

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 57 OF 2012**

Shri Vithal Pandurang Bakre,
of major age, agriculturist
Resident of House No.54,
Vithalapur, Karapur,
Bicholim Goa.

..... Appellant

Versus

1 Shri Zilu alias Ramrai Pandharinath Sinai
Dubhashi (since deceased)

Through legal heirs

(a) Mr Mangirish Ramrai Sinai Dubhashi,
Son of Ramrai Pandharinath Sinai Dubhashi,
58 years old, married,

(b) Mrs. Deepa Mangirish Sinai Dubhashi,
Wife of Mangirish Sinai Dubhashi,
50 years old, married
Both (a) and (b) residing at House No.141,
Vithalapur, Sanquelim Goa,

(c) Mrs. Meena Shailendra Kuvelkar,
Daughter of Ramrai Pandharinath Sinai
Dubhashi,
Major, married, housewife,

(d) Mr Shailendra C. Kuvelkar,
Husband of Mrs. Meena Shailendra
Kuvelkar,
Major, married,
Both (c) and (d) residing at Flat No.F-1,
Laxmi Apartments, above Hotel Musafir,
Tisk, Ponda Goa.

- (e) Mrs Neela Shriram Kamat,
Daughter of Ramrai Pandharinath Sinai
Dubhashi, major, married, housewife,
- (f) Mr Shriram Y. Kamat,
Husband of Mrs. Neela Shriram Kamat,
Major, married,
Both (e) and (f) residing at
C/o Ramesh L. Kamat,
Near Youth Hostel,
Miramar, Panaji Goa.
- (g) Mr Prasad Ramrai Sinai Dubhashi,
Son of Ramrai Sinai Dubhashih,
Major, unmarried, residing near
Mahalaxmi Temple, Bandora, Ponda Goa.
- (h) Mr Prashant Ramrai Sinai Dubhashi,
Son of Ramrai Sinai Dubhashi,
Major, unmarried, residing at
House No.141, Vithalpur, Sanquelim Goa.
- (i) Mrs. Nisha Balkrishna Karapurkar,
Daughter of Ramrai Sinai Dubhashi,
Major, married, housewife,
- (j) Mr Balkrishana Y. Karapurkar,
Husband of Mrs. Nisha Balkrishna
Karapurkar,
Major, married,
Both (i) and (j) residing at
Flat No. D-102, Gold Beam Residency,
Near Dempo House, St. Cruz,
Tiswadi Goa.
2. Smt. Lilabai Zilu alias Ramrai
Sinai Dubhashi,
Both of major age, house No. not known,
Sanquelim, Taluka, Bicholim Goa.Respondents

Mr V. P. Thali with Mr R. Borkar and Mr Rajdeep Prabhugaonkar, Advocates for the Appellant.

Mr Parag Rao with Ms S. Drago and Mr Akhil Parrikar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

Reserved on : 1st MARCH 2024
Pronounced on: 4th MARCH 2024

JUDGMENT

1. Heard Mr V. P. Thali with Mr R. Borkar and Mr Rajdeep Prabhugaonkar, learned counsel for the Appellant, and Mr Parag Rao with Ms S. Drago and Mr Akhil Parrikar, learned counsel for the Respondents.

2. This Second Appeal is directed against the following: -

(a) The judgment and decree dated 29.04.2002 made by the Civil Judge Senior Division at Bicholim (trial Court) dismissing the Appellant's Special Civil Suit No.16/2000/A;

(b) The judgment and decree dated 16.05.2011 made by the Ad-hoc District Judge-2, North Goa, Panaji (First Appellate Court), dismissing the Regular Civil Appeal No.208/2010 against the above judgment and decree.

3. Thus, this Second Appeal is directed against the concurrent judgments and decrees made by the trial Court and the First Appellate Court dismissing the Appellant's suit/appeal in which the Appellant/plaintiff had sought the following reliefs: -

