



rut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 96 OF 2023

1. Usno Vishnu Gaudio alias Gaonkar,
s/o Vishnu Usno Gaudio,
aged 65 years,
agriculture, and his wife,
2. Manjula Usno Gaudio,
aged 60 years,
housewife,
Both residents of H.No. 156,
Morod, Dharbandora.
3. Pandurang Vishnu Gaudio alias Gaonkar,
son of late Vishnu Gaudio, major in age,
55 years, married, and his wife
4. Smt. Geeta Pandurang Gaudio alias Gaonkar
wife of Pandurang Vishnu Gaudio,
major in age, 50 years,
married, housewife.
5. Shri. Ratnakar Vishnu Gawde alias Gaonkar,
son of late Vishnu Gaudio, major in age,
40 years, married, and his wife,
6. Smt. Ranjana Ratnakar Gaonkar,
wife of Ratnakar Vishnu Gaudio,
major in age, 38 years, married.
7. Shri. Shrikant Vishnu Gaude alias Gaonkar,
son of late Vishnu Gaudio major in age,
49 years, married, and his wife,

8. Smt. Manda Shrikant Gaonkar,
wife of Shrikant Vishnu Gaonkar,
major in age, 38 years, married,
All resident of House No. 156,
Morod, Dharbandora.
9. Smt. Samati Gurudas Gaonkar,
d/o Vishnu Gaudio,
Wife of Gurudas Gaonkar,
age 50 years, and her husband,
10. Shri. Gurudas Gaonkar,
Ganesh Gaonkar, 55 years,
both resident of House No. 209,
Sakli Bandoli, Taluka Dharbandora - Goa.
11. Smt. Sudha Eknath Gaonkar,
daughter of Vishnu Usno Gaude,
widow of Eknath Gaonkar,
50 years, H.No.215,
Narvem, Bicholim - Goa.
12. Smt. Vilas Narayan Priolkar,
daughter of late Vishnu Usno Gaudio,
widow of Narayan Priolkar,
45 years resident of House No. 631,
Surla, Bicholim - Goa.
13. Shri Madhu Krishna Gaonkar,
s/o late Krishna Gaonkar, major of age,
66 years, married, widower,
r/o H.No.149, Morod, Dharbandora.
14. Shri Dhaku Krishna Gaonkar,
s/o late Krishna Gaonkar, major of age,
60 years, married, and his wife,

15. Smt. Surang Dhaku Gaonkar,
wife of Dhaku Gaonkar, 49 years,
Housewife, both r/o H.No.149,
Morod, Dharbandora.
16. Shri Ramdas Krishna Gaonkar,
s/o late Krishna Gaonkar, 53 years,
married, service, and his wife,
17. Smt Pushpa Ramdas Gaonkar,
Wife of Ramdas Gaonkar, 47 years,
housewife, both r/o H.No.149,
Morod, Dharbandora.
18. Shri Satyawan Krishna Gaonkar,
s/o late Krishna Gaonkar,
60 years, married and his wife,
19. Smt. Sheila Satyawan Gaonkar,
wife of Satyawan Gaonkar,
51 years, housewife,
both r/o H.No.149, Morad,
Dharbandora.
20. Shri Gurudas Krishna Gaonkar,
s/o late Krishna Gaonkar,
49 years, married, and his wife,
21. Smt. Anita Gurudas Gaonkar,
wife of Gurudas Krishna Gaonkar,
47 years, housewife, agriculturist,
all residents of H.No.149,
Morad, Dharbandora.
22. Smt. Vasanti Damodar Gaude,
daughter of late Krishna Gaonkar,
aged 45 years, housewife,

and her husband,

23. Shri Damodar Gaude,
s/o of Jagi Gaude,
aged about 50 years, agriculturist,
both residents of Keri,
Ponda-Goa.
24. Shri Sadanand Sanvalo Gaude,
s/o late Sanylo Pandu Gaude,
45 years, Agriculture, and his wife,
25. Smt. Sunita Sadanand Gaude,
wife of Sadanand Sanvalo Gaude,
major in age, 39 years,
married, both residents of H.No.152,
Marad, Dharbandora.
26. Shri Pandu Sanvalo Gaude,
aged 55 years, s/o late Sanylo Gaude,
major in age, agriculture,
married and his wife,
27. Smt. Shakuntala Pandu Gaude,
50 years, both residents of H.No.154,
Morod, Dharbandora Goa.
28. Smt. Sushila Ankush Solienkar,
wife of Ankush Solienkar,
daughter of Sanylo Pandu Gaude,
35 years, and her husband,
29. Shri Ankush Ramnath Solienkar,
50 years, both residents of H.No.209,
Shivdem, Dharbandora Goa.
30. Smt. Laxmi Narayan Kakodkar,
wife of late Narayan Kakodkar,

