents referred to in paragraph 2 of the civil applications, i.e. the Agreement/Deed dated 04.02.1921 relating to the one half purchased by Sale Deed dated 22.02.1923 and

the provisional inscription certificate relating to the other half purchased by Court auction. The applicants then state that *"recently under the circumstances narrated hereinafter"* the applicants were able to retrieve the documents that they now seek to produce as additional evidence. The circumstances narrated are again that the applicants were "*unable to locate the documents though they had extensively searched the records*". Then, there is a reference to some trespass by the appellants taking advantage of the pandemic situation and the visit by one of the Advocates for the applicant in the archives.

16. Upon due consideration of Misc. Civil Application No.43 and 44 of 2021, reasons set out therein, it is difficult to hold that the applicants have established that notwithstanding the exercise of due diligence, such evidence was either not within their knowledge or that they could not after the exercise of due diligence produce the same at the time when the decree made by the Trial Court or the First Appellate Court was passed. Apart from the fact that the two applications do not even assert the exercise of due diligence, from the reasons set out in the civil applications, no case of exercise of due diligence is made out.

17. Mr Coutinho correctly pointed out that the appellant, who was the defendant in the suit, had applied for better particulars. Better particulars, directly or indirectly, refer to the documents that the applicants now seek leave to produce. At that stage, the applicants denied having such documents and, based upon such denial, declined to furnish particulars. This means that the applicants were made aware

of such documents. Even otherwise there is material on record which establishes that the applicants were aware of such documents. In any case, there is no explanation as to why no attempt was made to obtain and produce these documents before the First Appellate Court. Accordingly, no case is made to bring the applicants' case under Order XLI Rule 27(1)(aa) of CPC and admit this additional evidence at the second appellate stage.

18. After having heard the learned Counsel for the parties extensively, no case is made out for granting leave to produce these documents as this Court would be in a position to pronounce this judgment even without adverting to the documents now sought to be produced. As discussed later, both these appeals warrant dismissal even without adverting to the documents for which the first respondent now applies for leave. No doubt, admission of these documents would only fortify this conclusion, but that by itself is not sufficient to hold that a case has been made out under Order XLI Rule 27(1)(b) of CPC to grant leave for the production of additional evidence.

19. Misc. Civil Application No.373 of 2018 in Second Appeal No.35 of 2007 is filed by the appellant. This application refers to Order XLI Rule 27 of CPC but contains no averments sufficient for the exercise of powers under any of the sub-clauses of Order XLI Rule 27(1) of CPC. Misc. Civil Application No.373 of 2018 is filed in the most casual manner by stating that the present Advocate, who appears on behalf of the appellant because the earlier Advocate declined to continue with the

matter, came across the documents in respect of which leave is filed *"as he was scrutinizing the file in possession of the applicants"*.

20. There is absolutely no explanation why these documents, if they were already with the appellant, were not produced before the Trial Court or the First Appellate Court. There are no averments about any exercise of due diligence at any of the stages. Nothing indicates that these documents are necessary for the Court to pronounce judgment in these appeals. Accordingly, no case is made out to exercise the powers under Order XLI Rule 27 of CPC and allow the production of two documents in this Second Appeal.

21. Accordingly, for all the above reasons, the applications for the production of additional documents/evidence made by the appellants and the first respondent are liable to be dismissed and are hereby dismissed. In any case, even if the documents sought to be produced by the parties were to be considered, such consideration would not affect the conclusion in these appeals. Even after considering the documents, there was no scope for allowing these two appeals for the reasons discussed hereafter.

22. The appellants in both these appeals are the legal representatives of Remedios Fernandes, who was the sole defendant in Regular Civil Suit No.14/1997/D, which was instituted by respondent nos.1, 2, predecessor in title of respondent nos.3(a) and 3(b) (Eng. Antonio Pedro Alcantara), respondent nos.4, 5, 6 and 7. Accordingly, the

appellants shall be referred to as the defendants, and the respondents shall be referred to as the plaintiffs, even for the purpose of these appeals.

23. The plaintiffs instituted Regular Civil Suit No.14/1997/D before the Trial Court seeking relief of permanent and temporary injunction in respect of plot 'D' admeasuring 675 sq. mtrs. from the land described under no.8327 and surveyed under no.70/1 of Chicalim (as described in para 2 of the plaint read with the plan at Annexure 'A' to the plaint).

24. It was the plaintiffs' case that they were the owners in possession of the larger property known as Baili Chall alias Baili Chali alias Bailo Molo, registered under description no.8327 at page 185 (reverse) and registered in the Land Registration Office under matriz no.634 and surveyed under nos.70/1, 73/3 and 73/4 of village Chicalim. The plaintiffs claimed that the suit plot admeasuring 675 sq. mtrs. was a part of this larger property, and since the defendants were interfering with the suit plot without any right or authority to do so, they ought to be permanently injuncted from interfering or encroaching in the suit plot in any manner.