- (a) *That the declaration may be given in favour of the plaintiff to the effect that the defendants are not having any right or interest of whatsoever over the suit area admeasuring 1156 sq. mts., from the said property "OZRAVORIL" situated at Podocem in Sattari Taluka and in consequence the plaintiff may be declared to continue to use the suit area for the purpose of cremation of the dead persons from the family of the plaintiff;*
- (b) *That the competent authority may be decreed and ordered to make the necessary correction of survey records by including an area of 181 sq.mts., in survey No.59/2 of village Podocem by excluding the said area of 181 sq. mts., from Survey No.59/1 of Village Podocem of the said property "OZRAVORIL" situated at Village Podocem in Sattari Taluka;*
- (c) *That the defendants may be restrained perpetually by way of perpetual injunction from interfering in any manner whatsoever in respect of the suit area;*
- (d) *That the suit area may be decreed and ordered to be demarcated by fixation of boundary stones in respect of the suit area;*
- (e) *Costs of the suit be awarded to the plaintiff.*

4. Mr Thali, learned counsel for the Appellant, at the very outset, submitted that the Appellant was no longer claiming that the suit property "OZRAVORIL" admeasuring 1156 square metres at Podocem, Sattari Taluka was never sold to the Respondents and the claims to this effect in the plaint or in the appeal were now not being pressed. Mr Thali, however, submitted that the Gift Deed dated 28.12.1954 and the Sale Deed dated

08.05.1957 very clearly provides that an area of 1156 square metres (75 hands X 75 hands) was reserved in the property “OZRAVORIL” for the cremation of family members of the plaintiff. He submitted that this area, which was described in the plaint as the “suit area”, could therefore, not be used by the Respondents for any other purpose and the Respondents ought to be injunctioned from preventing the Appellant from using the suit property for the purpose of cremation of his family members.

5. Mr Thali refers to the Gift Deed dated 28.12.1954 and the Sale Deed dated 08.05.1957 to submit how an obligation had been created upon the Respondents/defendants and such obligation could not be defeated by the defendants by simply constructing a compound wall or otherwise preventing the Appellant from cremating his family members in the suit area.

6. Based on the above, Mr Thali submitted that the substantial question of law framed by this Court on 05.07.2012 while admitting this appeal should be decided in favour of the Appellant. The question reads as follows: -

Whether the Courts below have misconstrued the deeds dated 28.12.1954 and 08.05.1957 to come to the conclusion that the appellant has no right of incineration of the dead bodies of the family of the appellant in the suit property?

7. Mr Thali submitted that the additional substantial questions of law are involved in this appeal and prayed that this Court should frame the same in the exercise of powers conferred upon it by Section 100(5) of the Civil Procedure Code. The additional questions proposed by Mr Thali read as follows: -

- (a) Whether the burden of identifying the suit area on the basis of the aforesaid two deeds dated 28th December 1954 and 8th May 1957 respectively, would lie upon the plaintiff when he was party to none of them or would it lie upon the defendant No.1 who was the party/purchaser to the sale deed dated 8th May 1957?
- (b) Whether on the basis of the clear and explicit language in the deeds dated 28th December 1954 and 8th May 1957, respectively, read with the pleadings and the evidence on record, the findings given by both the courts below with regards to the identification of the suit area, were perverse?
- (c) Whether the courts below could have granted injunction in favour of the respondents to restrain the appellant from interfering in Survey No.59 to the extent of the obligation cast under the said deeds dated 28th December 1954 and 8th May 1957, respectively?
- (d) Whether the finding of the trial Court that the suit is barred by limitation, is perverse?

8. Mr Thali submitted that two Courts failed to appreciate that the burden of identifying the suit area was on the defendants, who were actual parties/purchasers to the sale deed dated 08.05.1957. He submitted that

even otherwise, there was ample evidence on record identifying the suit area. He submitted that the suit area was also described in the gift deed dated 28.12.1954 and the sale deed dated 08.05.1957. He submitted that the finding of the trial Court about the suit being barred by limitation was vitiated by perversity because the suit was instituted after the defendants refused to respond to the Appellant's legal notice asserting that the Respondents comply with the obligation undertaken by them in the deeds dated 28.12.1954 and 08.05.1957.

9. For the above reasons, Mr Thali submitted that the additional substantial questions of law as proposed by him are involved in this appeal, and the same may be formulated and answered favouring the Appellant.

10. Mr Rao submitted that this was a case of concurrent judgments and decrees. He submitted that the evidence on record supports the findings concurrently recorded by the two Courts. He submitted that none of the proposed questions framed are involved in this appeal. In any case, he submitted that such questions have to be decided against the Appellant based on the pleadings and the evidence produced on record by the Appellant.