age 55 years, H.No. 211,
Cuparwadam Curti, Ponda – Goa

31. Smt. Manderem Harichandra Gaude,
daughter of Ram Usno Gaude,
wife of Harichandra Gaude,
major in age, 55 years, married,
and her husband;
32. Shri. Harichandra Gaude,
major in age, 66 years, married,
both residents of House No. Not known,
Ambeudak, Costi Taluka Sanguem - Goa.
33. Smt. Gulabi Gokuldas Gaude,
daughter of Rama Usno Gaude,
50 years, married, and her husband
34. Shri Gokuldas Buddo Gaokar,
aged 55 years, Casual work,
both resident of House No. 642,
Kirlapal Dabal,
Taluka Dharbandora - Goa.
35. Smt. Deepali Datta Gaonkar,
Widow of Datta Gaonkar, age 45 years,
housewife, residents of H.No.149,
Morod, Dharbandora.
36. Ram Datta Gaonkar,
son of late Datta Gaonkar, Service,
aged 25 years.
37. Dinesh Datta Gaonkar,
Son of late Datta Gaonkar, age 27 years,
not employed, both r/o H.No.156, Appellants
Morad, Dharbandora.

Versus

1. Shri Upaso Pablo Gaudio (since deceased)
Through LRs.

Son of late Pablo Upasso Gaudio,
Aged about 65 years, married,
Agriculturist and his wife,

1. Shri Upaso Pablo Gaudio (Since deceased)
1(a). Mr. Sandeep Upaso Gawade,

Son of Late Upaso Pablo Gaudio,
51 years of age and his wife,

1(b). Mrs. Sampada Sandeep Gawade
48 years of age, housewife

1(c). Mr. Umesh Upaso Gaonkar
Son of Late Upaso Pablo Gaudio,
48 years of age, business and his wife

1(d). Mrs. Suchitra Umesh Gaonkar
44 years of age, housewife,

1(e). Mr. Shailesh Upaso Gaonkar
Son of Late Upaso Pablo Gaudio,
43 years of age, business and his wife

1(f). Savita Shailesh Gaonkar
38 years of age, service

1(g). Mrs. Prashani Jagannath Ghadi
Daughter of Late Upaso Pablo Gaudio,
38 years of age, housewife
and her husband

1(h). Jagannath Ghadi, 40 years of age,
service, All residing at 104, Marad,
Dharbandora Goa.

2. Smt. Chander Upaso Gaude,
Major of age, 55 years, married,
Housewife,
3. Shri Dilip Dhaku Gaonkar,
Major of age, 42 years, married,
And his wife,
4. Smt. Dishali Dilip Gaonkar,
Major of age, 42 years, married,
housewife, All residents of
H.No. not known, Marad,
Dharbandora,
Taluka Dharbandora - Goa.
5. Smt. Kamal Naru Kalekar
Widow of late Naru Kalekar,
Major in age, 64 years, married,
housewife, (Since deceased duly
represented by respondent Nos.6 and 7)
6. Shri Suryakant Naru Gaonkar @ Kalekar,
Son of late Naru Gaonkar,
Major in age, aged 49 years, Married,
And his wife,
7. Smt. Savita Suryakant Gaonkar @
Kalekar,
Wife of Suryakant Gaonkar @ Kalekar,
Major in age, 40 years, housewife,
Both residents of H.No. not known,
Udalshe, Sancorda, Dharbandora - Goa.
8. Smt. Shantu Ashok Gaonkar,
Wife of Ashok Gaonkar, 45 years,
housewife,

9. Shri. Ashok Gaonkar, major in age,
48 years, married,
All from 5 to 9 are resident of
H.No. not known,
Porathadando, Navelim,
Sanquelim Taluka Bicholim - Goa.

10. Smt. Amrutem Babaya Gaonkar,
Wife of Babaya Gankar,
Major in age, 55 years,
married, housewife, And
her husband,

11. Shri Babaya Gaonkar,
(Since deceased duly represented by
respondent Nos. 10, 12, 13, 14, 15, 16
and 17, Son of Barkelo Gaonkar,
Major in age, aged 69 years,
Both resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora Goa

12. Shri Prakash Babaya Gaonkar,
Son of late Babaya, major in age,
Aged 49 years, married,
all from 10 to 12 are resident of
House No.272, Kirlapal-Dabal,
Taluka Dharbandora - Goa,

13. Smt. Malu Prakash Gaonkar,
Wife of Prakash Gaonkar,
Major in age, 45 years,
housewife, Resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora - Goa.

14. Shri Satish Babaya Gaonkar,
Son of late Babaya, major in age,

Aged 40 years, married,
resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora — Goa.

15. Smt. Vaishali Satish Gaonkar,
Wife of Satish Gaonkar,
Major in age, 49 years,
resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora - Goa.
16. Shri Nitin Babaya Gaonkar,
Son of late Babaya, major in age,
33 years, married,
resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora - Goa.
17. Smt. Shakuntala Nitin Gankar,
Wife of Nitin Gaonkar, Major in age,
30 years, married,
resident of House No.272,
Kirlapal-Dabal,
Taluka Dharbandora - Goa.
18. Shri Premanand Gawde,
major in age, 45 years,
resident of House no. not known,
And his wife,
19. Smt. Kishori Premanand Gawade,
Major in age, housewife,
Both resident of House no.
not known, Usgao, Pali - Goa.
20. Shri Dattaram Gaonkar,
Major in age,

28 years, Resident of House No.
not known, Molcornem, Quepem - Goa.

