

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 4 OF 2024**

PIEADADE CARVALHO AND ANR. Appellants
<i>Versus</i>	
MARIA VICTORIA BOAVINDA FURTADO AND 4 ORS. Respondents

Mr A. D. Bhobe and Mr R. Kamat, Advocates for the Appellants.
Mr G. Agni and Mr K. Kavlekar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED : 4th APRIL 2024

P.C.:

1. Heard Mr Bhobe, learned counsel for the Appellants and Mr Agni, learned counsel for the Respondents.

2. Considering the fact that two Courts have held that the second plaintiff, Valesio Furtado, i.e. husband of the first plaintiff Maria Furtado, had a valid power of attorney on behalf of the first plaintiff coupled with the fact that only power of attorney holder of the two plaintiffs have deposed on behalf of the plaintiffs and/or their legal representatives, this appeal is admitted on the following substantial questions of law.

(A) Whether when the substantive relief (i.e. declaration of the sale deed) dated 05/03/1985 sought for in the

suit being barred by limitation on the date of filing of the suit (23/03/1995), the Appellate Court as well as the Trial Court were right in relying on the consequential relief (i.e. recovery of possession) to hold the suit to be within the period of limitation?

(B) Whether when the Appellate Court as well as the Trial Court having observed that Mr Valesio Furtado i.e. the husband of the plaintiff No.1 having a valid Power of Attorney on behalf of the Plaintiff No.1 on the day of the suit sale deed, r/w Article 1189 of the Family Laws, the Courts were right in holding the suit deed to be a nullity for want of consent of the Plaintiff No.1?

3. Mr Agni, learned counsel for the Respondents, pointed out that the property, which was the subject matter of the sale deed dated 05.03.1985, was measured only 2600 square metres. He referred to Para 2 of the plaint in which the suit property was described as measuring 4200 square metres, which included the sale deed property of 2600 square metres and an encroached portion of 1600 square metres. He submitted that two Courts have concurrently held that the sale deed was null and void for want of consent from the first plaintiff. He also pointed out that the two Courts have concurrently held that the Appellants/defendants had absolutely no

right or title in respect of the encroached portion of 1600 square metres. He referred to the finding of the trial Court in Para 25 of the impugned judgment and decree.

4. The Appellants' case, based on which the above questions of law have been formulated, relates to the sale deed property measuring 2600 square metres. Since the arguable issues were raised, the appeal has been admitted on the above two substantial questions of law. However, in so far as the additional area of 1600 square metres is concerned, there is nothing to show that the Appellants had any right or title to the same. Accordingly, in so far as this encroached area of 1600 square metres is concerned, no substantial question of law arises, and no protection deserves to be extended to the Appellants regarding this portion.

5. The concurrent findings recorded by the two Courts on the aspect of this encroached portion of 1600 square metres warrant no interference whatsoever. Accordingly, it is clarified that admission of this appeal or grant of any interim relief therein would not prevent the Respondents, i.e. legal representatives of the original plaintiffs, from executing two decrees so far as the encroached portion of 1600 square metres is concerned.

6. By the Civil Application No.10 of 2024, the Appellants have applied for interim relief. Now that this Second Appeal is admitted, qua sale deed dated 05.03.1985 and the property therein admeasuring 2600 square metres, the interim relief is hereby granted restraining cancellation of sale

deed or execution of the decree qua the sale deed property admeasuring 2600 square metres is concerned. However, it is once again clarified that the decree regarding the encroached portion of 1600 square metres has not been stayed. In fact, the appeal qua this portion shall be deemed to have been dismissed. Therefore, this order or rather this interim relief, should not be construed as any restraint on executing the impugned decrees so far as the encroached portion of 1600 square metres is concerned.

7. The appeal is admitted, but the civil application has been disposed of. The appeal's hearing is expedited.

8. Mr Agni waives service on behalf of the Respondents.

M. S. SONAK, J.

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