11. Mr Rao submitted that the Appellant filed patently a false case claiming that the suit area admeasuring 1156 square metres was never sold to the Respondents and, consequently, the Respondents had no right or title to the suit area admeasuring 1156 square metres. He submitted that

since a patently false plea was raised in the plaint and pursued before the trial Court and First Appellate Court, this Court should not grant any relief to the Appellant, given the law laid down by the Hon'ble Supreme Court in the case of ***Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira***¹.

12. Mr Rao submitted that there was evidence about the enclosure of the entire property, which was the subject matter of 1954 and 1957 deeds right from the 1950s. There were admissions of the Appellant on this aspect. Still, the suit was instituted only on 17.04.2000. The suit was accordingly barred by limitation, and the trial Court rightly held so. The Appellate Court upheld this finding. Mr Rao pointed out that there was not even a serious challenge to this finding before the First Appellate Court. No substantial question of law based on the plea of limitation was raised or proposed at the time of admission of this Second Appeal.

13. Mr Rao submitted that after taking a patently false plea, the Appellant failed to identify the portion of 1156 square metres from out of larger property which was subject matter of 1954 and 1957 deeds. In the absence of any attempt of identification, two Courts correctly declined any relief of permanent injunction to the Appellant.

14. Mr Rao submitted that any issues concerning revenue records do not afford any cause of action for instituting a suit which was initially based

¹ (2012) 5 SCC 370

on the alleged title. He submitted that a dispute relating to revenue entries was sought to be created by the Appellant and then this dispute was sought to be passed a cause of action for filing the suit in 2000. Mr Rao submitted that this was not permissible and relied on *P. Kishore Kumar Vs Vittal K. Patkar*² to support his contentions.

15. For all the above reasons, Mr Rao submitted that this appeal may be dismissed.

16. The rival contentions now fall for determination.

17. The subject matter of this appeal is the suit area measuring 1156 square metres, forming a part of the larger property “OZRAVORIL” surveyed under Nos.59/1 and 59/2 of Village Podocem in Sattari Taluka.

18. The larger property “OZRAVORIL” originally belonged to Vittal alias Laxman Raghunath Bakre and his wife Laximi Bakre. Laximi Bakre died on 01.10.1952. Bakres had two sons Pandurang and Purushottam. However, Purushottam died a bachelor on 15.12.1915. Pandurang survived his parents and married Malsabai. However, even Malsabai expired in 1952.

19. Pandurang and Malsabai had a daughter named Caveri, alias Jankibai. She was married to Gajanan Sadashiv Ghate. After the demise of

² 2023 SCC OnLine SC 1483

Malsabai in 1952, Pandurang adopted Anand Ramchandra Paradkar, whose name was then changed to Vithal Pandurang Bakre.

20. By a deed of 28.12.1954, the property “OZRAVORIL” was allotted by Pandurang to his biological daughter Caveri. In this deed of 28.12.1954, the following declaration is to be found.

“Declaration: that in that land or the said property described under No. 1357 there is a hilly part of the length of 75 hands and of equal breadth near the said property, “Ozor” which is used by the family of the first party Panduronga, for the purpose of incineration of the persons who have expired, therefore, the second parties who are the owners of the said property declare for due effects that they shall maintain or shall continue to maintain that practice of incineration in the said land of the persons of family of the first party without any disturbance.”

21. Subsequently, by sale deed dated 08.05.1957, Caveri and her husband sold the property “OZRAVORIL” to Zilu Pandarinath Sinai Dubhashi, the predecessor in title of the Respondents/defendants. This sale deed contains the following stipulation.

“That, moreover they the first parties make the present sale with the obligation of the second party and his successors and representatives should maintain the agreement and the declaration referred to the same deed of twenty and eight of December of Thousand nine hundred fifty and four in respect of one hilly part of length of seventy and five hands and of seventy and five said adjoining the referred land “Ozor” of the said

property described under the number Thousand three hundred fifty and seven and which actually found by four marks.”

22. The Appellant/plaintiff instituted Special Civil Suit No.16/2000/A before the trial Court claiming that the portion of property admeasuring 1156 square metres from out of larger property “OZRAVORIL” was not even sold to the Respondents by virtue of the sale deed dated 08.05.1957. Based on such bald pleading, it was claimed that the Respondents had no right or title to the suit property admeasuring 1156 square metres and consequently, sought for a declaration that the Respondents have no right or interest of whatsoever nature over the suit area admeasuring 1156 square metres.