21. Smt. Gomati Dattaram Gaonkar,
Major in age, 26 years,
Resident of House No. not known,
Molcornem, Quepem - Goa.
22. Shri Chondru Gawade,
Major in age, 35 years, agriculture,
Resident of House no. not known,
Banastari, Taluka Ponda - Goa.
23. Smt. Nita Chondru Gawade,
Major in age, 31 years, married,
Resident of House no. not known,
Banastari, Taluka Ponda Goa.
24. Shri. Ramnath Kansekar,
son of Barkelo Gaonkar,
major in age, aged 48 years,
married, and his wife
25. Smt. Jayanti Ramnath Kansekar,
wife of Ramnath Gaonkar,
age 45 years, both resident of
house no. not known,
Porthadando Navelim,
Sanquelim - Goa.
26. Smt. Laxmi Anant Gaonkar,
Wife of late Anant Gaonkar,
Major in age, 61 years, married,
Indian National,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.

27. Shri Sanjay Anant Gaonkar,
Son of late Anant Gaonkar,
Major in age; 48 years, married,
Indian National,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.
28. Smt. Rita Sanjay Gaonkar,
Wife of Sanjay Gaonkar,
Major in age, 45 years, married,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.
29. Shri Latesh Anant Gaonkar,
Son of late Anant Gaonkar,
Major in age, 42 years,
married, resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.
30. Smt. Jyoti Latesh Gaonkar,
Wife of Latesh Gaonkar,
Major in age, 40 years, married,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa
31. Shri Mahesh Anant Gaonkar,
Son of late Anant Gaonkar,
Major in age, 35 years, bachelor,
resident of House No.155, Morad-
Dharbandora,
Taluka Dharbandora Goa.

32. Shri Nilesh Ananat Gaonkar,
Son of late Anant Gaonkar,
Major in age, 38 years, bachelor,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.
33. Miss Sunanda Anant Gaonkar,
Daughter of late Anant Gaonkar,
Major in age, 31 years, spinster,
resident of House No.155,
Morad-Dharbandora,
Taluka Dharbandora Goa.
34. Smt. Sunita Gurudas Zalmi,
wife of late Gurudas Zalmi,
major in age, 45 years,
married, resident of House No. 169,
Kundaim-Taluka Ponda - Goa.
35. Shri Chandrakant Mahadev Gaonkar,
Son of late Mahadev Gaonkar,
major in age, 62 years, and his wife,
36. Smt Leela Chandrakant Gaonkar,
Wife of Shri Chandrakant Gaonkar,
Aged 55 years,
Both residents of House No.101,
Morod-Dharbandora,
Taluka Dharbandora Goa.
37. Smt. Mortem Ravi Gaonkar,
Wife of late Ravi Mahadev Gaonkar,
Major in age, 52 years,
married, housewife,

38. Shri Deepak Ravi Gaude,
Son of late Ravi Mahadev Gaude,
Major in age, 48 years, married,
and his wife,
39. Smt. Deepa Deepak Gaude,
Wife of Deepak Gaude,
Major in age, 45 years, married,
All residents of House no.234,
Morod-Dharbandora,
Taluka Dharbandora Goa.
40. Shri Sandesh Ravi Gaude,
Son of late Ravi Gaude,
major in age, 38 years, bachelor,
Indian National,
Resident of House no.2,
Morod-Dharbandora,
Taluka Dharbandora Goa.
41. Smt. Pramila Ravi Gaude,
Daughter of late Ravi Gaude,
Major in age, 33 years, spinster,
resident of House no.234,
Morod-Dharbandora,
Taluka Dharbandora Goa.
42. Shri Mohan Mahadev Gaonkar,
Son of late Mahadev Gaonkar,
Major in age, 52 years, widower,
And his daughters,
43. Miss Manisha Mohan Gaonkar,
Daughter of Mohan Gaonkar,
Major in age, 22 years, spinster,

44. Miss Mayuri Mohan Gaonkar,
Daughter of Mohan Gaonkar,
Major in age, 20 years, spinster,
All residents of House No.101,
Morod-Dharbandora, Goa.
45. Shri Kamlakant Mahadev Gaonkar,
Son of late Mahadev Gaonkar,
Major in age, 49 years, married
and his wife,
46. Smt. Kamlavati Kamlakant Gaonkar,
Wife of Kamlakant Gaonkar,
Major in age, 45 years, housewife,
Both residents of House No.101,
Morod-Dharbandora,
Taluka Dharbandora Goa.
47. Smt. Bharati Sada Gaonkar,
w/o of late Sada Mahadev Gaonkar,
aged 45 years,
resident of House no.46/3,
Morod-Dharbandora,
Taluka Dharbandora Goa.
48. Smt. Prafulla Popot Kundaikar,
45 years, daughter of late Mahadev
Sukdo Gaonkar,
Resident of House No.917,
Kundaim, Ponda-Goa.
49. Smt. Tulshi Shrikant Gaonkar,
Wife of Shrikant Gaonkar,
Major in age, 52 years, married
and her husband,

