

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.13 OF 2024

RAKESH MANDREKAR

... Appellant

Versus

ARJUN K. SHETGAONKAR AND 2 ORS.

... Respondents

Mr Amay Phadte, Advocate *for the Appellant.*

Mr J.P. Mulgaonkar, Senior Advocate, and Ms Shweta Parulekar, Advocates *for the Respondents.*

CORAM: M.S. SONAK, J.

DATED: 12th April 2024.

ORAL ORDER:

1. Heard Mr Phadte for the Appellant. Mr J.P. Mulgaonkar, learned Senior Advocate appears with Ms Shweta Parulekar for the Respondents.
2. The Appellant appeals the concurrent Judgment and Decree made by the Trial Court and the First Appellate Court decreeing the suit instituted by the Respondents granting relief of declaration, recovery of possession and permanent injunction.
3. The Appellant is the Original Defendant, and the Respondents are the Original Plaintiffs in Regular Civil Suit No.40/2010/A. The two

Courts have held that the Plaintiffs had established that they were the owners of the suit property, and since the Defendant had carried out illegal construction by encroaching upon the suit property, the suit was decreed. The Appellate Court has dismissed the appeal.

4. Mr Phadte learned that Counsel for the Appellant had submitted that the Plaintiffs had sought a declaration that they were the owners of the suit property. However, the Plaintiffs had not impleaded their respective spouses, who would be the co-owners or the moiety holders, assuming the Plaintiffs' case about their ownership was correct. He submitted that in the absence of a joinder of all co-owners or moiety holders, no relief of declaration could have been granted. He submitted that in the absence of any relief of declaration, there was no question of ordering demolition, recovery of possession or permanent injunction.

5. Mr Phadte submitted that the finding about the construction being illegal suffers from perversity because the Appellant had produced on record a 1996 NOC from the Panchayat for repairs of the structure.

6. Based on the above submissions, Mr Phadte proposes the following substantial questions of law, which, according to him, arise in this Second Appeal.

A. Whether the both the lower Court failed to appreciate that the Plaintiff have not joined all the Co-owners as necessary Parties in its suit for declaration and consequential reliefs?

B. Whether both the Courts below failed to appreciate that the Defendant/ Appellant had obtained NOC dated 20/10/1994 from Village Panchayat of Verla Canca for the repair of the said alleged illegal structure?

7. Mr Mulgaonkar submitted that there was no error in the concurrent findings recorded by the two Courts. He submitted that the Trial Court had recorded a finding that the Plaintiffs had power of attorney from their spouses. He further submitted that in this case, there was no cloud whatsoever on the Plaintiff's title and therefore, the relief of declaration was superfluous. Mr Mulgaonkar relied on *Anathula Sudhakar vs. P. Buchi Reddy (Dead) By Lrs & Ors.*¹ to support his contention.

8. Mr Mulgaonkar submitted that the Appellant has produced not even a shred of evidence in support of his unauthorised occupation of the suit property. Similarly, no evidence was produced of any permissions from any authorities to put up the construction on the Plaintiffs' suit property. The NOC from the Panchayat for repairs is hardly a document that would legalise the unauthorised construction put up in the suit property. In any case, Mr Mulgaonkar submitted that there is no perversity in the findings recorded, and at the Second Appeal stage, it is not for this Court to reassess or reevaluate the evidence on record.

¹ AIR 2008 SC 2033

9. The rival contentions now fall for my determination.
10. On the non-joinder of necessary parties, there is evidence that the Plaintiffs had Power of Attorney of their spouses. Secondly, and more pertinently as the First Appellate Court held, the Appellant herein appeared to be a complete stranger to the suit property, having not produced even a title of the title. In such circumstances, Mr Mulgaonkar is justified in submitting that the relief of declaration was completely superfluous. There was no challenge, threat or cloud to the Petitioner's ownership of the suit property. In the absence of any such cloud, given the law in *Anathula Sudhakar* (supra), there was not even any necessity for the Plaintiffs to seek relief of declaration.
11. In the above circumstances, the two Courts cannot be faulted for not dismissing the suit on the ground of non-joinder of any necessary parties. Therefore, the first substantial question of law does not arise, and if it arises, it would have to be held against the Appellant.
12. Insofar as the second question proposed by Mr Phadte is concerned, a mere NOC for repairs by the Panchayat does not validate the Appellant putting up construction on the Plaintiffs' suit property. In any case, the Appellant has not produced any permission from the Panchayat or any other relevant authorities to put up the construction in the first place.
13. The two Courts examined the oral and documentary evidence on

record. Even the Panchayat's 1994 NOC has been duly considered. There is no perversity in the finding of fact concurrently recorded by the two Courts to give rise to this substantial question of law.

14. For the above reasons, this appeal is liable to be dismissed and is hereby dismissed. There shall be no order for costs.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

Docket signed by JOSE
FRANCISCO DSOUZA
on 11/11/2024
+05:30