



Jose

**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 38 OF 2024**

**WITH**

**CIVIL APPLICATION NO. 31 OF 2024**

1. The Chief Secretary,  
Govt. of Goa state, Secretariat,  
Panjim, Goa.
  
2. The Director of Land Survey,  
Through Vinesh Vishwanath Arlenkar  
Land Survey Department,  
Panjim, Goa. ... Applicants/  
Appellants

*Versus*

1. Smt Varsha Kishor Sawant,  
Major of age, married, housewife,  
R/o H.No VSP 420, Vishwamberwadi,  
Sanvordem, Goa.
  
2. Smt Satabai Rajaram Kavlekar,  
Major of age, married, housewife,  
R/o H.No 312, Baag Sanvordem, Goa.
  
3. Shri Suresh Shivram Naik,  
Major of age, married, service,  
R/o H. No 214, Sanvordem, Goa.
  
4. Ramakant Shankar Karapurkar,  
Married, major of age, businessman,  
R/o H.No 29, Anandiwadi,  
Sanvordem, Goa.

5. Mrs Savitabai Vaikunt Naik,  
Major of age,  
R/o H. No 25, Anandwadi,  
Sanvordem, Goa.
6. Dr Upendra Narcinva Sinai Sanvordekar,  
Now deceased represented by his  
Successors in interest  
Smt. Shilavati Upendra Sinai Sawardekar,  
Widow, 65 yrs of age,  
d/o Ganpat Anandrao Wagle,  
Both r/o H. No 20, Cuncolim, Goa  
(Expired)
  - a. Smt Geeta Chandrakant Kudchadkar,  
d/o Smt Shilavatibai Upendra  
Savordekar, and her husband
  - b. Dr Chandrakant Kudchadkar,  
Both Residents of "Shantai" Bungalow,  
D. Manuel Gomes Road,  
Behind Sanchayani, Vidyanagar,  
Margao, Goa.
  - c. Shri P.V.(Mahesh) Kudchadkar,  
Having office near Civil & Criminal  
Court, Margao.
7. Shivanand Raghuvir Sinai Sanvordenkar,  
Married, major of age, landlord,  
Son of Raghuvir Sinai Sanvordenkar,  
and his wife
8. Smt Kamladevi S. S. Sanvordenkar,

Married, major of age, housewife,  
Daughter of Sadashiv Naique.

9. Vidyanand Raghuvir Sinai Sanvordenkar,  
Bachelor, major of age, landlord,  
Son of Raghuvir Sinai Sanvordenkar  
(deceased)
10. Utoma R. S. Sanvordenkar, married,  
Major of age, Landlord,  
S/o Raghuvir Sinai Sanvordekar,  
and his wife (Expired)
- 10a) Shri Raghuvir Uttam Sanvordekar,  
Son of Utoma Raghuvir Sinai  
Savordekar,  
Major in age, married and his wife.
- 10b) Smt Hetal Raghuvir Savordekar,  
Wife of Mr Raghuvir Uttam  
Savordekar, Major in age, married,  
Both residents of H. No 332,  
Baagwada, Near Village Panchayat  
office, Sanvordem, Taluka  
Sanguem, Goa.
- 10c) Smt Prita Hemkant Bhangi,  
Daughter of Mr Utoma Raghuvir  
Sinai Savordekar, Married, major in  
age, and her husband
- 10d) Mr Hemkant Bhangi,  
Major in age,  
Advocate by Profession, married,  
Both residents of H. No not known,

Opposite Electricity Sub-station,  
Pontemol, Curchorem,  
Taluka Quepem, Goa.

11. Smt Nayan Utoma Sinai Savordenkar,  
Married, major of age, housewife,  
All resident of Sanvordem, Goa.

[Defendant No. 5 is duly represented by Joaquim Santan Fernandes, r/o Sanvordem, Goa as per Power of Attorney executed by the defendant No. 5 on 12.10.88 before Notary Atmanand Verlekar Registered under serial no 2061 Dated 12/10/88 and similarly defendant/ Respondent No 6 to 10 are represented by said Joaquim Santan Fernandes, r/o Sanvordem, Goa as per Power of attorney executed on 2/10/88 registered under serial no 2005 dated 2.10.88 which will be address for service of summons defendant no 5 to 10] ... Respondents

***Ms. Sulekha Kamat***, Additional Government Advocate for the Applicants/Appellants.

***Mr. Sudesh Usgaonkar with Ms. Marie Rosette Pereira, Advocates for Respondent Nos.1 and 3.***

**CORAM : VALMIKI MENEZES, J.**  
**RESERVED ON : 14<sup>th</sup> MARCH, 2024.**  
**PRONOUNCED ON : 20<sup>th</sup> DECEMBER, 2024.**

**JUDGMENT:**

1. This is a First Appeal impugning Judgment and Decree dated 16.09.2019 passed by the District Judge-I, South Goa at Margao, whereby Civil Suit No. 21/2016 of the Respondents/Original Plaintiffs has been decreed against the Appellants/Original Defendant Nos. 1 and 2, declaring the Plaintiffs and the Defendant Nos. 3 and 4 to be absolute owners of the suit property bearing Survey No. 29/1 of village Rumbrem, Sanguem Taluka. Consequently, the Trial Court has held that the Plaintiffs and Defendant Nos. 3 and 4 are entitled to record their names in the Survey Records as occupants of survey holding 29/1.
  
2. Admit. With the consent of the learned Advocates for the Appellants and Respondent Nos. 1 and 2 who are the contesting parties as recorded by this Court in its order dated 14.03.2024, the matter has been heard finally and is being presently disposed of.

The Respondent Nos. 1, 2 and 3 who are the original Plaintiffs in the suit are hereafter referred to herein as the “Plaintiffs”, while the Appellant Nos. 1 and 2 herein are referred to as “Defendants”.

3. It was the case of the Plaintiffs in the plaint that one Uttam Ladu Sinai Sanvordekar and his wife along with Defendant Nos. 5 to 10 were owners of the suit property known as “Ponsacodilgall” admeasuring 58,240 sq. mtrs situated in village Rumbrem of Sanguem Taluka; the suit property, as described in paragraph No. 1 of the plaint, though was not described in the Land Registration Office of Quepem, was enrolled in the Land Revenue Office of Sanguem in the old Portuguese Revenue Records under Matriz No. 38, 39 and 40 and was surveyed under old Cadastral Survey No. 6 and under New Survey No. 29 with boundaries as stated in paragraph No. 1 of the plaint. The plaint further records that Defendant Nos. 5 to 10 inherited the rights to the suit property from Uttam and his wife, divided the suit property into five independent plots and sold the same by executing five different Deeds of Sale, one of which was executed in favour of Plaintiffs and Defendant Nos. 3 and 4 by virtue of which the Plaintiffs and Defendant Nos. 3 and 4 became absolute owners under this Deed.

