

(2011) 03 BOM CK 0176

In the Bombay High Court

Case No : Second Appeal No. 90 of 2009

Anant Ganesh Fal Dessai (deceased) Through his legal heirs
and Others

APPELLANT

Vs

Administrator of Comunidades South Zone, Comunidade
Building Margao- Goa, Comunidade of Balli and Shri Anay
R. Fal Dessai

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2011) 03 BOM CK 0176

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : M.B. D"Costa, with Mr. J.A. Lobo, for the Appellant; C.A. Coutinho, Advocate Respondent No. 2. Mr. P.A. Kamat, Advocate for Respondent No. 3., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard Mr. D" Costa, learned Senior Counsel for the appellants, Mr. Coutinho, learned Counsel for respondent no.2 and Mr. Kamat, learned Counsel for respondent no.3. None for respondent no.1, though served. By this Second Appeal, the appellants take exception to the judgment and decree dated 20th August, 2009 passed by the Ad hoc District Judge-II, South Goa, Margao in Regular Civil Appeal No. 17/2009 dismissing the appeal preferred against the judgment and decree dated 22nd January, 2009 passed by the Civil Judge, Junior Division, Quepem in Regular Civil Suit No. 10/2003.

2. The appellants herein are the plaintiffs and the respondents are the defendants in the above suit filed seeking reliefs of declaration and permanent injunction. It is the case of the plaintiffs that they are owners in possession of the property "Dhovornecoddil" "Soropioavolly" or "Gongueavolly" registered under No. 10658 and surveyed under No. 61 of village Balli and a part of the

property bearing Survey No. 15/1 of village Benurdem which admeasures 1,51,400 square metres (the suit property) has been wrongly surveyed in the name of defendant no.2. The suit was contested by defendant no.2. The plaintiffs examined four witnesses. Defendant no.2 examined two witnesses. The trial Court upon appreciation of the evidence, oral and documentary, held that the plaintiffs had not proved that the suit property formed part of the property "Dhovornecoddil" "Soropioavolly" or "Gongueavolly" and that the suit property was also not properly identified. These findings were given upon appreciation of the evidence, oral and documentary, led by both the parties. The lower appellate Court by the impugned decree has dismissed the appeal.

3. Mr. D" Costa, learned Senior Counsel appearing for the appellants submitted that the lower appellate Court has not exercised jurisdiction in accordance with law. According to learned Counsel, the findings given by both the Courts that the suit property has not been identified, is patently unsustainable in law. Learned Counsel further submitted that the lower appellate Court has not even discussed evidence of the three witnesses, who have deposed about the possession of the suit property by the plaintiffs. According to learned Counsel, the land registration certificate clearly proves the title of the plaintiffs to the suit property and the oral evidence led by the plaintiffs clearly proves the possession thereof. Mr. D" Costa further submitted that during the recent survey, boundary of the village Balli was shifted and, therefore, although certificate discloses that the suit property is situated in village Balli, the same is not fatal to the case of the plaintiffs.

4. Per contra, Mr. Coutinho, learned Counsel appearing for respondent no.2 submitted that although the judgment of the lower appellate Court is not happily worded, the finding of the lower appellate Court that the property has not been identified, cannot be faulted. Learned Counsel further submitted that the trial Court has upon critical analysis of the evidence, oral and documentary, led by the parties, has held that the plaintiffs had not proved the title and possession in respect of the suit property which lies in the village Benurdem. Learned Counsel further submitted that the land registration certificate produced by the plaintiffs clearly proves that the property is in village Balli and not in Benurdem. According to learned Counsel, the case set up by the plaintiffs that during recent survey, boundary of village Balli was shifted, cannot be accepted in the absence of cogent evidence having been led by the plaintiffs. Learned Counsel, therefore, submitted that no case has been made out for interference with the impugned decree in exercise of jurisdiction u/s 100 of C.P.C.

5. Having considered the rival submissions and having perused the record, I am of the considered opinion that the finding of both the Courts below that the suit property has not been identified, cannot be faulted. Both the Courts upon appreciation of the evidence, oral and documentary, have found that the plaintiffs have not been able to establish their title to the suit property on the basis of the land registration certificate since the boundaries differ. This finding, in my opinion, is pure finding of fact arrived at by both the Courts on proper

appreciation of the evidence led by the parties. No doubt, the judgment of the lower appellate Court is not happily worded and there is no discussion about the possession of the suit property as claimed by the plaintiffs, but the same does not advance the case of the appellants in as much as the plaintiffs having failed to identify the suit property, the mere fact that there is no discussion in so far as the possession of the suit property is concerned, would not render the impugned decree unsustainable in law. In my considered opinion, the trial Court has correctly appreciated the evidence and the finding given by the lower appellate Court about non-identification of the suit property also cannot be faulted. In my considered opinion, no substantial question of law is involved in the present appeal. Hence, the appeal is dismissed.