25. The defendants, by their application dated 15.03.1997, applied for the following better particulars:-

> *(a) Who was the person from whom the said half was purchased on 27/07/1923, the document by which the same was purchased with the Notary before whom the same was executed.*

> *(b) The proceedings in which the auction was conducted by the Court on 8.6.1925, the name of the parties between whom such proceedings were going on and the relation of such person to the decree holders and/or judgment debtors.*

26. The plaintiffs, by their response dated 29.07.1997, responded that on going through their records, they did not find a copy of the Deed dated 23.07.1923 or the Auction Purchase Deed dated 08.06.1925. They claimed that their search was on, but presently, they were not in a position to furnish the better particulars sought by the defendants.

27. The defendants filed their written statement and the counterclaim on 25.09.1997. In the written statement, the defendants denied the case of the plaintiffs. By way of counterclaim, the defendants sought a declaration that the original defendants' mother was the owner in possession of the larger property described under no.8327 and surveyed under no.70/1 and 73/3 of the Chicalim village. A further declaration was sought that the deletion of the original defendant's mother's name from the survey records was fraudulent and based on a forgery, and, therefore, the same should be cancelled. Further declaration was sought to declare the Agreement of Sale dated 16.10.1996 entered into by plaintiffs no.1 to 6 with plaintiff no.7 was null and void. A permanent injunction was also sought by the original defendants against the plaintiffs to restrain them from trespassing into the larger property surveyed under no.70/1 and 73/3.

28. The plaintiffs filed their written statement to the counterclaim on 16.03.1998, denying the defendants' case and purporting to explain how the defendants had no right, title or possession of the larger property, including the suit property.

29. Based on the pleadings, the Trial Court cast the following issues on 03.06.2000.

> *"1. Whether the plaintiff proves that the defendant on 15/12/97 trespassed and encroached into the suit plot by erecting a suit structure of 20 sq. mts.?*
>
> *2. Whether the plaintiffs prove that they are the owner in possession of the property described under No.8327?*
>
> *3. Whether the defendant proves that the suit structure has been in existence for over 35 years and in occupation of the defendant and his predecessors?*
>
> *4. Whether the defendants proves that the plaintiffs have fraudulently got their names impleaded in Record of rights by deleting the name of the mother of the defendant?*
>
> *5. Whether the defendant proves that the defendant is in physical possession of the properties surveyed under survey No: 70/1, 73/3, and 73/4 openly continuously and uninterruptedly for last twelve years and prior to that through his mother Peregina Ubaldina de Cruz?*
>
> *6. What order? What relief?"*

30. The plaintiffs and the defendants examined three witnesses, each including themselves. They produced oral as well as documentary

evidence. The Trial Court, by its judgment and decree dated 31.12.2004, dismissed the suit and the counterclaim.

31. Accordingly, the plaintiffs instituted Regular Civil Appeal No.13 of 2005 before the First Appellate Court challenging the Trial Court's judgment and decree dated 31.12.2004 to the extent it dismissed the plaintiffs' Regular Civil Suit No.14/1997/D. Similarly, the defendants instituted Regular Civil Appeal No.14 of 2005 to challenge the Trial Court's judgment and decree dated 31.12.2004, to the extent it dismissed the defendants' counterclaim in Regular Civil Suit No.14/1997/D.

32. The Regular Civil Appeal Nos.13 and 14 of 2005 were disposed of by the First Appellate Court vide a common judgment and decree dated 29.12.2006 by which the First Appellate Court allowed Regular Civil Appeal No.13 of 2005 and decreed Regular Civil Suit No.14 of 2005. However, Regular Civil Appeal No.14 of 2005 was dismissed, thereby confirming the dismissal of the counterclaim in Regular Civil Suit No.14/1997/D. Hence, these two appeals by the defendants.

33. Mr Coutinho submitted that if this Court were inclined to allow the applications under Order XLI Rule 27 made by the plaintiffs and the defendants, then this Court would be obliged to follow the procedure under Order XLI Rules 28 and 29 of CPC. He relied on ***Uttaradi Mutt V/s. Raghavendra Swamy Mutt***[2] to submit that

[2] (2018) 10 SCC 484

remand was in order so that the defendants would have an opportunity to counter the evidence now accepted and, if necessary, to even apply for amendment of pleadings. He submitted that the defendants had sought better particulars, which the plaintiffs did not furnish. He submitted that the same documents should not have been produced at the second appellate stage and that without affording the defendants a fair opportunity to rebut such documents/evidence or produce fresh evidence.

34. Mr Coutinho submitted that the additional substantial questions of law proposed by him are also involved in these two appeals. He pointed out that the inscription record, which constituted evidence of title and possession in terms of Article 953 of the Portuguese Civil Code, showed the defendants' mother's name recording half of the larger property described under no.8327. He submitted that in terms of Article 12 of the Registration Code, a suit for injunction simpliciter without seeking cancellation of the inscription was not at all maintainable.

35. Mr Coutinho submitted that even otherwise, this inscription created a cloud on the plaintiffs' title and, therefore, a suit for permanent injunction simpliciter was not maintainable considering the legal position explained by the Hon'ble Supreme Court in ***Anathula Sudhakar V/s. P. Buchi Reddy (Dead) by L.R.s & Ors.***[3]. Based on

[3] 2008 (5) All MR 451

these submissions, Mr Coutinho submitted that the substantial question of law framed on 28.06.2013 and the additional substantial question of law (i), as proposed by him, ought to be answered favouring the defendants (appellants).