4. It is further the case of the Plaintiffs that the said property was recorded in the old Survey No. 6 and Matriz records in the name of the original owner Uttam, though

the names of Defendant Nos. 5 to 10 were not recorded by the Revenue Authorities in the new Survey records under Survey No. 29. In the plaint, it is their case that after purchase of the property, the Plaintiffs and Defendant Nos. 3 and 4 have undertaken the cultivation of suit property by planting therein Coconut trees, Areca nut trees, Mango, Banana, Jackfruit and Breadfruit trees and enjoying these plots of land independently since 1988. They further contend that the Plaintiffs, in February, 2001 availed of a loan from an Agricultural Bank to further develop the property and also constructed thereon, with permissions from Statutory Authority a residential house.

They claim that on perusing the survey records, it came to their knowledge that an erroneous entry was made of the name of the Government of Goa in the occupant's column of this record, when the Government does not own any property under Survey No. 29. On further inquiries with Defendant Nos. 5 to 10, it came to light that Defendant No. 5 had made attempts to delete the name of Government of Goa from the survey records, however, the application came to be dismissed for default before the Deputy Collector. Thereafter, the Plaintiffs issued a notice dated

14.03.2001 under Section 80 CPC to the Defendant Nos. 1 and 2 to which there was no response giving rise to the cause of action for filing the suit.

5. After the plaint was served on the Defendants, a written statement came to be filed by Defendant Nos. 1 and 2 i.e. Government of Goa and Director of Land Survey. The Defendants denied the existence of the property “Ponsacodil Gal” under Matriz no. 38, 39 and 40 in village Rumbrem, however, stated that the property under survey no. 21/9 of the same village has an area of 58425 sq. mtrs and the same belongs to the Government of Goa; they denied the boundaries of the property “Ponsacodil Gal”. The Defendants also denied that the original owners of the suit property were Uttam Sanvordekar or that it was inherited by Defendant Nos. 5 to 10.

6. In the written statement, the Defendants claim that the Defendant Nos. 4 to 8 had no right to divide the suit property into plots or make the independent Sale Deeds in favour of the Plaintiffs and the other parties and claimed that if such Deeds are in fact executed, the same are Null and Void. The Defendants also denied that the Plaintiffs

are in possession of the suit property. There is, however, no denial to the specific averments contained in the plaint that the Plaintiffs have constructed a residential house on the suit property and have undertaken extensive plantation of various trees (para no. 5, 6 and 7 of the plaint). There is also no counterclaim on the challenge thrown to the Sale Deed executed in the favour of the Plaintiffs.

Defendant Nos. 3 to 10 did not file any written statement and the suit has proceeded ex-parte against them.

7. Issues were framed by the Trial Court which are reproduced below:

“1. Whether plaintiffs proves that there exist a property known as ‘Ponsacodilgall’ of three additions admeasuring 58.240 sq.mts. bearing matriz Nos. 38,39 and 40 which corresponds to old survey No.6 and new survey No. 29?

2. Whether plaintiff proves that said property was inherited by defendants 5 to 10 through Uttam Ladu Sinai Sanvordekar?

3. Whether plaintiffs prove that defendants 4 to 8 subdivided the said property into 5 independent plots and sold it to plaintiff and defendants 3 & 4 by sale deeds?
  4. Whether plaintiffs proves that since the time of its purchase plaintiff and defendants 3 to 4 are in possession of suit property and they carried out the development work and constructed residential quarters since 1988?
  5. Whether plaintiffs proves that name of defendant No.1 has been wrongly recorded in survey Records?
  6. Whether plaintiffs proves that cause of action for filing the suit arose in February 2001?
  7. Whether defendants 1 & 2 proves that property bearing 25 survey No, 29/1 admeasures 58,425 sq. mts. and belongs to Govt.?
  8. What Order & Decree ?
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8. The Plaintiffs led evidence by examining Plaintiff No. 3, Suresh Shivram Naik as PW1, Amarnath Sawant, brother

of the Plaintiff No.1, Civil Engineer as PW2 and Laximan Gaonkar, a caretaker of the property as PW3. On the Plaintiffs closing their evidence, the Defendants examined Shri. S. R. Rane, a Head Surveyor attached to the Directorate of Settlement and Land Records. On closing evidence, the Trial Court dismissed the suit by its Judgment and Decree dated 10.12.2003. The Appeal bearing Regular Civil Appeal No. 4/2004 was also dismissed by the District Court by Judgment and Decree dated 10.08.2004.

9. In the Second Appeal bearing No. 138/2004, this Court on considering the record of the suit and Appeal quashed and set aside both, the Decree dated 10.12.2003 of the Trial Court and Decree dated 10.08.2004 of the First Appellate Court; it transferred Regular Civil Suit No. 63/2001/A to the District Court, South Goa at Margao and directed the District Court to decide the suit afresh. The transfer of the suit was in view of the amended provision of Section 26(A) of the Goa Civil Court's Act, 1965, whereby, all suits pending before the learned Senior Civil Judge, wherein the Government of Goa was a party stood transferred to the District Court. Whilst setting aside both Decrees i.e. of the Trial Court and the Appellate Court, this

Court formulated and answered the following two substantial questions of law:

“1. *Whether the Appellate Court ought to have seen that in the absence of record of Land Registration document, document of matrix, though is a document prepared in connection with collection of revenue, could not be brushed aside because it was the only document in existence even prior to coming into force of the Land Revenue Code, 1968 under which the Survey of Record of Rights was conducted?*

2. *Whether the Courts below were right in discarding the record of cadastral survey, in which the name of the predecessor in title of the vendors of the appellants was admittedly recorded and proved so, on the ground that the document of survey does not constitute document of title, but at the same time considering the survey of Record of Rights relied upon by the respondent no.1 and 2, which is also a survey document, to answer issue no.7 viz. that respondents no.1 & 2 have proved that property belongs to the Government of Goa in the affirmative?”*

10. While answering the aforementioned substantial questions of law, this Court concluded that merely because the suit property is not registered in the Land Registration

Office, by itself, cannot defeat a claim of title of the suit property. This Court then considered the Sale Deed of the Plaintiffs, the Cadastral Survey Plan of the subject property, the Matriz record bearing Nos. 38, 39 and 40 and further, in view of the fact that the Defendants have not disputed in the written statement the identity of the property, concluded, based on evidence that the Appellate Court nor the Trial Court was justified in dismissing the Appeal and suit.