50. Shri Shrikant Gaonkar,
Major in age, 56 years, married,
Resident of House No.153, Calem,
Taluka Sanguem - Goa.
51. Smt. Shashi Ramesh Gaude,
wife of Ramesh Gaude,
daughter of Mahadev Sukdo Gaonkar,
major in age, 55 years, married,
and her husband
52. Shri. Ramesh Gaude,
major in age, 58 years, married,
both resident of house No. 649,
Kundaim Taluka Ponda - Goa.
53. Smt. Nayan Govind Gaude,
Wife of Govind Gaude,
Daughter of Mahadev Sukdo Gaonkar,
Major in age, 49 years, married,
And her husband;
54. Shri Govind Gaude,
Major in age, 62 years, married,
Both residents of House no.15,
Tamsoddo, Dharbandora,
Taluka Dharbandora - Goa.
55. Shri Vasant Mukund Gaonkar,
Son of late Mukund Gaonkar,
Major in age. 69 years. married,
And his wife,
56. Smt. Leela Vasant Gaonkar,
Wife of Shri Vasant Gaonkar,
Major in age, 59 years, married,
Okamb, Dharbandora,
Taluka Dharbandora ~ Goa.

57. Shri Ulhas Mukund Gaonkar,
Son of Mukund Gaonkar,
major in age, Married and his wife,
58. Smt. Uttara Ulhas Gaonkar,
Wife of Shri Ulhas Mukund Gaonkar,
Major in age, 55 years, housewife,
Both residents of House No.144,
Okamb, Dharbandora,
Taluka Dharbandora - Goa.
59. Shri Mangaldas Mukund Gaonkar,
Son of Mukund Gaonkar,
major in age, 50 years,
Married and his wife,
60. Smt. Meghana Mangaldas Gaonkar,
Wife of Mangaldas Gaonkar,
Major in age, 49 years, married,
Both residents of House No.144,
Okamb, Dharbandora,
Taluka Dharbandora - Goa.
61. Smt. Sushila Jana Kukalkar,
wife of Jana Kukalkar,
daughter of Mukund Gaonkar,
major in age, 46 years, married,
Indian National, and her husband
62. Shri. Jana Kukalkar
major in age, 49 years married,
Indian National
both resident of house No. Not known
Marcel, Ponda - Goa
63. Smt. Jayanti Anand Zalmi
daughter of Mukund Gaonkar,

wife of Anand Zalmi, major in age,
45 years, married, and her husband

64. Shri. Anand Zalmi,
major in age, 52 years,
both residents of Kundaim,
Near Industrial Estate, Ponda - Goa.
65. Smt jayu Pandhari Gaude,
wife of Pandhari Gaude,
daughter of Mukund Gaonkar,
major in age, 46 years married
and her husband
66. Shri. Pandhari Gaude,
Major in age,
51 years, married,
Both residents of House No.
Not known,
Nirankal Betoda,
Taluka Ponda Goa.
67. Shri Tukaram Shanu Gaonkar,
Son of late Shanu Gaonkar,
Major in age,
Aged 42 years, widower.
68. Shri Barkelo Tukaram Gaonkar
Son of Shri Tukaram Gaonkar
Major in age, 26 years, married,
And his wife,
69. Smt. Rangati Barkelo Gaonkar,
Wife of Shri Barkelo Tukaram Gaonkar,
Major in age, 24 years, housewife,

70. Shri Hanumant Tukaram Gaonkar,
Son of Shri Tukaram Gaonkar,
and his wife, Major in age, 42 years,
married, and his wife,
71. Smt. Harshada Hanumant Gaonkar,
Wife of Shri Hanumant Gaonkar,
Major in age, 40 years, housewife,
All resident of near Primary School,
Dabal, Dharbandora, Goa.
72. Smt. Priyanka Prakash Parsekar,
Wife of Shri Prakash Parsekar,
aged 30 years,
Daughter of late Shri Tukaram Gaonkar,
Resident of H.No.244, Vantem Sattari,
Taluka Sattari - Goa.
73. Shri Ghanashyam Shanu Gaonkar,
Son of Shanu Gaonkar,
Major in age, 55 years, married
And his wife
74. Smt Shanti Ghanashyam Gaonkar,
Wife of Ghanashyam Gaonkar, married,
Major in age, 50 years,
Both resident of House No.155,
Dabal, Taluka Dharbandora.
75. Shri Ranganath Shanu Gaonkar,
Aged 70 years, son of Shanu Gaonkar,
Major in age, married, and his wife,
76. Smt. Shalini Ranganath Gaonkar,
Major in age, married,
aged 65 years,
Both resident of House No.82, Dabal,Respondents
Taluka Dharbandora - Goa.

Mr Iftikhar Agha and Ms Valencia Fernandes, Advocates for the appellants
Mr Parikshit Sawant and Mr Ketan Morajkar, Advocates for the respondents.

CORAM: NIVEDITA P. MEHTA, J.