23. The Appellant also sought for consequential relief that he may be declared to continue to use the suit area admeasuring 1156 square metres for the purpose of cremation of dead persons from the plaintiff's family. Further, the relief for correction of survey records and a perpetual injunction to restrain the Respondents from interfering in any manner whatsoever in respect of the suit area was also sought. Additional relief for demarcation by fixation of boundary stones in respect of the suit area was also sought.

24. The only substantial question of law framed on 05.07.2012 at the time of admission of this appeal relates to the misconstruction of deeds dated 28.12.1954 and 08.05.1957. Neither of these deeds excluded the

suit area of 1156 square metres from the transfer effected initially in favour of Caveri and later by Caveri to Dubhashi. Therefore, based on two deeds, the Appellant/plaintiff was not at all justified in contending that there was no sale or transfer of suit area admeasuring 1156 square metres in favour of Dubhashi i.e. Respondents/defendants. The two deeds initially transferred the entire property “OZRAVORIL” to Caveri, and then Caveri transferred the same to Dubhashi. All that could be said is that some obligation had been placed, initially on Caveri and by Caveri on Dubhashi, to allow Bakre to cremate their family members in the suit area.

25. Thus, most of the averments in the suit about there being no transfer of the suit area were false. The relief sought was also based on such false averments that the suit area was in fact excluded from the purview of two deeds. Consequently, as a result of such exclusion, the Respondents/defendants had no right, title or interest in the suit area. This plea was pursued before the trial Court and the First Appellate Court. However, in this Court, such a plea which was even otherwise entirely untenable was not pressed at the very outset.

26. In *Maria Margarida Sequeira Fernandes* (supra), the Hon’ble Supreme Court has held that false claims and defences are serious problems with real estate litigation, predominantly because of ever-escalating real estate prices. 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 because of the enormous delay in adjudication of cases in the Courts. In the case of *Ramrameshwari Devi Vs Nirmala Devi*, the Hon'ble Supreme Court³ 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. This problem can be solved or at least be minimised if exemplary cost is imposed for instituting frivolous litigation.

27. The Hon'ble Supreme Court referred to the mantra “Satyameva Jayate” and held that the truth must be the foundation of our judicial system. The Court held that in the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice. The truth is the foundation of justice. 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. The Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth. The Court also held that the pleadings are the foundation of litigation.

28. The Appellant/plaintiff in this case, as noted earlier, pleaded a false case that the suit property or suit area measuring 1156 square metres was

³ (2011) 8 SCC 249

never transferred to the Respondents/defendants. Such a case is not supported by either 1954 or 1957 document. Even the reliefs claimed in the plaint were based on this false foundation. In such circumstances, the two Courts were justified in denying any relief to the Appellant.

29. However, even if patently falsity in the pleadings is now overlooked, the question is whether the Appellant has made out a case for grant of any relief at all in the suit and consequential in this appeal.

30. Mr Thali submitted that since the clauses of the 1954 and 1957 deeds are clear and unambiguous, at least an injunction should be issued against the Respondents/defendants, preventing them from obstructing the cremation of the member of the Bakre family.

31. The declaration in the 1954 deed or clauses/recitals in the 1957 deed are indeed clear. However, there is no clarity regarding the precise location of the suit area of 1156 square metres. The two Courts have held that it was incumbent upon the Appellant/plaintiff to have pleaded and then proved the clarity and location of the suit area. However, Mr Thali submits that such precise identification or any identification was not at all necessary, and the Appellant/plaintiff had also asked for relief of demarcation.

32. Even if Mr Thali's contention is accepted, still, in this case, there are pleadings, and there is evidence which suggests that from the date of

execution of 1954 and 1957 documents, there has been not a single cremation of Bakre family members in the suit area or suit property. PW1 falsely claimed that Pandurang's wife was cremated in the suit property or suit area. The two Courts have rightly held that this claim was apparently false.

33. Admittedly, the Appellant/plaintiff was adopted by the Bakre family after Pandurang's wife expired in 1952. The Appellant/plaintiff was hardly six years old at the time of adoption into the Bakre family. Secondly, the deed by which the property "OZRAVORIL" was allotted to Caveri is dated 28.12.1954, i.e. after the demise of Pandurang's wife. Therefore, even if it is assumed that Pandurang's wife was cremated in the property "OZRAVORIL", at the time of her demise in 1952, this property belonged to her husband Pandurang. Such a cremation if at all can have no nexus with 1954 and 1957 documents. Such a cremation can certainly not be said to be in pursuance of any right reserved in 1954 and 1957 documents.