**11.** The findings recorded by this Court after considering the evidence led by the parties, as recorded in paragraph No. 5 of the Judgment are quoted below:

*“5. I have considered the submissions of the learned Counsel and I have also gone through the records. Dealing with the first substantial question of law, I find that merely because the suit property is not registered in the Land Registration Office by itself cannot defeat a claim of title over suit property. Title can be proved in different manners as established by him. In the present case, the appellants are claiming to be the title holders of the property based on the Sale Deed which has been duly registered before the Sub-Registrar of Sanguem. It cannot be disputed that the Sale Deed duly registered before the registration authorities is a document of title provided title of the vendors is established. The only aspect, as such, to be examined is whether the sellers of the appellants had*

*a title over the disputed property. In the present case, in support of the claim of title, the appellants have produced the cadastral survey plan in respect of the subject property. On perusal of the cadastral survey plan, I find that the property surveyed under no.6 stands in the name of one Uttam Sanvordekar. It is the case of the appellants that the vendors in the said Sale Deed are the descendants of Uttam Sanvordekar. In the absence of any evidence adduced by the respondents to disapprove such aspect the appellants were justified to prima facie say that the respondents were descendants of Uttam Sanvordekar. Apart from that, in support of the title of the vendor, the appellants have also produced the matriz record. The matriz record bearing numbers 38,39 & 40 disclose that the property stands in the name of said Uttam Sanvordekar. It cannot be disputed that the properties of the Government are not inscribed in the matriz record. The very fact that the subject property is stated to be inscribed in the matriz record would itself suggest that the property cannot belong to the Government. In the present case, the Courts below whilst examining the boundaries as shown in the matriz record vis-a-vis the survey record in respect of the property survey no.29 have come to the conclusion that the boundaries correlate with each other though the learned Trial Judge whilst examining the said aspect has categorically held that three of the boundaries shown in the matriz record correspond to the subject property, but however, the Court below has erroneously held that the property did not correspond with one another. Apart from that, the identity of the property is not disputed by the respondents no.1 & 2 in the written statement. On perusal of the written statement filed by the respondents no.1 & 2, as rightly pointed out by Shri*

*Sudesh Usgaonkar, it is the stand taken by the said respondents that the appellants have encroached into the property of the respondents no.1 & 2. This itself would suggest that the contention of the respondents that they are in possession of the subject property is not at all correct. Besides that on perusal of the evidence of PW1, I find that there is no material or any statement made in the deposition that the respondents no.1 & 2, are in possession of the disputed property. In such circumstances, I find that the learned appellate Court was not justified to dismiss that appeal filed by the appellants merely relying upon the survey record. It is well settled that the entries in the survey record cannot create or defeat title. No doubt, it cannot be disputed that matrix record by itself is not a document of title but however the entry therein is an instance to be considered to the realm in the claim of title by a person in whose name such entry stands. Apart from that, in the present case though the appellants have adduced evidence to claim that they are in possession of the disputed property the learned appellate Court had failed to examine such aspect merely because the names of the appellants do not figure in the survey record. The evidence of witness, who is stated to be the caretaker of the suit property has not at all been examined by the Lower Appellate Court whilst coming to the conclusion that the appellants have failed to examine their possession over the subject property. Having failed to do so, I find that the judgment of the Lower Appellate Court dismissing the appeal filed by the appellants cannot be sustained and deserves to be quashed and set aside. Apart from that, in terms of Article 274 of the Decree 3602 the cadastral survey are conducted after minute observation of the title document*

*of all the adjoining owners. In such circumstances the entries in the cadastral cannot be easily quashed and set aside unless there is cogent evidence to establish that the entries therein are not correct. In the present case, the respondents no.1 & 2 have failed to produce any document contrary to the entries in the cadastral survey plan. Apart from that, as per section 51 of the Land Revenue Code even the process of survey which has been not been completed is deemed to be record of right. The effect of these provisions would have to be re-examined while considering the case put forward by the appellants.”*

12. On remand/transfer of the suit to the District Court, the same was re-numbered as Civil Suit No. 21/2016 and was heard by the learned District Judge. The impugned Judgment and Decree dated 15.09.2019 now decrees the suit by declaring the Plaintiffs and Defendant Nos. 3 and 4 to be owners of the suit property as per their respective plots and Survey No. 29/1 of village Rumbrem and directs that the name of the Government of Goa in the survey records is a wrong entry, liable to be deleted and the names of the Plaintiffs and Defendant Nos. 3 and 4 ought to be entered in the occupant's column in its place. This Judgment and Decree have been challenged in the present Appeal.

**13.** The following points arise for determination in this appeal:

1. Whether, in the light of the limited order of remand and considering the provision of Section 14 of the Goa, Daman and Diu Land Revenue Code 1968(the Code, for short), the impugned judgment and decree needs interference and
2. Whether the Plaintiffs have sufficiently discharged the burden of rebutting the presumption under Section 105 r/w Section 14 of the Code?
3. In the absence of any challenge to the Deed of Sale executed in favour of the plaintiffs, has the trial Court committed any error whilst passing the impugned judgment in holding that the Plaintiffs were in possession of the suit property?
4. In the absence of any title document, apart from reliance on the entry in the survey records, has the trial Court committed an error of law in relying upon the entries in the Matriz document and Cadastral Survey to hold that the plaintiffs had proved title to the suit property?

**SUBMISSIONS:**

14. Learned Additional Government Advocate Ms. Sulekha Kamat appearing for the Appellants has advanced the following submissions:

a) That under Section 14 of the Goa Land Revenue Code all lands which are not property of any person are declared to be property of the Government and it is for a person claiming a title to such property to prove his title as against the Government by instituting proceedings under Section 14 of the Code or filing a suit. She submits that in terms of Section 105 of the Code, once an entry is made in the name of the Government of Goa, in the occupant's column of the survey records, such entry shall be presumed to be true unless a claimant of title to that land proves to the contrary. It was submitted, that the Trial Court has proceeded on an erroneous assumption that it was for the Appellant to prove its title and substantiate the entry in the survey record, rather than presume that such entry was correct and to place the entire burden of proving the claim to title on the Plaintiff.

- b)** Reliance was placed by the learned Advocate for the Appellant on the Judgments quoted below to contend that the presumption under Section 105 of the Code is one of title of the State in its favour and the State could not be called upon to produce any document to prove the source of such title, prior to the coming into force of the Revenue Code:
- i. *R. Hanumaiah vs. Secretary, Government of Karnataka, 2010(4) SCR 904.*
  - ii. Judgment dated 14.10.2021 passed by High Court of Bombay at Goa in **First Appeal No. 189/2008 (Forest Department vs. The Administrator of Communidades).**
  - iii. *Shri Raja Durga Singh vs. Tholu, AIR 1963 SC 361.*
  - iv. Judgment dated 18.03.2016 of the High Court of Bombay at Goa passed in **Second Appeal No.138/2004 (Varsha Sawant vs. Chief Secretary).**
  - v. *Fabrica de Igreja de N.S. de Milagres vs. Union of India reported in 1995(1) Bom C.R. 588.*

vi. Judgment dated 25.09.1998 of the High Court of Bombay at Goa passed in **Appeal from Order No.61/1998 (M/s Deeksha Holding Ltd. vs. Sita Dessai)**.

c) It was further submitted that the Plaintiffs, in the absence of any document showing land registration in favour of their predecessor-in-title and in the absence of production of a document of title, prior in point of time to the coming into force of the Land Revenue Code, could not have discharged the burden to prove such title, by producing a Matriz certificate or an extract from the Register of Land Survey from the Portuguese Government; it is further contended that in any event, a comparison of the description of the property claimed by the Plaintiffs in the aforementioned documents, with the boundary description of the suit property in the present survey, does not correlate the property under Matriz with its present boundaries. It is therefore contended, that on a proper reading of the evidence, the findings as to the location and comparison of boundaries of the property claimed

by the Plaintiffs through its erstwhile owner is perverse and contrary to the evidence on record.