Reserved on : 22nd NOVEMBER 2024
Pronounced on: 13th DECEMBER 2024

JUDGMENT

1. Heard learned counsel Mr. Iftikhar Agha for the appellants/plaintiffs and learned counsel Mr. Parikshit Sawant for the respondents nos. 1 to 25/defendant Nos. 1 to 25.
2. The parties shall be referred to in the manner they so appear in the impugned judgment passed by the learned Trial Court.
3. The present first appeal under Section 96 of the Civil Procedure Code is filed by the plaintiffs challenging the judgment and decree dated 24/09/2020 passed by the Court of Civil Judge Senior Division of Salcete, at Quepem in Special Civil Suit No. 06/2019/A whereby the application filed by the defendants under Order 7 Rule 11 of Civil Procedure Code for rejection of plaint was allowed. This Court vide order dated 05/10/2021 has observed that the plaintiffs are restricting their claim against the respondent nos. 1 to 25 who are the only contesting respondents and accordingly, the notices were issued to the respective parties. In the same order on an undertaking by the counsel for the plaintiffs that a complete set of papers shall be served on the

learned counsel for the defendants nos. 1 to 25, the preparation of the paper book was dispensed with.

4. By the consent of the parties, the present appeal was finally heard at the admission stage.

5. The brief facts necessary for the disposal of the appeal may be stated thus:

The plaintiffs have filed a suit for declaration and permanent injunction under Section 34 of the Specific Relief Act and Order XXXIX Rule 1 and 2 of C.P.C. seeking the following reliefs:

- a) By judgment and decree, it may be declared that the judgment and order dated 13/07/2012 in the Regular Civil Appeal No. 6/2012 is null and void, hence inoperative;
- b) By judgment and Decree, it may be declared that the plaintiffs are the owners of the suit property surveyed under No.202/3 of Village Dharbandora Taluka;
- c) By an order it may be declared that the name of Bablo Upasso Gaudio is erroneously recorded in the survey record of Survey No.202/3 of the suit property and same is liable to be deleted;
- d) By an order of permanent injunction the defendants, their legal representatives, labourers, servants etc., be restrained from interfering in the suit property and disturb the peaceful possession of the plaintiffs;

e) By an order of permanent injunction defendant No.1 be restrained from carrying on the construction work in the suit property;

f) By an order of permanent injunction, the defendants may be restrained to carry out the correction of survey record on the garb of judgment and order dated 13/07/2012 in the Regular Civil Appeal No.6/2012.

6. The present proceedings revolve around the property known as "Moroda Gauntona" situated in village Dharbandora, admeasuring 6 hectares, 629 sq. meters which is surveyed under No.202/3 and was granted to late Pablo Upasso Gaudio by virtue of Alvara No. 364 dated 29.05.1929.

7. The case made out in the plaint is that, the plaintiffs claimed to be the descendants of the original BABLO UPASSO GAUDO and not the defendants. In paragraphs 4 and 5 of the plaint, the suit property is described as under.

8. That there exists aforementioned property known as 'MORODA GAUNTONA" situated in Village Dharbandora of Dharbandora Taluka earlier of Sanguem Taluka admeasuring 6 hecs. 629 sq. mts which is surveyed under No.202/3 of Village Dharbandora of Dharbandora Taluka. According to said survey record, it is bounded as under: -

On or to the East: by property Usno Pablo Gaudio, Ram Sazro Gaudio and Pandu Babi Gaudio.

On or to the West: by Government land;

On or to the North: by Government land; and

On or to the South: by Government land in possession of Sheddo Vithoba Gaudio.

9. The plaintiffs contend that the said property was granted to late Bablo Upasso Gaudio who married to Deviya Gaudi hereinafter referred to as 'Original Bablo' by virtue of Alvara No. 364 dated 29.05.1929 and the said property according to alvara is bounded as under :-

To the East : By land of Pandu Babi Gaudio

To the West and North: By land with State,

To the South: By concession of the land of Sheddo Vithoba Gaudio,

Hereinafter referred to as 'The suit property'.

10. It is the case of the plaintiffs that the suit property was first assigned to the original Bablo Upasso Gaudio in the year 1884 along with the other property Bondigali or Podolem. The said suit property was developed by said Bablo Upasso Gaudio and only thereafter the Alvara in respect of the suit property was granted to the original Bablo in the year 1929. The plaintiffs have further stated that Bablo Upasso Gaudio and his wife Deviya passed away and are survived by three sons namely Usno, Upasso and Sukdo. It is asserted that the name of Ram Usno Gaonkar is figuring in survey record No. 202/3 of the suit property. Hence the plaintiffs being the legal heirs of Ram Usno Gaonkar are in possession of the suit property through the original grantee Bablo Upasso Gaudio.