36. Mr Coutinho submitted that the two Courts acted perversely, construing an Agreement for Sale dated 04.02.1921 as a Sale Deed when the plaintiffs had themselves contended that a Sale Deed was drawn on 21.11.1921 and rectified on 27.07.1923. Mr Coutinho submitted that the Sale Deed and the Rectification Deed were admittedly not produced by the plaintiffs before the Trial Court or the First Appellate Court. In such circumstances, the two Courts committed an error of law in treating the Agreement of Sale as a Sale Deed. Based on this, Mr Coutinho submitted that the substantial question (a) ought to be answered in favour of the defendants and against the plaintiffs. He relied on ***Suraj Lamp & Industries Pvt. Ltd. V/s. State of Haryana & Anr.***[4] to contend that an Agreement of Sale does not create any right in the property.

37. Mr Coutinho submitted that the Agreement for Sale dated 04.02.1921 was void because it purported to transfer a part of the property, which was never partitioned by metes and bounds. He relied on Article 2177 of the Portuguese Civil Code to submit that such an Agreement would be null and void. Based on this contention, he

[4] (2012) 1 SCC 656

submitted that the substantial question (b) ought to be decided favouring defendants and against the plaintiffs.

38. Mr Coutinho submitted that the auction purchase document by which the plaintiffs claim to have purchased half of such property described under no.8327 was never produced on record by the plaintiffs. He pointed out that the provisional registration, which was produced on record, lapsed after 180 days in terms of the Land Registration Code under Decree No.42565. He submitted that the First Appellate Court erred in accepting the plaintiffs' case and discarding the defendants' case. Based on this, Mr Coutinho submitted that the substantial question (c) ought to be decided in favour of the defendants and against the plaintiffs.

39. Mr Coutinho submitted that half of the property described under no.8327 was inscribed under no.51649 in favour of the defendant's mother. He submitted that under Article 953 of the Portuguese Civil Code, such inscription constitutes evidence of title and possession. Accordingly, he submitted that the substantial question (d) ought to be decided in favour of the defendants and against the plaintiffs. He relied on ***Mr Porbuko Uma Mandrekar & Ors. V/s. Mr Wencesslay Alex D'Silva & Ors.***[5], ***Silvestre Mascarenhas V/s. Shanta Locunu Fotto Dessai*** (Second Appeal No.11/1994) and ***Union of India V/s. Vishnu Pai Kane*** (First Appeal No.78 of 1990).

[5] 2005 (107) BomLR 614

40. Mr Coutinho submitted that fraud was played on the defendants' mother for deleting her name from Form III by serving records. He submitted that her name was deleted without issuing any notice to her after suppressing the inscription under no.51649. He submitted that the two Courts misdirected themselves in law in nonsuiting the defendants on the grounds of limitation. He submitted that limitation, if any, would commence from the date of knowledge of the fraud. He submitted that, in any case, mere entries in survey records do not constitute the cause of action for limitation to run, as was held by the Hon'ble Supreme Court in ***Daya Singh & Anr. V/s. Gurdev Singh through LRs.***[6]. Based on this contention, Mr Coutino submitted that substantial question (e) ought to be decided favouring the defendants and against the plaintiffs.

41. Finally, Mr Coutinho submitted that the First Appellate Court ended in taking into account Exhibit PW1/e which was marked as Exhibit PW1/e, which was marked as an exhibit subject to the production of an original document when, in fact, the original document was never produced before the First Appellate Court. Based on this, Mr Coutinho submitted that an additional substantial question of law (ii) ought to be decided in favour of the defendants and against the plaintiffs.

[6] Air 2010 SC 3240

42. For all the above reasons, Mr Coutinho submitted that both these Second Appeals may be allowed and Regular Civil Suit No.14/1997/D be dismissed but the counterclaim therein be decreed.

43. Mr Usgaonkar, learned Senior Advocate for the plaintiffs countered Mr Coutinho's submissions and defended the impugned judgment and decree based on the reasoning reflected therein. He pointed out that the inscription and the description records favoured the plaintiffs. He pointed out how, in at least two judicial proceedings which had attained finality, the plaintiffs were adjudged as the owners in possession of the larger property described under no.8327, of which the suit property was only a part, by the competent Courts. He pointed out how these proceedings were against the defendants or their predecessors in title and further how one of the proceedings was disposed of based on the clear and unambiguous admissions of the defendants or their predecessors in title. Mr Usgaonkar submitted that these previous decisions constituted res judicata, and the defendants were even precluded in law from once again falsely asserting their alleged title or possession to the larger property or the suit property described under no.8327.

44. Mr Usgaonkar submitted that none of the substantial questions of law as framed or as proposed are even involved in these Second Appeals. He submitted that, in any case, such substantial questions of law ought to be answered against the defendants and favouring the plaintiffs.