**d)** Heavy reliance is placed on the above-mentioned judgments to contend that, this Court having held that a Matriz document or the Portuguese Survey Registers/Cadastral plans are not title documents, the Trial Court ought to have rejected the evidence of the Plaintiffs and held the title as not proved.

**15.** Refuting the arguments on behalf of the Defendants/Appellants, learned Shri Sudesh Usgaonkar for the Plaintiffs has made the following submissions:

**a.** He submits that the entire matter has to proceed on the basis that there is no challenge thrown by the State to the five sale deeds, all dated 24.10.1988 produced in evidence to substantiate the contention that the Plaintiffs were in fact owners of the property. He submits that once the deeds of sale have not been set aside at the behest of the Defendants, and no counterclaim had been filed to challenge the same, in terms of the provision of Section 110 of the Evidence Act, it

had to be held that the Plaintiffs were in possession of the suit property under a title. It is the contention of the Plaintiffs that in the absence of a challenge to these sale deeds, the only contention that required consideration on behalf of the State was, whether the Plaintiffs had discharged the burden of proving that the land purchased under the sale deed was one and the same land which was subject matter of the Matriz document, the old Cadastral Survey Plan and could be related to the title of the original owner Uttam Ladu Sinai Sanvordekar. Reliance was placed on *Chief Conservator of Forests vs. Collector* reported in (2003) 3 SCC 472 to buttress this submission.

- b.** It is further the submission of the Plaintiffs that on reading the contents of para 5 and 6 of the written statement, there is no denial to the factum of possession exercised by the Plaintiffs over the suit property. The Defendants have also not denied the fact that the Plaintiffs have exercised possession of the suit property by constructing a

residential house thereon under licence, and by cultivating the property in the manner stated in the plaint. Learned Advocate for the Plaintiffs further submits that prior to the coming into force of the Land Revenue Code in 1970, there has been no evidence led by the State to justify the entry in the survey records on the basis of any title or on the basis of prior possession of the property that may have been held by the erstwhile Portuguese Government. He has taken me through the specific boundaries of the property denominated as “Posacodilgal” which is described in the Matriz document under Nos.38, 39 and 40, the boundaries as shown on the old Cadstral Survey No. 6 and submits that the description of its four boundaries correspond by bearing, exactly with the names of the owners of the properties shown in the Matriz, with the names entered in the occupants column of the survey number 29 of the new revenue survey under the Land Revenue Code. It is further the contention of the Plaintiffs that in terms of the

provision of Section 63 of the Revenue Code, the surveys conducted by the erstwhile Portuguese Government in terms of Article 269 and 274 under Decree Law 3602 dated 24.11.2017, shall be deemed to have been commenced and completed or continuing under the provisions of the Goa Land Revenue Code; it was submitted that the words “commenced under any law for the time being in force” refers to the Cadastral Survey conducted in terms of the erstwhile Decree Law, and therefore, the Cadastral Survey and the Matriz record could not be ignored by the Trial Court as contended by the learned Advocate for the State. Reliance was placed on *Nair Service Society Ltd. vs. KC Alexander* reported in AIR 1968 SC 1165.

- c. It is further contended by the learned Advocate for the Plaintiffs that the limitation for recovery of possession of the suit property would be governed by Article 134 of the Limitation Act, 1908 and such limitation would commence from the date of knowledge of the fact that the

property was in possession of a person other than the State of Goa. It was submitted that the date of knowledge, as held in *Dilboo vs. Dhanraji* reported in (2007) SCC 702 would be the date of registration of a sale deed, and on such date, the State of Goa was deemed to have knowledge of the Plaintiffs' possession of the suit property. Reliance has also been placed on *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana* reported in (2009) 7 SCC 363 on the same proposition of law. It was therefore contended that the defendant State having full knowledge of the possession of the suit property was with the Plaintiffs at least from the date of execution of the sale deed, which fact was disclosed to the State in the notice under Section 80 CPC communicated on 14.03.2001, and the State not having taken any steps to challenge these deeds, could now not contend that it was in possession of the suit property, pursuant to an entry in the survey record.

d. It was next contended that on the first round of this litigation, after two Courts i.e. the Trial Court and the District Court had rejected the reliance of the Plaintiffs on the Matriz record and Cadastral Survey as evidence, this Court, in a Second Appeal against the aforementioned judgments, had specifically framed two substantial questions of law, relating to the same argument raised by the State; it was contended that by this Court's judgment of 18.03.2016, remanding the suit to the District Court for a fresh decision, this Court had noted that in the absence of any evidence adduced by the State to disprove the entries found in the name of Uttam Ladu Sinai Sanvordekar in the Matriz and Cadastral Survey, the Plaintiffs were justified to *prima facie* say that they were descendants of the said Sanvordenkar. It was further contended, that in the aforementioned remand judgment, that since the properties of the Government are not inscribed in the Matriz record, note had to be taken of the very fact that the subject property

having been inscribed in favour of a private party, the same could not belong to the Government. A further contention is raised that in this judgment, the High Court, while remanding the matter, had observed that apart from the identity of the property not being disputed by the State, in the written statement, and the State having taken the stand therein that the Plaintiffs have encroached upon State property, this itself would suggest that the contentions of the State/Defendants that they are in possession of the suit property was incorrect.

Based upon these submissions, the Plaintiffs contended that the remand of the case to the District Court was not an open remand but limited to a decision in the light of the observations made in that judgment as findings as to possession of the Plaintiffs and the value of the entries in the Matriz and Cadastral Survey had already been decided.

**16.** I have considered the submissions made by the respective Advocates of the parties, and considered the

pleadings and evidence on record. I have also considered the findings rendered by the District Court in relation to the judgment and decree of this Court dated 18.03.2016 by which the case was remanded to the District Court for a fresh hearing.

17. Perusal of this Court's judgment dated 18.03.2016 which set aside the earlier judgment dated 10.12.2003 of the Civil Court dismissing the suit, considered the entire evidence and then remanded the suit for fresh adjudication to the District Court. The order of remand indicates that the District Court was directed to decide the suit afresh in the light of the observations made in the judgment. The specific observations made in the judgment which are found in paragraph 5 thereof are quoted below:

- (a) Merely because the suit property is not registered in the Land Registration Office, by itself cannot defeat the claim of title over the suit property. Title can be proved in a different manner as established by him. In the present case, the Appellants(Plaintiffs) are claiming to be title holders based on a Sale Deed which is duly registered. It cannot be disputed that

a duly registered Sale Deed is a document of title, provided the title of the vendors is established.

- (b) In support of claim of title, the Appellants have produced a cadastral plan in respect of the subject property; on perusal of the cadastral plan I find the property surveyed under No.6 stands in the name of Raut-Sanvordekar. It is the case of the Appellants that the vendors in their Sale Deed are descendants of Raut-Sanvordekar. In the absence of any evidence adduced by the Respondents to dispute such aspect the Appellants were justified to prima facie say that the vendors were descendants of Raut-Sanvordekar.
- (c) In support of the title of the vendor, Appellants have produced matriz record of matriz bearing Nos.38, 39 and 40 which disclose that the property stands in the name of Raut-Sanvordekar. It is not disputed that the properties of the Government are not inscribed in the matriz record. The very fact that the subject property is inscribed in the matriz record would itself suggest that the property cannot belong to the Government.