11. The plaintiffs have further stated that the entry of the name of Bablo Upasso Gaudio i.e., the father of defendant no.1 who is the grandson of original Bablo Gaudio is wrongly recorded in survey no. 202/3 of the suit property and the same is required to be deleted. The plaintiffs contend that the defendants have taken disadvantage of the said entry; by filing Regular

Civil Suit No.22/2002 before the Civil Court Junior Division at Sanguem claimed the relief of correction of survey record by deleting the names of Ram Usno Gaunkar, Krishna Ram Gaunkar and Saulo Pandu Gaunkar which was dismissed. The aforesaid judgment of dismissal was challenged by the defendants in Regular Civil Appeal No. 6/2012 in the Court of District Judge, South Goa, Margao wherein the said appeal was allowed vide judgment and order dated 13.07.2012. Post more than six years thereof the plaintiffs have approached the trial Court by filing suit in the year 2019 stating therein that plaintiff No. 1 while cleaning the old truck used by his father found old documents in Portuguese language pertaining to the suit property i.e., Deed of Partition and allotment dated 17.09.1923 and Deed of Rectification dated 26.03.1925 and as per the said deed of partition and rectification deed, the plaintiffs are the owners of the suit property. The plaintiffs further contend that the defendants have played fraud on the Court by suppressing these documents. The plaintiffs claim that Pablo Upasso Gaudio, through whom the defendants claim their rights in the property, is the grandson of the original grantee Pablo Upasso Gaudio. The cause of action as mentioned in paragraph 51 of the plaint reads thus:

“51. The cause of action first arose on 1st week of January 2019 when the plaintiff no.1 found the old document in respect of the suit property and thereafter on 5.5.2019 when the plaintiff no.1 noted that the defendant no.1 has accumulated laterite stones and sand in the suit property and has constructed one toilet block.”

12. In the case in hand, no written statement has been filed, and only averments that have been taken into consideration by this Court are those contained in the plaint.

13. The defendants nos. 1 to 25 have submitted in this appeal that the cause of action on which the suit has been filed is that they have found two documents i.e., Deed of Partition and allotment dated 17.09.1923 and Deed of Rectification dated 26.03.1925 by which they claim to have right to the suit property. The defendants submit that on bare perusal of paragraph No. 5 of the plaint, the boundaries described in the Deed of Partition and allotment dated 17.09.1923 and Deed of Rectification dated 26.03.1925 at page 245 of the appeal, the last five lines make it evident that the boundaries of the suit property is not identical to the boundaries described in the aforesaid documents of Deed of Partition and allotment dated 17.09.1923 and Deed of Rectification dated 26.03.1925. Hence, it is contended that the tracing of the aforesaid documents cannot be said to be the cause of action as the boundaries described in the documents which according to the plaintiffs were found in the trunk are not the same. The defendants submit that the suit property by which the plaintiffs are claiming their rights as owners of the said suit property have already been decided by the learned District Judge in Regular Civil Appeal No.6/2012 vide judgment and order dated 13.07.2012 and the same has attained finality. The aforesaid litigation was initiated by the descendants of Pablo Upaso Gaudio. The defendants submit that the pleading in the plaint is vague regarding the date of birth, marriage, and death of the original Pablo and therefore, the information through interrogatories by application dated 26/09/2019 was preferred and the plaintiffs furnished the information vide

reply dated 24.10.2019 in which they have admitted that the original Bablo passed away on 10/01/1891. The defendants contend that the original Bablo passed away prior to the grant made by the Government by Alvara No. 364 dated 29.05.1929; hence the plaintiffs who are the descendants of original Bablo, through his son Usno cannot claim any right to the suit property, which was granted to Bablo Upaso Gaudio, the grandson of original Bablo Upaso Gaudio of whom the defendant nos. 1 to 25 are the descendants.

14. Further, the defendants contend that the suit property by name Bondigali or Podolem, the details of the same are not set out in the plaint nor the survey number is mentioned and therefore cannot be termed to be part of survey No. 202/3 of Dharbandora village, now taluka. The defendants contend that the plaintiffs have no right or possession over the suit property under survey no. 202/3 of Dharbandora Village which legitimately belongs to defendants No. 1 to 25 who have proved their title in earlier suit Nos. 22/2002 and 24/2013 in respect of the suit property. The defendants have therefore contended that the plaintiffs have failed to disclose any cause of action and the same is fraudulently created. Consequently, the defendants vide Exh. 17 filed an application for rejection of the plaint under Order 7 Rule 11 of the CPC. The plaintiffs filed their reply to the said application for rejection of plaint stating therein that the issue is required to be framed for deciding the allegations made in the application under Order 7 Rule 11 of the CPC and on this ground itself the said application is not maintainable and is liable to be rejected.

15. The learned trial Court after taking into consideration the argument and the averments in the plaint, arrived at the conclusion that the plaintiffs have failed to show that the suit property corresponds to the property allotted to their ancestors as per Deed of partition and allotment dated 17.09.1923 and deed of rectification dated 26.03.1925 to confirm their title over the same. The learned trial Court therefore allowed the application of the defendants under Order 7 Rule 11 (a) of the Civil Procedure Code by rejecting the plaint and observed that no reliefs can be granted to the plaintiffs as the present suit is filed without any cause of action.

16. The only point that arises for determination in this appeal is whether the plaint in Special Civil Suit No.6/2019 discloses a cause of action and whether the trial Court has allowed the application of defendants after considering the relevant provisions under Order 7 Rule 11 (a) of CPC.