45. Mr Usgaonkar submitted that the documents which the plaintiffs seek to produce under Order XLI Rule 27 are public documents of unimpeachable character. He submits that even in the response application for better particulars, the plaintiffs had clearly stated that the search was on for these documents. He submitted that these documents only buttress the other evidence already produced on record by the plaintiffs, which includes judicial decrees in no less than two proceedings. He submitted that even dehors these documents, there was no case to interfere with the concurrent findings recorded by the Trial Court and the First Appellate Court for dismissing the defendant's counterclaim.

46. Mr Usgaonkar submitted that no fraud was involved in deleting names from Form III. He submitted that, in any case, the issue of mutations or deletion of names from survey records is quite irrelevant now that the two Courts have decided on the issue of title and possession. Therefore, he submitted that no case is made for rescinding or cancelling the survey records.

47. Mr Usgaonkar submitted that the fraudulent changes in the inscription records made in 1976 were void. He submitted that no such changes could be effected in the inscription and description records after 1965 after the new registration regime replaced the old registration regime. He, therefore, submitted that the substantial questions of law based on the inscription and description documents or Article 953 of

the Portuguese Civil Code do not arise and, in any case, would have to be answered favouring the plaintiffs and against the defendants.

48. Mr Usgaonkar submitted that the two Courts have held that the defendants were neither the owners nor in possession of the suit property. There are concurrent findings of fact, and there was not even an allegation about such findings being vitiated by perversity. He, therefore, submitted that these appeals may be dismissed. Mr Usgaonkar relied on ***Prem Singh and Ors. V/s. Birbal and Ors.***[7], ***Som Dev and Ors. V/s. Rati Ram & Anr.***[8] and ***Shri Narcinva Shivram Sinai Nadkarni & Ors. V/s. Government of Goa, through its Chief Secretary & Ors.*** (First Appeal No.177 of 2005 decided on 18.02.2011) in support of his contentions.

49. For all the above reasons, Mr Usgaonkar submitted that both these Second Appeals may be dismissed.

50. The rival contentions now fall for my determination.

51. The larger property, Baili Chall alias Baili Chali alias Bailo Molo described under no.8327, was admittedly owned by Joaquim Remedios D'Cruz. Half of this property devolved upon Joao Caitan D'Cruz and the other half upon Manuel Francisco D'Cruz. To this extent, there was not even any dispute between the plaintiffs and the defendants. Even

[7] (2006) 5 SCC 353

[8] (2006) 10 SCC 788

otherwise, the oral and documentary evidence on record establishes this position without any ambiguity whatsoever.

52. The plaintiffs claim to have acquired this larger property described under no.8327 in the following manner:-

> (a) Half of the property described under no.8327 by registered Sale Deed dated 21.11.1921 (as rectified by Rectification Deed dated 27.07.1923). This Sale Deed/Rectification Deed was executed by Manuel Francisco D'Cruz in favour of Manuel Salvador Da Costa pursuant to the Agreement for Sale dated 04.02.1921;
>
> (b) Balance half of the property described under no.8327 through Court Auction Purchase in 1925.

53. Plaintiff no.1, Dr Alfred Costa (PW1), first produced on record the proceedings in Special Civil Suit No.14362 of 1954 (PW1/F colly). This suit (1954 suit) was instituted by the predecessors in title of the plaintiffs, i.e. Manuel Salvador da Costa and his wife Carolina Peres e Costa, against Manuel Fernandes and Ubaldina Peregrina de Cruz, i.e. the parents of the defendants. The plaint in this suit is on pages 273 to 277 (English translation).

54. The plaint in the 1954 suit describes, without any ambiguity, the larger property described in the Land Registration Office under no.8327. The plaintiffs in the said plaint had pleaded that half of the said property was purchased from Manuel Francisco da Cruz, and the said purchase was duly registered. The other half was subsequently allotted by way of right of option in the auction, which took place in

the Civil Court of the Judicial Division of Salcete on 08.06.1925. Based upon these, it was pleaded that the plaintiffs in the 1954 suit, i.e. the predecessor in title of the present plaintiffs, were in possession of the entire property described under no.8327 for much more than 30 years, which possession was always held in good faith, publicly and uninterruptedly and without any opposition - which possession resulted in the acquisition of a right by positive prescription, which was specifically pleaded.

55. The 1954 suit plaint then refers to the property described under no.8328 and how the defendants in the said suit, i.e. the predecessors in title of the present defendants, began to interfere with property described under no.8327 by confusing the same with the property described under no.8328. Interference was by threatening the toddy tappers or obstructing those claiming through the plaintiffs' property in the 1954 suit.

56. Based on the above pleadings, the plaintiffs in the 1954 suit, i.e. the predecessors in title of the plaintiffs, sought the following reliefs against the defendants, i.e. the predecessors in title of the defendants: -

> *"In these terms and in other terms of the law, the present suit should be decreed and order should be passed against the defendants to acknowledge: a) that the plaintiffs are owners in possession of the property Bail Salli, described in the Land Registration Office under No. 8327 and in no way any right helps the defendants; b) that the actions referred to in para 6 of the petition were illegal and abusive; c) that the said property Baile Sali of the*

plaintiffs cannot be mistaken with the property that is attached but in the event it is mistaken, the attachment be declared null and void for all legal purposes; d) to pay to the plaintiffs the costs towards damages created and caused to them, alongwith costs and other reliefs in terms of law."