- (d) The Courts below, whilst examining the boundaries as shown in the matriz record vis-a-vis the survey records the property under Survey No.29 have come to the conclusion that the boundaries co-relate with each other, but however, the Courts have erroneously held that the properties did not correspond to one another; apart from that the identity of the property was not disputed by Respondent Nos.1 and 2 in the written statement. The stand taken by the Respondents was that the Appellants have encroached in the Government property; this itself suggests that the contention of the Respondents that they are in possession of the property is not at all correct. On perusal of evidence of DW1, there is no material or any statement made in the deposition that Respondent Nos.1 and 2 are in possession of the disputed property.
- (e) In terms of Article 274 of Decree 3602, the cadastral survey is conducted after minute observation of the title documents of all adjoining owners. Under such circumstances, the entries in the cadastral survey cannot be easily quashed and set aside unless there is

cogent evidence to establish that the entries therein are not correct. In the present case, Respondent Nos.1 and 2 have failed to produce any document contrary to the entry in the cadastral survey plan.

The points for determination will have to be decided in the light of the aforesaid specific findings and observations given by this Court whilst remanding the matter for fresh adjudication. It is in the light of these observations, which restrict the terms of remand to the District Court, that the suit was to be decided.

18. It is the Plaintiffs' case that they have derived title through a registered Sale Deed dated 24.10.1988, which has been executed after promulgation of survey records. It is the claim of the Plaintiffs that they have derived title through a Sale Deed from the vendors who are successors in title of Uttam Ladu Sinai Sanvordekar. It is further the Plaintiffs' case in the plaint that the property which is known as "Ponsacodilgall" was surveyed under old Cadastral No.6 which corresponds to new Survey No.29/1, which property was enrolled in the Matriz record under No.38, 39 and 40 of village Rumbrem. It is further the Plaintiffs' pleading that

both the cadastral survey and Matriz record are inscribed in the name of Uttam Ladu Sinai Sanvordekar. The boundaries of the property “Ponsacodilgall” as stated in the plaint are given in paragraph No.1 thereof and are as follows:

East : limit of village Bandol, Mansoon waters and Charamodi of Fazenda National.

West : By Mansoon waters and Boricantiachem Moll of Narayan Rama Gaonkar

North :By limit of village Bandol, Boricantiachem Moll of Narayan Rama Gaonkar and mansoon waters.

South :By Mansoon river waters and Odimalilichimondy and Birafale of Vithoba Gaonkar.

The Plaintiffs' claim to be in possession of the property by pleading acts of cultivation and construction of a house thereof which was duly licensed by the authorities.

**19.** In the written statement, it is not the defence of the Government that the property in question stood in the name of the State in the Portuguese record prior to coming into force of the Land Revenue Code in 1970. The defence does

not claim an original title but only claims title on the basis of entry in the survey record. In the written statement, there is no pleading of the Defendants exercising possession of the property though the Defendants plead that the Plaintiffs were not entitled to illegally construct in the suit property. A further pleading is not found in paragraph No.6 of the written statement that in case the Plaintiffs have done any encroachment in Government land the same is illegal and actionable, without authority of the Government. No counter claim for recovery of possession has been filed or any relief sought of a declaration to declare the Sale Deed in favour of the Plaintiffs to be null and void.

**20.** In evidence, the Plaintiffs have examined Suresh Shivram Naik/Plaintiff No.3 who has stated that the suit property has been sold by the Sale Deed of 1988, by Defendant Nos.5 to 10 who are the successors of Uttam Ladu Sinai Sanvordekar. This witness has produced the survey plan of Survey No.29 of village Rumbrem, the old Cadastral plan under Cadastral No.6 and the Matriz record of properties under Matriz Nos.38, 39 and 40. In cross examination, this witness discloses that Defendant Nos.5, 6, 8, 9 and 10 who have executed the Sale Deed are the

grandchildren of late Uttam Sanvordekar while the other Defendants are their spouses. The statement made by the witness in the cross examination that the suit property belonged to Uttam Ladu Sinai Sanvordekar has not even been denied; the only suggestions that are put are that the spouses of some of the grandchildren of Uttam Sanvordekar were not parties to the Sale Deed. A further denial was put in the form of a suggestion that the property whose Matriz records and Cadastral Survey was produced does not correspond to land under Survey No.29, in the new Survey. Apart from this, the other suggestions put were that the Sale Deeds executed were null and void, that the licences for construction were illegally issued by the Panchayat and that the Plaintiffs are not in possession of the suit property. There is no cross examination of the witness on the details of the transactions of the Sale Deed or on the acts of possession specifically deposed to in paras 18 to 21 of the examination in chief.

**21.** Land under Survey No.29 is in the shape of a quadrangle with Survey No.28 to the North, Survey Nos. 26, 30 and 32 to the West, Survey No.23(Part) to the South and Survey Nos.23 and 24 to the East. According to the entries

in the Survey records under the Land Revenue Code, Survey No.24 to the North stands in the name of Government of Goa, which, in the old Cadastral Survey, stands in the name of “Terreno do Estado” which translated from Portuguese is “Land of the State”. Survey Nos.26 and 30 on the West, are respectively in the name of Krishna Anand Sinai Kantak while on the Cadastral Survey, the land to the West is owned by Crisna Ananda Sinai Contoco, which is the very same person whose name appears in the new survey record. Towards the South and East lies Survey Nos.23 which is entered on the name of Government Land in the Survey record in Form I and XIV whilst in the Cadastral Survey, the land to the South and East of Cadastral No.6 is “Terreno do Estado” translated from Portuguese meaning “Land of the State”.

The boundaries on the Cadastral Survey No.6 therefore exactly match up to the present boundaries of new Survey No.29. In addition, the area of land under Cadastral No.6 known as “Ponsacodil Gall” standing in the name of Uttam Ladu Sinai Sanvordekar is 5.8240 hectares or 58,240 square metres; the area of Survey No.29 in the survey record is shown admeasuring 58,425 square metres, which roughly

corresponds to the area shown in the Cadastral Survey. Thus, it can be concluded that new Survey No.29/1 corresponds to the property under old Cadastral No.6, which stood in the name of Uttam Sanvordekar.

22. The Trial Court, has considered the aforementioned evidence and arrived at a finding on Issue No.1 in its Judgment, after considering the aforementioned evidence, that the properties under Cadastral No.6 correspond to the property under new Survey No.29/1. The finding is based on the consideration of the evidence on record and cannot be considered as perverse and is therefore confirmed. This is more so in the light of the observations made in the remand order limiting the scope of the remand in the manner referred to above.

23. Further, this is not a case where the State claimed that the property stood in its own name in the old records or that it was claiming title on the basis of a previous entry in the Portuguese records. The only basis on which the State claims title is by way of an entry in the Survey record and a presumption attached thereto. Clearly, from the fact that the property under Cadastral No. 6 which corresponds to

Survey No. 29/1 of the new survey, the property could not stand originally in the name of State/Government. The property in fact stood in the old Revenue records in the name of Uttam Ladu Sinai Sanvordekar. Thus, this is not a case where, the property in question did not belong to any person, for the provisions of Section 14 of the Code to apply.