17. The learned counsel for the plaintiffs submitted that the plaintiffs are the legal heirs of the original Bablo Upasso Gaudio, in view of the documents i.e., Deed of Partition and allotment dated 17.09.1923 and Deed of Rectification dated 26.03.1925 found by the plaintiff no. 1 in the old truck of his father in the year 2019. The learned counsel further submitted that the defendants have fraudulently obtained the judgment and decree dated 13.07.2012 and therefore, the suit is filed by the plaintiffs seeking a declaration to declare that the judgment and order dated 13.07.2012 in Regular Civil Appeal No.6/12 as null and void and inoperative. It was contended by the counsel appearing on behalf of the plaintiffs that there is a difference between no cause of action and non-disclosure of cause of action.

It is submitted that the learned trial Court has decided upon the merits of the suit at a premature stage. It is contended that the question of rights can be established by leading evidence. The learned counsel further submitted that the trial Court without analytical comparison, has wrongly arrived at the conclusion that the plaintiffs have failed to disclose any cause of action, and it was incumbent upon the trial Court to frame an issue before rejecting the plaint. The learned counsel for the plaintiffs to buttresses the case has relied on the following decisions:

- i) *State of Orissa vs. M/s Klockner and Company, reported in AIR 1996 SC 2140;*
- ii) *M/s Dom Francisco Flat Owners Co-op. Housing Society Ltd. Vs M/s Alfran Constructions Pvt. Ltd. & Ors., reported in 2014(5) ALL MR 813;*
- iii) *Ms. Sociedade De Formento Industries Ltd. Vs. Gurudas G. Pai, reported in AIR 2016 CC 3094 (BOM).*

18. The learned counsel for the defendants argued that the plain reading of the plaint itself demonstrates that there is no cause of action mentioned by the plaintiffs for filing the suit. The learned counsel submitted that they had filed a Civil Suit No. 22/2002 before the Civil Judge Junior Division at Sanguem for correction of Survey records by deleting the names of Ram Usno Gaudio, Krishna Rama Gaudio and Saulo Pandu Gaudio and the suit was dismissed by Judgment and Decree dated 30.11.2011. Against the said decree an Appeal was filed by the defendants bearing Regular Civil Appeal No.6/2012 before the District Judge, Margao which was allowed and consequently the judgment of trial Court dated 30.11.2011 was quashed and set aside and the suit was

decreed by judgment dated 13.07.2012. The defendants further contended that the plaintiffs have averred in paragraph 32 of the plaint that another suit was filed by one Laxmi Anant Gaonkar and Sanjay Anant Gaonkar and others who claimed to be descendants of Sukdo Bablo Gaudio bearing Civil Suit No. 24/2013 claiming to be co-owners of the suit property along with plaintiffs in R.C.S. No.22/2002 which was also dismissed by the Judgment and order dated 31.05.2018 against which no appeal is filed and as such, the decision of the trial Court becomes final.

19. The counsel for the defendants nos. 1 to 25 submitted that the earlier round of litigation wherein the issue was regarding the ownership rights in survey no. 202/3; once the judgment and decree passed by the District Judge in Regular Civil Appeal No.6/2012 has attained finality, the present suit seeking declaration for setting aside 13.07.2012 should not be entertained. The learned counsel submitted that the trial Court after considering the averments in the plaint has correctly arrived at the finding that the suit deserves to be rejected and there is no perversity in the judgment and order as contemplated by the counsel for the plaintiffs. He submitted that a bare perusal of the plaint clearly reflects that there is no cause of action accrued in favour of the plaintiffs to institute a suit for declaration and permanent injunction. The suit property as described in paragraphs 4 and 5 has been correctly dealt with by the trial Court. The learned counsel for the defendants submitted that the two documents i.e. deed of amicable division with allotment dated 17.09.1923 and Deed of rectification dated 26.3.1925 are sham and fraudulent documents in which the suit property could not be

subject matter as the suit property is a Government land granted to Bablo Upasso Gaudio by Alvara No. 364 dated 29.5.1929 which is much after the said documents were prepared and there is an admission by the plaintiffs that the original Bablo Gaudio expired on 10/01/1889 prior to the grant made by the Government by Alvara no. 364 dated 29/05/1929, hence the plaintiffs cannot claim any right in the suit property. According to him, the plaintiffs have failed to show that the suit property corresponds with the boundaries of the property named "MORODA GAUNTONA" as described in the Deed of amicable division and allotment dated 17/9/1923 and Deed of Rectification dated 26/03/1925, therefore, the suit is filed without any cause of action and that the judgment/order of rejection of plaint vide order dated 24.09.2020 passed by Senior Civil Judge, at Quepem, does not warrant any interference. The learned counsel has relied on the following decisions in support of his contentions.

- i) *Church of Christ Charitable Trust and Educational Charitable Society Vs Ponniamman Educational Trust, reported in (2012) 8 SCC 706;*
- ii) *T. Arivandandam Vs T. V. Satyapal and another, reported in (1977) 4 SCC 467;*
- iii) *Vishnu Anant Dessai and another Vs Govind Vithal Sawant and others, reported in 2020 SCC OnLine Bom 862.*

20. The rival contentions now fall for consideration is as under:

21. To consider whether Ld. Trial Court has properly considered the provisions of Order VII Rule 11 of CPC, it would be necessary to reproduce the same. Order 7 Rule 11 of CPC reads thus:

"11. Rejection of plaint. -The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;

[(f) where the plaintiff fails to comply with the provisions of rule 9]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff]."