57. The defendants in the 1954 suit, i.e. the predecessors in title of the present defendants, filed their written statement on 19.03.1954. In this written statement, Manuel Fernandes and his wife Ubaldina Peregrina da Cruz, i.e. parents of the present defendants, in terms admitted and acknowledged that the plaintiffs in the 1954 suit, i.e. the predecessors in title of the present plaintiffs, were the owners in possession of the property described under no.8327, i.e. the larger property. They claimed that only the property described under no.8328 belonged to them, and consequently, they had no right, title or interest in the property described under no.8327. This is clear from the written statement on pages 282 to 288 of the paper book (English translation).

58. In their written statement in the 1954 suit, the defendants' parents explained how they were confused between the properties described under no.8327 and 8328. They went to the extent of claiming that they were proceeding in good faith and that the plaintiffs in the 1954 suit induced them to commit a mistake. However, the defendants' parents clearly and unambiguously admitted and acknowledged that the property described under no.8327 belonged to the plaintiffs. They submitted that even if the suit were to be allowed, the plaintiffs should be ordered to pay costs.

59. The averments in paragraph 15 of the written statement filed by Manuel Fernandes and Ubaldina da Cruz, i.e. the parents of the present defendants in the 1954 suit, are transcribed below for the convenience of reference:-

> *"Thus, in terms disputed in the preceeding para, the defendants herein have no doubt to acknowledge that the property from which they collected the produce is "Bailly Chally" described in the Land Registration Office under No. 8327 and that it belongs to the plaintiffs. Thus, at least, once for all is defined which is the property "Bailly-Chally" purchased by the plaintiffs, the latter shall have to cease the unjust retention of the property "Bailly-Chally" described under No. 8328 and which belongs exclusively to the defendants as sole representatives of the said Joao Caetano Cruz to whom the ownership of the same was allotted in the inventory referred to in para 3rd and which property the plaintiffs unjustly took in possession after the death of the said Mariano Roque which death took place about six years ago.*
>
> *In these terms, even if the suit is allowed, the plaintiffs should be ordered to pay costs because it was they who by unjust retention since few years of two properties hereinbefore referred to and this also inspite of having purchased only one of them and even by their deliberate inaction when they were informed about the attachment and the deposit referred to, gave cause for the defendants to collect the produce on which grounds the present suit is based."*

60. Based on the above clear, categorical and unambiguous admissions, the Civil Court, by judgment and decree dated 08.07.1954, decreed Special Civil Suit No. 14362 of 1954 in the following terms as per the then prevailing practice:-

"That they acknowledge the admission of the prayer and state that in fact there was a confusion as regards the suit property as the property of the plaintiffs has the same boundaries and name as the property of the defendants.

The opposite party in their statement submitted that they had nothing to say nor to contest.

The Learned Judge considered the acknowledgement made by the defendants as valid for all legal purposes and as such admitted the prayer of the plaintiffs and ordered the defendants to pay the costs stamp duty of the proceedings. To be notified and registered.

Thereafter the clerk notified the order drawn up hereinabove to the parties and to their representatives personally present and all being aware took to be notified.

In witness whereof the present proceedings are drawn up which after being read out and found to be correct are going to be signed by the Hon'ble Judge, by the parties present and their representatives, the interpreter, the bailiff and by me, the said clerk who wrote it out.

Sd/ Illegible
Sd/ Antonio Blasio de Sousa
Sd/ Illegible
Sd/ Manuel Salvador da Costa
Sd/ Jacinto Coutinho
Sd/ Dumiana Fernandes
Sd/ Manuel Fernandes
Sd/ Ubaldina Peregrina Da Cruz
Sd/ Illegible
Sd/ Esvonta Ananta Sinai Corongoto
Sd/ Camilo Valeriano Aleixo de Noronha
Four stamps duly cancelled follow."

61. Thus, from the above documentary evidence on record, it was established that the plaintiffs were the owners in possession of the property described under no.8327, having acquired half of such property by sale and the other half through Court Auction Purchase.

The defendants' parents clearly and unambiguously admitted these facts. The plaintiff no.1 has deposed to these facts and, in any case, these facts are born out from the proceedings in Special Civil Suit No.14362 of 1954 (PW1/F colly). Neither in the cross-examination nor by way of any independent evidence produced by the defendants, any dent was made to the above position.

62. As if this evidence was not sufficient, the plaintiffs produced on record the proceedings in Special Civil Suit No.2499/1962 (Exhibit PW1/G colly) (1962 suit). The depositions concerning the 1962 suit and the records and proceedings of the 1962 suit once again established how the plaintiffs were adjudged as owners in possession of the property described under no.8327. This was also a suit instituted by Manuel Salvador Da Costa, i.e. the father of the plaintiffs, against Manuel Fernandes and Ubaldina da Cruz, i.e. the parents of the defendants.

63. The 1962 suit was disposed of by the Civil Judge Senior Division at Salcete vide judgment and decree dated 05.01.1964. This judgment and decree records how, despite the decree in Special Civil Suit No.14362 of 1954 (1954 suit), the parents of the present defendants attempted to interfere with the suit property and consequently applied for a permanent injunction.