34. Further, there is evidence that Pandurang himself was not cremated in the suit area of 1156 square metres. PW1 had admitted that his father Pandurang who died much after 1957, was cremated at Khandepar. PW1 also admitted that other Bakre family members were cremated in the public crematorium near the property "OZRAVORIL". Thus, there is no evidence whatsoever of any of Bakre's family members or even other Bakre

family members being cremated in the suit property or said area from 1954 or 1957.

35. Further, there is evidence that the property “OZRAVORIL” was completely enclosed and had only one entrance. PW1 admitted the key to this entrance was with the Respondents/defendants. He admitted that this was a position from 1957, though at one stage, he claimed that this was a position before 1955. In such circumstances, the two Courts have held that the suit was barred by law of limitation even after making an allowance to the Appellant/plaintiff because he was a minor in 1957. The two Courts have held that the Appellant/plaintiff attained a majority in 1967 and at least at that time he should have instituted the suit.

36. In order to create a cause of action, the Appellant/plaintiff filed objections with the Survey authorities and claimed that the right referred to in 1954 and 1957 documents should be entered in the survey records. Further, just before filing the suit, he also addressed legal notice asserting right and claimed that because there was no response from the Respondents/defendants, a cause of action had accrued for instituting the suit in the year 2000.

37. Mr Rao referred to *P. Kishore Kumar* (supra), in which it is held that it is trite law that revenue records are not documents of title. After referring to *Sawarni Vs Inder Kaur*, the Hon'ble Supreme Court⁴ held that

⁴ (1996) 6 SCC 223

mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person whose favour mutation is done to pay the land revenue in question. Therefore, based on any attempt at mutation in revenue records a cause of action cannot be pleaded, or based upon such cause of action a suit, which is otherwise barred by limitation cannot be said to be within limitation. Thus, even if the additional question of law regarding the limitation proposed by Mr Thali were to be framed, the same would have to be decided against the Appellant.

38. The issue of identification of the suit property or the suit area assumes importance because of the Respondents' plea that though some obligation may have been cast under the documents of 1954 and 1957, the same was not enforceable, and in any case, the same was never enforced right from 1954 or 1957. Mr Rao referred to the detailed evidence on record showing how the entire property "OZRAVORIL" was enclosed and had only a single entrance. He referred to admissions of PW1 on this aspect. He pointed out how PW1 admitted that there was only one entrance, and the key to the same was with the Respondents/defendants.

39. Since the Appellant/plaintiff insisted that the suit area was not even sold to the Respondents/defendants, the burden of establishing this and the location of the suit area or suit property was on the Appellant/plaintiff. This could not have been avoided by the Appellant/plaintiff on the plea

that he was a minor at the time of execution of the 1954 or 1957 document or that he was not a party to such document. Admittedly, his predecessors in the title were parties. The predecessor in the title never once asserted that any cremation takes place in the suit property or said area. The Appellant/plaintiff claims through his predecessor in title. Therefore, the concurrent findings of fact recorded by the two Courts on the aspect of identification also warrant no interference.

40. In the above circumstances, even if the additional questions proposed by Mr Thali were to be formulated, they would have to be answered against the Appellant/plaintiff.

41. Accordingly, the substantial question of law framed at the time of admission of this appeal and the substantial questions of law proposed by Mr Thali would have to be answered against the Appellant/plaintiff. The appeal is accordingly liable to be dismissed and is hereby dismissed. Though, in this case, the Appellant/plaintiff had raised a false plea, since the same was given up before this Court, no costs are imposed.

42. The appeal is dismissed without any order for costs.

43. This Court attempted a settlement between the parties. Mr Rao, on instructions from the Respondents he represents, offered to pay the Appellant ₹500,000/- without prejudice and in full and final settlement. Mr Thali, on instructions, stated that the Appellant would buy the suit

area for ₹500,000/- . This was not acceptable to the Respondents as the entire property was covered by agricultural plantation.

44. Although this Appeal is dismissed if, within 90 days, the Appellant writes to the Respondents represented by Mr Rao about accepting the offer of ₹500,000/- , such Respondents may consider paying this amount to the Appellant within 30 days, in full and final settlement of Appellant's claims. It is clarified that this is not a part of the decree but only a suggestion to give a quietus to this issue.

M. S. SONAK, J.