The order of limited remand of this Court answers in two substantial questions of law framed in Second Appeal No. 138/2004, by holding that merely because the suit property is not registered in the Land Registration Office, could not defeat the Plaintiff's claim at title, which could be based on the registered Sale Deed; whilst answering the substantial questions, this Court also held that on perusal of the Cadastral survey, the property surveyed under Cadastral no. 6 stood in the name of Uttam Sanvordekar and the Matriz Nos. 38, 39 and 40 also stood in the same name. it further held that properties of Government not being inscribed in the Matriz record, would suggest that the properties under Matriz Nos. 38, 39 and 40 cannot belong with the Government. This Court further held, as I have also held in the preceding paragraphs, that property under Cadastral No. 6 corresponds to the boundaries of the

property under Survey No.29. Clearly, therefore, this was not a case which could fall under Section 14 of the Code, since the property in question did belong to a person (Uttam Sanvordekar), and not to the State.

**24.** Heavy reliance was placed by the Appellant on *Fabrica da Igreja De N.S. Milagres* (supra), *Diksha holding Ltd.* (supra) and *Forest Department V/s Communidade of Naquerim* (supra) to submit that provision of Section 14 of the Code would be applicable to the present case and the presumptions under Section 105 thereof to operate in favour of the entries in the records, which stand in the name of the Appellant.

**25.** At the outset, note has to be taken of the fact that in the written statement of the Appellant, the Appellants do not plead the existence of the title of the State prior to the coming into force of the Land Revenue Code. The Appellant/original Defendant have also admitted in paragraphs 5 and 6 of the Written Statement that the Plaintiffs have their structures in the suit property and that there is a plantation on the suit property which the Defendants claimed is unauthorized. This by itself is an

admission that the possession of the suit property was not with the Defendant No. 1.

26. Sections 1, 2 and 199 of the Code came into force on 06.01.1971, Section 3 came into force on 20.02.1971, while the rest of the Code, including Section 14 and Section 105 came into force on 01.03.1971. the presumptions of the correctness of an entry in the Record of Rights under Section 105 would start to operate only after a Record of Rights comes into existence in terms of Section 95 of the Code. The draft Surveys and Revenue Records under the Code were prepared only after 1971 and in terms of the repeal clause under Section 201, any right acquired or rights stated in an earlier record maintained under the repealed laws would not be affected by the coming into force of the Code. The Matriz records and the Cadastral Surveys were the records maintained under Decree No. 3602 dated 24.11.1917 which was repealed by the Court. Even though the Cadastral Surveys were provisional and were never finalized, and no presumption could be attributed to them, entries therein are a piece of evidence which may be considered to prove title and possession. This is also reiterated in the very judgment

of this Court remanding the case back to the Trial Court on the first round.

27. *Fabrica de Igreja* (supra) was a Judgment rendered in a suit where the Plaintiff sought a declaration of its title against the Government based upon its possession. It did not claim an original title in the property but claimed a title based upon its long possession. The suit was originally one for a permanent injunction simpliciter without a relief of declaration, which was later sought by way of an amendment. That was a case where there was no original source of the title and no entry based upon such title. The entry in the old records was not based upon any prior document but was on the basis of a Deed of Declaration. It was in view of those facts that the Court held that the Cadastral Survey, which contained the name of the Plaintiff, based upon the Deed of Declaration could not be held to be having legal evidentiary value.

28. *Diksha Holding Ltd.* (supra) was a Judgment rendered at the interim stage to decide the grant of temporary injunction. While in that Judgment, it is true that what is held is that the Matriz records do not have any presumptive

value, it is not a Judgment in support of the submission of the Appellant that the Matriz and the Cadastral Survey have absolutely no evidentiary value.

**29.** In *Forest Department V/s Communidade of Naquerim* (supra) was a First Appeal by the State against the Decree dismissing its Civil Suit filed through the Forest Department to declare the Forest Department to be an owner of the survey holding and to further declare that the name of the Defendant/Communidade of Naquerim was wrongly entered in the survey records of the suit property; a further direction was sought to the Revenue Authority to delete the entry and to include the name of the Forest Department and further, to grant an order of permanent injunction to restrain the Communidade from interfering with the suit property.

In that suit, a written statement was filed by the Communidade claiming a title to the suit property on the basis of a Matriz documents which it claimed referred to the suit property. The points for determination framed by this Court, amongst others were whether the Appellant/Forest Department had failed to identify the suit property and correlate the boundaries of the suit property with its title

documents; the other two relevant points for determination was whether the Trial Court could ignore the provision of Section 14 of the Land Revenue Code and non-suit the Plaintiff state for failure to prove title to the suit property, and whether the Matriz documents relied upon by the Communidade pertain to the suit property and could be regarded as documents of title.

**30.** While deciding the first point for determination, this Court, based on oral and documentary evidence concluded that the boundary is described in the BOLITIM OFFICIAL dated 11.01.1951, under which the Forest Department claimed title, three boundaries co-related with the boundaries of the new survey. Based on these findings, this Court held that the State had proved its title to the property in the new Survey, on co-relation of the boundaries with its original title. This Court then proceeded, based on the fact that the Forest Department had proved its title, to decide the impact of the provisions of Section 14 of the Code. In para 37 of the Judgment, what this Court holds is that in view of the presumption under Section 14 of the Code, where the Defendant/Communidade took a defence of ownership, it was required to establish its title, failing which the

presumptions would operate. In other words, the burden in view of the presumption under Section 14 would lie on the person claiming a title against the State.

31. In this regard, this Court then went on to hold, on facts, in para 47 and 48 of its Judgment, that the Communidade, in the absence of a pleading as to how it acquired exclusive ownership of the suit property, could not have claimed title based on a Matriz entry; this was so since, the ownership of property of Communidade is always recorded in its “TOMBO” Book and in this case, none was produced by the Communidade. On facts, the same Judgment at paragraphs 51 and 52 proceeded to hold that the suit property in the new survey, whose boundaries matched with the property contained in the “BOLITIN OFFICIAL”, in which the property was registered in the name of the erstwhile Portuguese Government as Government Forest. On facts therefore, the aforementioned Judgment was rendered on the basis of a pre-existing title in the Government to the suit property, which is quite different from the facts of the present case, where the Government claims no such title to the property prior to coming into force of the Code.

In fact, the Judgment of this Court in *Forest Department V/s Communidade of Naqueri* (supra) at paragraphs 55 and 56 holds that the Communidade had failed to discharge the burden of establishing the boundaries in the Matriz documents and has thus failed to show any title to the property claimed by him. On facts, therefore, *Forest Department V/s Communidade of Naqueri* (supra) would not apply to the present case.

