

Amrut



IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 7 OF 2024

GLENN LOBO

... Appellant

Versus

TERESA LOBO ALSO KNOWN AS

TEREZINE PINTO E LOBO AND ORS.

... Respondents

Appellant present in person.

Mr J. A. Lobo and Mr Rishikesh Gawas, Advocates for respondent Nos.2 and 4.

CORAM: M. S. KARNIK, J

DATED : 23rd AUGUST 2024

ORAL ORDER :

1. Heard the appellant appearing in person at length and learned counsel Mr Lobo for respondent Nos. 2 and 4.
2. This Second Appeal assails the judgment and decree dated 11.02.2020 passed by the Ad-hoc District Judge-1 (FTC), Mapusa Goa, dismissing the appeal filed by the appellant.
3. The appeal was filed before the First Appellate Court challenging the judgment and decree of the Civil Judge Junior Division, F-Court, Mapusa. The trial Court dismissed Regular Civil Suit No.188/2014/F.

4. The First Appellate Court in the judgment and decree at Para 2 recorded that the impugned judgment of the trial Court was challenged on various grounds, some of which border on unpleasant, unsavoury and short of contumacious allegations of bias and favouritism against the various Presiding Officers before whom Regular Civil Suit No.188/2014/F was tried and heard at various points of time, including against the learned Advocate for the respondents.

5. The appellant is seeking traditional access used for more than one and half century passing through the property of the respondents. The appellant is a senior citizen and claimed that he has no access to his property as a result of blocking of the traditional access by the respondents. According to the appellant, he has to jump over a 1.5 metres high wall which is illegally erected by the respondents to enter his house. The wall was erected to block his traditional access.

6. The First Appellate Court found that the plaintiff has failed to establish that there was an existence of easement at loco through clear pleadings as to the starting point, the end point, the length and the location, as well as the fact that he was using the same as of right with the acquiescence of the owner of the servient heritage. There are concurrent findings of the First Appellate Court and trial

Court on this aspect. Para 33 of the judgment of the trial Court elaborately deals with this aspect. The trial Court as well as the First Appellate Court found that apart from the fact that there are no pleadings as to the location of the so-called traditional access of necessity, there was only a rough sketch annexed to a complaint to the Panchayat at Exhibit 84 and another sketch prepared by the plaintiff himself at exhibit 105 in the suit.

7. A perusal of the findings of the trial Court from Para 5 onwards indicate that the trial Court has elaborately discussed the evidence on record and found that there are ways which can be used by the plaintiff to access his property bearing survey No.296/13. The trial Court has considered the old cadastral plan of survey No.796 (exhibit 144) and the new survey plan (exhibit 145) to show that there exists access to the east of survey No.296/13. Further, there are photographs at exhibit 157 Colly relied upon by the trial Court to arrive at a finding that there exists a road and also a gate of the plaintiff to the north-east of his property. The photographs further show one access from the back door of the plaintiff's house.

8. The defendants examined surveyor Mr Sitakant Kamat as DW4 and produced a survey report along with a plan and photographs (exhibit 174), which again shows the existence of the

road touching the property of the plaintiff, on the eastern side of his property and the existence of the gate and back door. The material on record would show that there is access available to the property of the plaintiff being a tarred road. The First Appellant Court and trial Court have recorded concurrent findings based on the evidence on record. These findings of fact cannot be said to be perverse. As such, no substantial questions of law arise in this second appeal. The appeal is accordingly dismissed. No costs.

9. The Civil Application No.17 of 2024 does not survive the disposal of the second appeal and the same is accordingly disposed of.

M. S. KARNIK, J