64. The judgment and decree dated 05.01.1964 in the 1962 suit set out in great detail how the predecessors in title of the plaintiffs, i.e. the plaintiffs' parents, acquired right, title and possession of the property described under no.8327. This judgment and decree considers the legal

effect of the 1954 suit and the decree made therein, the legal effect of the Sale Deed by which half of this property was purchased, and the legal effect of the Court auction proceedings in which the remaining half was purchased. This judgment and decree also considers the legal effect of land registration and the inscription and description records. Finally, after decreeing the suit and requiring the defendants' parents to hand over the possession of a portion of the property on which they had trespassed, this judgment and decree also records how the possession was restored to the predecessors in title of the plaintiffs, i.e. plaintiffs' parents. Thus, the judgment and decree dated 05.01.1964 in Special Civil Suit No.2499 of 1962 (Exhibit PW1/G colly) constitutes substantial documentary evidence in support of the plaintiffs' case.

65. The judgment and decree dated 05.01.1964 in the 1962 suit also invokes the principle of res judicata, given the clear and categorical findings in the 1954 suit. These clear and categorical findings were based on the clear and categorical admissions made by the predecessors in title of the defendants, i.e. defendants' parents admitting and acknowledging the predecessors in title of the plaintiffs, i.e. the plaintiffs' parents to be owners in possession of the entire property described under no.8327. Admissions of this nature bind the defendants and constitute the best evidence supporting the plaintiff's case. The court accepted these admissions, and the 1954 suit was decreed. The defendant's parents never retracted the admissions or challenged the decree based on such admissions. This position was reiterated in the

1962 proceedings and the judgment and decree made therein on 05.01.1964.

66. The present defendants' parents challenged the judgment and decree dated 05.01.1964 in the 1962 suit before the Judicial Commissioner. By judgment and order dated 05.07.1968, the Judicial Commissioner dismissed the appeal and upheld the judgment and decree dated 05.01.1964 in Special Civil Suit No.2499 of 1962. The Judicial Commissioner's order was produced on record by PW1 as PW1/D (pages 238 to 242). Clearly, therefore, the judgment and decree dated 05.01.1964 in the 1962 suit has also attained finality, and the present defendants cannot distance themselves from the findings recorded either in the 1954 or 1962 suits.

67. Mr Usgaonkar did refer to other oral and documentary evidence on record which establishes the plaintiffs' case. However, it is not necessary to go into such evidence because the Trial Court and the First Appellate Court have considered such evidence while dismissing the defendant's counterclaim.

68. Given the documentary evidence in the form of decrees in the 1954 and 1962 suits, which have attained finality, most of the substantial questions of law urged in the Second Appeal do not arise or, in any case, will have to be answered against the defendants and favouring the plaintiffs. Merely raising some questions of law is never sufficient. The substantial question of law must be one which, if answered in favour of the appellants, must have the potential of

overturning the impugned judgment and decree. None of the questions framed or urged to be framed make any dent in the legal and factual position arising out of the decrees in the 1954 and 1962 suits. The 1954 suit was passed on the clear and categorical admissions from the defendants' parents in a suit instituted by the plaintiff's parents. In the present proceedings, the defendants have produced no material to displace the consequences of the judgments and decrees in the 1954 and 1962 suits. The clear and unambiguous admissions in the pleadings of the 1954 suit are not even attempted to be explained. This is more than sufficient to dismiss these appeals.

69. The documents or the evidence that the defendants sought to produce in this appeal, if considered, would still not dent the legal and factual position established by the judgments and decrees in the 1954 and 1962 suits. However, if the documents that the plaintiffs sought to produce are considered, the Plaintiffs' case would be strengthened. Since the documents on record are more than sufficient to sustain the impugned judgment and decree, there is no necessity to admit the additional evidence.

70. Regarding the first substantial question of law, the issue of Agreement of Sale dated 04.02.1921 fades into insignificance once the record shows that the defendants' parents clearly, categorically and unambiguously admitted that the plaintiffs' parents purchased half of the property described under no.8327 vide Sale Deed of 1921. Therefore, even if it is held that the Agreement of Sale dated 04.02.1921

was not itself a Sale Deed or that the registered Sale Deed dated 21.11.1921 was not actually produced in this suit, these could not be regarded as good grounds to wipe out the effect of the judgments and decrees in the 1954 and 1962 suits.

71. The legal position about the status of an Agreement for Sale is well settled under the Transfer of Property Act and also the decision of the Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt. Ltd.* (supra). However, this Agreement of Sale dated 04.02.1921 is quite irrelevant considering the Decrees in the 1954 and 1962 suits, which have adjudged the plaintiffs and their predecessors in the title as owners of the entire property described under no.8327.

72. Once the plaintiffs have proved their title and even possession, they cannot be called upon to repeatedly prove the same fact in different judicial proceedings between the same parties or their successors. The defendants neither pleaded nor produced any evidence to show that they acquired any right or title to the property described under no.8327 post the decrees in 1954 and 1962 suits. The defendants have also not produced any oral or documentary evidence to show that the plaintiffs lost their possession through any legal means to the property described under no.8327 post the judgments and decrees in the 1954 and 1962 suits. Therefore, the first substantial question of law does not arise. Even if it arises, based upon the same, no case is made to interfere with the impugned judgment and decree made by the First Appellate Court in decreeing the suit and dismissing the counterclaim.