32. Quite contrary to the facts of the afore cited judgment, in the present case, this Court, in its earlier judgment in Second Appeal has considered the very same issue of title, and has held, whilst making a limited remand of the case to the District Court, that title could also be proved by relying upon the Matriz records and the cadastral survey. As was done in *Forest Department V/s Communidade of Naqueri* (supra), the purpose of comparing the Matriz records and Cadastral Survey to the new Survey, was to establish whether the suit property under Survey No.29/1 corresponds to the property known as “Ponsacodilgall” under Matriz No.38, 39 and 40 and Cadastral No.6. As held hereinabove, the boundaries as shown in the Cadastral as well as the Matriz records of the property correspond to the

boundaries of the present survey, as also the area of the property roughly matches with the area shown in the Cadastral plan. The property, both in the Matriz and the Cadastral plan stands in the name of Uttam Ladu Sinai Sanvordekar, who, the Plaintiffs claim is the ancestor of the vendors of the property.

33. In contrast to the documents produced by the Plaintiffs, the Defendants state, unlike in the case of *Forest Department V/s Communidade of Naqueri* (supra), has produced neither its old title where the property may have belonged to the erstwhile Portuguese Government nor has it produced any document post liberation of Goa i.e. 1961 until the Land Revenue Code came into force in 1972 to show how possession was exercised by the State over this property.

Thus, considering that the presumptions in terms of provisions of Section 14 would arise only when the land is not the property of any person, where it is now established that the property was in possession of Uttam Ladu Sinai Sanvordekar as found entered in the Matriz and Cadastral Survey, the defence that Section 14 would apply, is not tenable. This must also been seen from the complete absence

of any title shown to the property, prior to coming into force of the Code, by the State, which was different from the facts considered by this Court in *Forest Department V/s Communidade of Naqueri* (supra); in that case the property as established by the Bolletim Official, stood in the name of the State (Estado).

In the light of the aforesaid discussion, I hold Points of Determination Nos.1 and 2 in favour of the Respondents/ Plaintiffs.

**34.** In the present case, apart from having established that the property, according to the old records was in the name of Uttam Ladu Sinai Sanvordekar, the Plaintiffs have produced their Deeds of Sale which are registered documents of the year 1988. The Deed of Sale refers to the description of the property as contained in the Matriz records and Cadastral records with the details of its boundaries in terms of the old records. The plan annexed to the Sale Deed also specifies the boundaries of the property.

In the Written Statement of the Defendants, at paragraph 3 thereof, apart from a mere denial of the

execution of the Sale Deed, the Defendants aver that if such a Deed was executed in respect of Government land, then the same is null and void and is actionable. However, no specific challenge is thrown by way of a counterclaim to the Sale Deed, seeking a declaration that the same was void, as the Defendants would clearly have to prove its title to the property in the face of such a defence.

35. *Dilboo v/s. Dhanraji* (supra), cited by the Plaintiffs was a case where no averment was made in the pleadings, that the sale deeds in that case, were not genuine or binding, nor was any declaration sought to challenge the deeds, when disclosed. The only defence taken was that the Plaintiffs had no title to the suit property, nor were they heirs of its owners, hence the deed was invalid. The Supreme Court has held that whenever a document is registered, the date of registration becomes the date of deemed knowledge. In other words, where a fact could be discovered by deemed diligence, then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge.

36. In *Suraj Lamp & Industries Pvt. Ltd.* (supra), the Supreme Court was dealing with the effect of a compulsory registration of a conveyance of immovable property, its purpose and benefit and the effect of not taking recourse to challenge of such a document. Whilst dealing with this question it has held thus:-

*“16. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs 100 and upwards to or in immovable property.*

*17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.*

*18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with*

*which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”*

37. The Sale Deeds have been disclosed to the Defendants as on the date of filing of the plaint i.e. 26.06.2001 and were registered way back in 1988. Applying the ratio in *Suraj Lamp & Industries Pvt. Ltd.* (supra) to the facts of the present case, the Defendant was deemed to have knowledge of the Deed of Sale since 1988 and certainly in 2001 when the plaint was filed. Written Statement came to be filed on 02.01.2002 without throwing any challenge to the deed of sale, obviously because the Defendant had not pleaded any independent title on the basis of which it could sustain a challenge to the deeds.

38. In addition to the reliance placed on the Deed of Sale, the Plaintiffs have produced a notice issued to the Defendant dated 14.03.2001 under Section 80 of CPC, raising the very same issues contained in the plaint and claiming that the Plaintiffs had taken possession of the suit properties under the Sale Deed of 24.10.1988 and have developed the same by putting thereon a plantation and by constructing a house with the requisite licenses from the statutory authorities.

39. Besides these documents, PW1 has produced the construction licence dated 21.02.1991 issued by the Village Panchayat of Sanvordem for construction of a cowshed and storeroom structure on the suit land. This licence was accompanied by approved plan, in terms of which, the witness deposes, a construction was implanted on the suit property after which the structure was assessed to house tax, for which house tax receipts are produced from 23.11.1991.

40. PW1 has also deposed that there is a plantation consisting of Coconut trees, Areca nut trees, Cashew, Mango, Banana, Jackfruit and Breadfruit trees which are cultivated by them and are enjoyed by the Plaintiffs. It was further deposed that in February, 2001, the Plaintiffs availed of a

loan facility from an Agricultural Bank. There is hardly any denial of cross examination to all these acts of possession deposed to by the Plaintiffs.

In addition, the Plaintiffs have examined PW2 Amarnath, an Engineer, who apart from having deposed about the correlation of the boundaries of the Cadastral Plan, with the Matriz documents and the New Survey has also deposed that he has personally inspected the site and seen that the property is developed with a plantation and a farm house. Apart from bare denials of the existence of the plantation, farm house or any other structure at the site, there is hardly any cross examination on the boundaries and comparison of the old records to the New Survey.

**41.** Going through the Written Statement of the Defendant Nos.1 and 2, there is no pleading whatsoever as to how possession was exercised over the property after the coming into force of the Revenue Survey and prior to that. The Defendant Nos.1 and 2 have examined a sole witness, who was a Head Surveyor attached to the Directorate of Settlement and Land Records. There is not a word deposed by him or any document produced other than the survey

record and the survey plan to suggest how the property, prior to the Code being enacted and coming into force in 1972, the title of the property vested in the Government of Goa or even in the erstwhile Portuguese Government.

The cross examination of this witness, the witness does not know whether the property is known as “Ponsagalle” nor can he give the names of the owners of the survey numbers or the boundaries of the suit property under Survey No.29/1. To the suggestion that Defendant Nos.6 to 10 were heirs of Uttam Sanvordekar, the witness says he had no idea. He also deposed that after perusing the Deed of Sale, he did not know whether the heirs of Uttam had sold the property to the Plaintiffs, nor does he know who are the heirs of Uttam or how many heirs there were. He also deposed that he did not know the boundaries of the Matriz document referred to in his affidavit. On being shown the Matriz record and the Cadastral Survey, which was issued by his own department, he states that he has seen these documents for the first time in Court and he does not know on what basis instructions were given for drafting the Defendants Written Statement. He admits that apart from the Survey record, there is no record with the Government to suggest it had title to the

property prior to the new Revenue records being prepared under the Code. He also does not know if the original owner of the property of Uttam Sanvordekar. The witness also does not know whether the property was enjoyed by the Plaintiffs since the Sale Deed in 1988 nor does he know whether there are any structures constructed there on or any cultivation done thereon.