22. In view of aforesaid legal position, let us consider the judgments cited by both parties. In the case of *M/s Dom Francisco Flat Owners Co-Op. Housing Society Ltd. Vs M/s Alfran Constructions Pvt. Ltd. & Ors*, defendant no.1 had claimed that the plaintiff has no cause of action and it was not specifically pleaded that the plaintiff does not show any cause of action. Thus, relying on the decision of the Supreme Court in the case of *State of Orissa vs. M/s Klockner and Company*; this Court held that the case was covered by law as laid down by the Supreme Court in the case of *Klockner and company* (supra). **In case of Ms. Sociedade De Formento Industries Ltd. Vs. Gurudas G. Pai;** the facts of the case were totally different and cannot be said to be made applicable to the case at hand.

23. In the judgment of *Church of Christ Charitable Trust (supra)* wherein it has been held and observed that while scrutinizing the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms.

24. In the case of *T. Arivandanam* (supra) following observations in paragraph 5 of the judgment are apposite:

“5.The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should

exercise his power under Order VII, Rule 11 C.P.C taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the but at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them.”

25. In the case of **Vishnu Anant Dessai and another (supra)**, the Court observed that when a property in a suit is alleged to be disputed; the boundaries described would prevail over the extent and survey numbers. Admittedly, in the present case the boundaries mentioned in the plaint do not correspond to the boundaries mentioned in the documents said to have been found in the year 2019; basing reliance on mentions altogether different boundaries, hence the documents which is the subject matter of the suit property cannot be said to be a cause of action for filing the present suit before the trial court.

26. In furtherance of the judgments supra, it is also to be noted that while scrutinizing the plaint, it is the bounden duty of the Trial Court to ascertain materials for the cause of action. It is worthwhile to find out the meaning of the words “cause of action”. The cause of action must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue.

27. The plaintiffs have submitted that the plaintiff no.1 while cleaning the old truck of his father found the two documents i.e., Deed of amicable division with allotment dated 17.09.1923 and Deed of rectification dated 26.03.1925 in the year 2019 and fraud has been pleaded. The contention of fraud is raised only with a view to come out of the limitation. The mere reading of the plaint would show that the plaint is vexatious, frivolous and an abuse of process and the same has been instituted with a view of creating a litigation over the suit property for extraneous consideration. The cause of action shown is nothing but an eye wash. The plaintiff no.1's statement regarding the discovery of the two documents i.e., deed of amicable division with allotment dated 17.09.1923 and deed of rectification dated 26.03.1925 is a creation of the illusion of a cause of action by referring to these documents. Reliance on these two documents which have no relevance in view of *T. Arivandanam* (supra). No details are spelt out as to why none of the other plaintiffs who were parties to the earlier proceedings could not lay their hands on the so-called documents wherein the issue in those proceedings was also about the same survey no. 202/3. It is seen from the averments of the plaint that the plaintiffs have categorically alleged fraud. Based on two documents found by plaintiff no.1, he has approached the court and alleges fraud as these documents were suppressed by the defendants. It is pertinent to note that there is a growing tendency to file suits by the descendants on the purported ground of discovery of documents, knowledge acquired through the discovery of those documents through their relatives so on and so forth. The filing of the suit claiming their right over the suit property couching the prayer in such a manner to bring the cause within limitation is nothing but an abuse of the process of law. As afore-

stated, this raises a question in the mind since decades why the documents were not within the knowledge of the other family members and only the plaintiff no.1 could find the same, this theory put forward, to say the least, is unbelievable. The contention as regards fraud, it is expected of a party to state basic averment as to who has committed a fraud when the fraud has been committed and by what means the fraud has been committed. Nothing is mentioned, except bare allegation of commission of fraud.

28. In the judgment in the case of ***Canara Bank Vs. P. Selathal and others***, reported in (2020) 13 SCC 143, the Apex Court has held and observed that when there is an allegation of fraud, specific instances of the acts of fraud with evidence, have to be pleaded in the plaint. Mere statements are not sufficient, if just fraud is pleaded, to plead the fraud; however, there has to be material to show that the fraud is committed.

29. For any action of declaration, there is a period of limitation as provided under the Limitation Act. The plaintiffs have filed a suit seeking a declaration that the judgment and decree dated 13.07.2012 is null and void. The same has attained finality and the parties since long have acted upon the same. Thereafter, this suit is filed on the illusory cause of action which is clearly required to be thrown out. The plaint would clearly go to show that it is an attempt of clever drafting so as to bring the suit within limitation as well as by creating the illusory cause of action in favour of the plaintiffs is an attempt which would be required to be nipped in bud. A plaint which is itself confusing about its averments and which does not disclose a right to sue or even a cause of action accruing in favour of the plaintiffs must be rejected.

30. For the reasons stated supra, no interference is called for in the impugned judgment and order dated 24.09.2020 passed by the Civil Judge Senior Division at Quepem, as the findings therein are as per the settled proposition of law in respect of Order VII Rule 11 (a) of CPC. The appeal is devoid of merits and is liable to be dismissed. It is accordingly dismissed. No order as to costs.

NIVEDITA P. MEHTA, J.