73. Incidentally, by the application under Order XLI Rule 27 of CPC, the plaintiffs had sought leave to produce the Sale Deed dated 21.11.1921 and the Rectification Deed dated 27.07.1923. If this application were to be allowed, then the first substantial question of law would have to be certainly answered against the defendants. However, for the reasons discussed earlier, even though the registered Sale Deed dated 21.11.1921 and the Rectification Deed dated 27.07.1923 are not allowed to be produced on record, this substantial question of law will still have to be answered against the defendants. Based upon this question, in any case, the impugned judgment and decree warrants no interference whatsoever.

74. The second substantial question of law also does not arise in view of the above reasoning in the context of the judgments and decrees in the 1954 and 1962 suits. In any case, a plea based on Article 2177 of the Portuguese Civil Code cannot be raised for the first time in a Second Appeal to question the Agreement dated 04.02.1921 or the Sale Deed dated 21.11.1921. Such a question will involve disputed facts for which the foundation of pleadings is a must. Secondly, there would be the issue of limitation because almost 70 to 80 years (by now 100 years) have elapsed since the execution of the Agreement dated 04.02.1921 and the Sale Deed dated 21.11.1921. After acknowledging in the 1954 suit that the plaintiffs' parents had indeed acquired half of the right to the property described under no.8327 by virtue of its purchase, it is no longer open to the defendants to raise such an issue at the second appellate stage.

75. Besides, the evidence on record shows that even the other half of the property described under no.8327 was acquired by the plaintiffs' parents through Court Auction Purchase. Thus, the entire property was acquired by the plaintiffs' parents through a Sale Deed and Court Auction Purchase. The issue of there being allegedly no partition in metes and bounds or the applicability of Article 2177 of the Portuguese Civil Code, therefore, fades into insignificance. Based upon such a plea no case is made out to interfere with the impugned judgment and decree made by the First Appellate Court.

76. The third substantial question of law also does not arise and, in any case, will have to be answered against the defendants given the reasoning above in the context of judgment and decrees in the 1954 and 1962 suits. Once the position that the plaintiffs' parents had acquired half rights to the property described under no.8327 was clearly, categorically and unambiguously admitted by the defendants' parents in the 1954 suit, there was no need to produce an Auction Purchase document in any subsequent suits. Therefore, the issue of provisional inscription lapsing or the non-production of the auction purchase document gives rise to no substantial question of law sufficient to reverse the impugned judgment and decree made by the First Appellate Court. Incidentally, the auction purchase documents were now sought to be produced by the plaintiffs by resorting to Order 41 rule 27 of CPC. Accordingly, based on all this, and even without considering the additional documents sought to be produced by either party, the third

substantial question of law as well, no case is made out to interfere with the impugned judgment and decree made by the First Appellate Court.

77. The fourth substantial question of law is based on inscription no.51649 effected in the year 1976. It is extremely doubtful whether any changes could have been made in the inscription and description records in the year 1976. Besides, these changes were made without any notice to the plaintiffs or the plaintiffs' parents. Accordingly, based upon these facts or by relying upon Article 11 of the Land Registration Code no case is made out to interfere with the impugned judgment and decree made by the First Appellate Court.

78. In the decisions Mr Coutinho relied upon, it is undoubtedly held that Article 953 of the Portuguese Civil Code raises a strong presumption of title and possession. However, as was explained in *Shri Narcinva Shivram Sinai Nadkarni & Ors.* (supra), such a presumption arising out of Article 953 of the Portuguese Civil Code can be rebutted based on the material produced by the opposite party.

79. In the present case, the efficacy of the changes in the inscription records made in the year 1976 are themselves in doubt. Secondly, the judgments and decrees in the 1954 and 1962 suits are more than sufficient to rebut the presumptions. Even the admission in the written statement filed in 1954 suits is more than sufficient to displace the presumptory value to the inscription and description records entries.

80. Accordingly, even after considering the decisions relied upon by Mr Coutinho and the provisions of Article 953 of the Portuguese Civil Code or the provisions of Article 11 of the Land Registration Code (assuming that the same still operates), no case is made out to reverse the impugned judgment and decree made by the First Appellate Court based upon the substantial question of law at (d) or the substantial question of law at (i) as proposed by Mr Coutinho. Such questions, in fact, do not arise, and if they did arise, then the same have to be answered against the defendants and in favour of the plaintiffs.

81. In so far as the substantial question of law at (e) is concerned, the record does bear out that no notice was given to the defendants or their predecessors before Ubaldina's name was deleted from Form III of the survey records. Similarly, it is doubtful whether the Appellate Court could have non-suited the defendants qua this claim on the ground of limitation. *Daya Singh* & *Anr.* (supra) relied upon by Mr Coutinho would possibly not support such reasoning. But, on merits, the defendants were not entitled to any relief of the restoration of survey entries in Form III. It is well settled that entries in survey records are not reflective of the position of title of the parties to the property, which is a subject matter of the survey entries. Such survey entries are mainly for fiscal purposes, i.e. payment of land revenue, etc. Such entries may have some limited presumptive value, but they are surely not determinative of the title of the parties.