42. From the reading of the evidence of the Plaintiffs, there is no doubt that there are extensive acts of possession shown to be exercised by them over the suit property with no opposition or reaction from the Government of Goa. This is apart from the fact that the title over the property, or at least the right of occupancy, is well established since the Matriz records and Cadastral Survey in the name of Uttam Sanvordekar. The defence evidence in contrast, does not make any attempt to either show the acts of possession of the State over the property prior to coming into force of the Code or even thereafter; there is not an iota of evidence led by the State to show what acts of possession were performed over the suit property prior to the Sale Deed, or in what manner or what steps were taken by the State, after execution of the Sale Deed in 1988 and even after the notice under

Section 80 was received in 2001 to remove, what the State considered encroachment of the land or to restrain the Plaintiffs from entering upon the land. In this scenario, there can be no manner of doubt that the suit property was always in ownership and possession of Uttam Sanvordekar and his descendants and after the Sale Deed with the Plaintiffs, were exercised their rights over the property. Apart from the Survey record, which obviously, erroneously was entered in the name of the Government of Goa, the Defendant Nos. 1 and 2 have absolutely no document prior to the coming into force of the Code, to substantiate a title to the suit property. The entry in the Survey record in Form I & XIV is obviously erroneous and the Plaintiffs have succeeded, with the evidence produced in rebutting the correctness of the entry in the name of the Government of Goa. Accordingly, I hold the questions for determination Nos.3 and 4 in favour of the Plaintiffs. The findings of the Courts below on these points for determination do not call for any interference.

43. The Supreme Court, in *Chief Conservator of Forests A.P. vs. Collector* (supra), dealt with a similar fact situation. This was a case where the Plaintiff's possession of the suit property for generations, was held to be *prima facie* lawful

title/proof of ownership of the property. The Supreme Court, has considered the impact of Section 110 of the Evidence Act and applied the same in that case, and has held as under:

*“17. Now, we shall deal with Civil Appeal No. 9097 of 1995, which arises out of the suit filed by the respondents herein. The respondent-plaintiffs claimed in the suit that the land measuring 748.24 acres out of Survey No. 11 of Asadpur village and land measuring 45.20 acres out of Survey No. 168 of Malachinthapalli village in Kollapur taluk, Mahboobnagar district be declared as the patta lands of the plaintiffs and they be awarded compensation for the said lands, which was submerged in the Srisailam Project. The said lands were claimed to be ancestral patta lands and constituted private home-farm land of Plaintiff 1 and his father and were being enjoyed as grazing land for their cattle and for cattle-breeding farm. The plaintiffs had been paying land revenue in respect of these lands since the abolition of jagirs in 1949. The appellants denied that the suit land was patta land and home-farm land of the pattedars. It was pleaded that they were forest lands of the State. To establish their claim, the pattedars produced two witnesses. The first witness was one of the pattedars and the second was the Tahsildar of Jagir Jatprole for the period November 1937 to September 1949. They also filed supplementary setwar, Exhibit A-1. During the period 1954 to 1958, permission was granted to the pattedars by the Government for cutting forest wood; permission letters were filed as Exhibits A-2 to A-9.*

*These documents show the exercise of right as owner over the suit lands. Exhibit A-10 was filed to prove that in the village map, the suit lands were shown as patta lands. In support of the plea for payment of the land revenue after the abolition of jagirs from 1951 to 1974, Exhibits A-11 to A-26 were filed. Those receipts related to Asadpur village. Exhibits A-27 to A-44 are receipts for payment of land revenue in respect of the land in Malachinthapalli village. To prove that prior to the abolition of jagirs, the suit lands were under the control of the last Jagirdar, Exhibits A-46 to A-50 were filed which relate to the period 1312 Fasli to 1328 Fasli and show the expenditure incurred by the last Jagirdar in respect of the suit lands. The pahani patrika for the period 1972-73 and 1983-84 were also filed as Exhibits A-53 to A-55 but they may not be really relevant because they relate to the period after the dispute had arisen between the parties. As against this evidence, not an iota of evidence was placed on record by the Government to establish that the lands were taken over at the time of abolition of the jagirs or that they form part of the forest area and/or otherwise vested in the Government. The trial court as well as the Division Bench of the High Court believed the oral and documentary evidence to decree the suit of the pattedars a for declaration of title and for rendition of accounts. However, the relief of compensation was declined.*

*18. Mr Salve has heavily relied upon the presumption in Section 110 of the Evidence Act to support the judgment and order under challenge. He submits that in view of the long uninterrupted possession of the pattedars title to the land in their favour has to be presumed and it would be for the b appellant State to prove that they are not the owners of the*

*land. Ms Amareswari has contended that, on the facts, the presumption is not attracted.*

*19. Section 110 of the Evidence Act reads thus:*

*"110. Burden of proof as to ownership. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

*20. It embodies the principle that possession of a property furnishes *prima facie* proof of ownership of the possessor and casts burden of proof on the party who denies his ownership. The presumption, which is rebuttable, is attracted when the possession is *prima facie* lawful and when the contesting party has no title.*

*21. This Court in Nair Service Society Ltd. v. K.C. Alexander<sup>3</sup> observed: (AIR p.1173, para 15)*

*"That possession may *prima facie* raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides."*

*22. The pattedars proved their possession of the lands in question from 1312 Fasli (1902 AD) as pattedars. There is long and peaceful enjoyment of the lands in question but no proof of conferment of patta on the late Raja and the facts relating to acquisition of title are not known. The appellant State could not prove its title to the lands. On these facts, the presumption under Section 110 of the Evidence Act applies and the appellants have to prove that the pattedars are not*

*the owners. The appellants placed no evidence on record to rebut the presumption. Consequently, the pattedars' title to the land in question has to be upheld."*

44. Applying the provisions of Section 110 of the Evidence Act and the ratio of the Judgment in *Chief Conservator of Forests A.P. vs. Collector* (supra), the fact that Uttam Sanvordekar and thereafter the Plaintiffs had been in possession of the suit property, would be taken as their *prima facie* proof of their ownership, and it would be for the State to show otherwise; in the present case, the Government of Goa has produced no evidence to support its claim to the title of the suit property nor has it produced any evidence on record to show its possession from prior to the coming into force of the Code and even thereafter.

45. In view of the above referred discussion, no infirmity can be found with the Judgment and Decree of the Trial Court. The Judgment and Decree has been passed in accordance with law and based upon the evidence on record. There is no perversity in the findings rendered by the Trial Court, more so in the light of the limited remand by this Court in its Judgment dated 18.03.2016.

**46.** The Appeal is dismissed. The Judgment and Decree dated 16.09.2019 passed by the Adhoc District Judge-I, FTC-I, District Court, South Goa at Margao in Civil Suit No.21/2016/Regular Civil Suit No.63/2001/A (Old) is hereby confirmed. No costs.

**VALMIKI MENEZES, J.**