82. In this case, the plaintiffs have established their title and possession to the suit property as well as the entire property described under no.8327. In such circumstances, the issue of deletion of entries or mutation of notice fades into insignificance. Therefore, even if something could be said about the manner of deletion of survey entries, no case is made out to reverse the impugned judgment and decree made by the First Appellate Court based on the substantial question of law at (e) assuming that the same arises or that the same is some substantial question of law in these appeals.

83. Similarly, nothing turns on the production of Exhibit PW1/E. Even if this evidence is excluded from consideration, still, no fault can be found with the impugned judgment and decree made by the First Appellate Court. Incidentally, by application under Order XLI Rule 27 of CPC, the plaintiffs had sought leave to produce documents like the Sale Deed of 1921 or the Court Auction Proceedings. If all these documents were to be accepted in evidence, these would be additional grounds to sustain the judgment and decree made by the First Appellate Court. However, even without admitting these documents, there are ample reasons to sustain the impugned judgment and decree made by the First Appellate Court. Therefore, the additional question (ii), as proposed by Mr Couthino, does not arise or, in any case, will have to be answered against the defendants.

84. The question framed on 28.06.2013 will also have to be answered against the defendants. The admissions in the 1954 suit and

the judgments and decrees in the 1954 and 1962 suits are sufficient to dispel any clouds over the plaintiff's title or possession of the property described under number 8327. For the principles in *Anathula Sudhakar Reddy (Supra)* to apply, there ought to be a real cloud on the plaintiff's title and not some dishonest assertion backed with no credible or at least arguable material.

85. Similarly, even if the additional documents which the defendants seek to produce were to be admitted, the same would make no dent in the documentary evidence already produced on record by the plaintiffs. Based upon this additional evidence, there would be no case to reverse the impugned judgment and decree made by the First Appellate Court. The judgment and order dated 27.09.1929 made by the Judicial Commissioner in no manner dilutes the effect of the judgment and decrees in the 1954 and 1962 suits. Besides, as was explained by Mr Usgaonkar, the defendants' position before the Court Auction in which the plaintiffs or their predecessors in title purchased right to half of the property described under no.8327 is quite irrelevant. Based on the same, no case is made to interfere with the impugned judgment and decree.

86. Thus, for all the above reasons no case is made out to grant any relief to the appellants in this Second Appeal. This is a case where the appellants/defendants have made every attempt to wriggle out from their admissions or, rather, the admissions made by their parents. The defendants appear to have no qualms about shifting stands and raising

patently false claims or false defences in the First Appellate Court. Therefore, the Trial Court and the First Appellate Court correctly dismissed the defendants' counterclaims. The First Appellate Court, after examining the evidence on record and coming into close quarters with the reasoning of the Trial Court, correctly reversed the Trial Court and decreed the suit.

87. In ***Maria Margarida Sequeira Fernandes & Ors. V/s. Erasmo Jack De Sequeira (dead) through LRs***[9], the Hon'ble Supreme Court has emphasised that truth is the foundation of justice. Therefore, it must be the endeavour of all the judicial officers and judges to ascertain truth in every matter, and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth. Pleadings are the foundation of litigation. The truth should be the guiding star in the entire judicial process, and truth alone has to be the foundation of justice.

88. The Hon'ble Supreme Court further held that false claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Unscrupulous litigants drag on litigation pertaining to valuable real estate properties in the hope that the other party will tire out and ultimately settle with them by paying a huge amount. This happens

[9] (2012) 5 SCC 370

because of the enormous delay in adjudication of cases in our courts. If the pragmatic approach is adopted, then this problem can be minimised to a large extent.

89. The Hon'ble Supreme Court, by referring to its earlier decision in ***Ramrameshwari Devi V/s. Nirmala Devi***[10] has observed that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled-for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled-for litigation. It is a matter of common experience that the Court's otherwise scarce time is consumed or, more appropriately, wasted in a large number of uncalled-for cases. The imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution; otherwise, it may not be possible to maintain the purity and sanctity of judicial proceedings.

90. The above observations amply apply to the present case where the defendants, after clearly and categorically admitting the plaintiffs' case or the case put up by the plaintiffs' parents against the defendants' parents and after suffering two judicial decrees, have left no stone unturned to wriggle out from the admissions or cast of the binding effect of the judicial Decrees in the 1954 and 1962 suits and to wish away the effect of legal documents, only to prolong the litigation,

[10] (2011) 8 SCC 249

perhaps in the fond hope that the plaintiffs would tire out and offer some settlement.

91. For all the above reasons, these appeals are liable to be dismissed and are hereby dismissed with consolidated costs assessed at ₹25,000/- (Rupees Twenty-Five Thousand only).

92. The Misc. Civil Applications are also disposed of in the above terms.

M. S. SONAK, J.

NITI K HALDANKAR

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Date: 2024.02.22 15:55:02 +05'30'