
(2014) 07 BOM CK 0066

In the Bombay High Court

Case No : First Appeal Nos. 20 and 281 of 2006

Comunidade of Quitol

APPELLANT

Vs

President

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Evidence Act, 1872 — Section 110

Land Acquisition Act, 1894 — Section 30, 4(1)

Citation : (2014) 5 ABR 216

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : H.D. Naik, Advocate for the Appellant; P. Talaulikar and S. Karpe, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—Heard the learned Counsel for the respective parties. Both these appeals are directed against the judgment and award dated 04/10/2005 passed by the learned Additional District Judge-in, South Goa, Margao (Reference Court, for short) in Land Acquisition Case No. 72/1993.

2. Parties shall hereinafter be referred to as per their status in the said L.A.C. No. 72/1993.

3. Vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 ("L.A. Act", for short) and published in the Official Gazette dated 04/01/1990, land was acquired at Betul and Quitol villages in Quepem Taluka for setting up an Institution of Safety and Environmental Management for Petroleum Industries of India. This included an area of 61,425 square metres from Survey No. 73 and an area of 43,400 square metres from Survey No. 71/4 of Quitol village. By award dated 17/06/1992, the Land Acquisition Officer (L.A.O., for short) awarded certain compensation for the said land but since there was dispute amongst the parties as to the entitlement of the compensation, the L.A.O. made reference to the District Court, South Goa, u/s 30 of the L.A. Act which gave rise to the L.A.C.

No. 72/1993.

4. Party No. 1, by way of its written statement, claimed that it is the owner in possession of the property known as "Chichomol Othimola" bearing matriz No. 161 and that the acquired land from Survey No. 71/4 and 73(part) forms part of their said property and that other parties have no right. They, therefore, prayed that the entire compensation be paid to them.

5. Party No. 2, in its written statement, claimed that it is the owner of two adjacent properties situated at Arali and known as "Combaicondi" or "Bordo Borodanto" also known as "Sordo Borodanto" comprising of first addition and the second addition and that the first addition bears land registration No. 4717 and was gifted to Fabrica by its owner Sebastiao Arcanjo Borges and his wife Mariana Cordozo by gift deed dated 09/03/1957 and that the second addition bearing land registration No. 8774 was gifted to the Fabrica by its owner Lawrence Caetano de Rozario Monteiro by gift deed dated 13/12/1962. Party No. 2 alleged that the said property comprises of entire survey No. 73, part of survey No. 75, part of survey No. 82/1, entire survey No. 82/2 to 9, part of survey No. 87/1, entire survey No. 87/2, entire survey No. 68/1, 2 and 3, part of survey No. 71/4 and part of survey No. 71/5. Party No. 2, thus, claimed that entire acquired land from Survey Nos. 73 and part admeasuring 42,500 square metres from 71/4 was from the said property owned and possessed by it. Party No. 2, therefore, prayed that the entire compensation for acquired land from survey No. 73 be paid to it and compensation with regard to 42,500 square metres of land from survey No. 71/4 be paid to it.

6. Original party No. 3, Vinodkumar Shantilal Gosalia (since deceased), in his written statement, alleged that by sale deed dated 03/09/1969, he purchased three properties situated at Arali from Govind Balsu Naik Dessai also known as Anta Balsu Naik Dessai and his wife Smt. Premavati Govind Dessai, being one known as "OITERAL OU ARALY" under land description No. 8789 and matriz No. 172; second property being named "POLVOREM" under land description No. 4372 and matriz Nos. 7 and 6; and third being 2/5th of the property "PONDOLI OU GALLY" situated at Arali and bearing land description No. 4371 and matriz No. 5. He claimed that all the three properties bear several survey numbers namely 71/4, 73, 75, 76, 77, 79, 80, 81 and 82 with their sub-divisions from Quitol village and hence land acquired from survey Nos. 73 and 71/4 belonged to the party No. 3. He prayed that the entire compensation be paid to him.

7. Accordingly, issues were framed by the Reference Court. Party No. 1 examined its attorney, namely Subhashchandra alias Subhash Manju Naik Dessai as AW 1, one Rajendra Appa Naik, an agriculturist, as P1-W2 and the Engineering consultant namely Vikas Dessai as V-W1. Party No. 2 examined its Special Attorney namely Avelino Simoes as P2-W1 and a Civil Engineer by name Krishna Prabhudessai as P2-W2. Party No. 3, Vinodkumar Gosalia examined himself as P3-W1 and a Surveyor namely Rasiklal Dangui as P3-W2.

8. Upon consideration of the entire evidence on record, the learned Reference Court held that party No. 2 is entitled to receive the compensation for the entire land acquired from Survey Nos. 73 and 71/4.

9. Aggrieved by the said judgment and award, party No. 1 has filed First Appeal No. 20/2006, whereas party No. 3 has filed First Appeal No. 281/2006.

10. Mr. Talaulikar, learned Counsel appearing on behalf of party No. 1 submitted that the party No. 1 is the original owner of the property. He invited my attention to the sale deed dated 12/04/1893, relied upon by party No. 2, itself, which says that Antonio Piedade Borges and Francisco Dias had bound themselves to pay to the Comunidade of Quitol (Party No. 1) an annual cess amounting to two annas and eight pies per annum. He submitted that therefore, admittedly, the property originally belonged to party No. 1 and Venku Custa Rauto, the vendor in the said sale deed, had not paid the said 20 annuities due to which the purchasers had bound themselves to pay the same to the Comunidade of Quitol. He submitted that there is absolutely no evidence on record to prove that the said ground rent was paid to the Comunidade. Learned Counsel urged that the said sale deed dated 12/04/1893 speaks about the first and the third addition and there is no reference to the sale of second addition bearing land registration No. 8774, in the same. He therefore questioned as to how Laurence Monteiro could gift the second addition. Learned Counsel submitted that insofar as the party No. 3 is concerned, the title of the vendors of the party No. 3 was not proved and hence the party No. 3 had not proved his case. He further submitted that looking to the description of the property as mentioned in the documents of parties No. 2 and 3, proper identification had to be done, which was not there. He further submitted that the evidence of AW 1 the attorney of Comunidade and V-W1, an Engineer, namely Vikas Dessai examined by party No. 1 sufficiently proved that survey Nos. 71/4 and 73 formed part of the matriz No. 161 which is the property of the party No. 1. He contended that consequently, the gift deeds in favour of party No. 2 were not valid. He submitted that the party No. 3 had also miserably failed to prove his case. He urged that the impugned judgment and award is erroneous and is liable to be set aside. He, therefore, submitted that the entire compensation be paid to the party No. 1.

11. Mr. Naik, learned Counsel appearing on behalf of the legal representatives of the party No. 3, submitted that in First Appeal No. 108/2005, arising out of the judgment and award dated 01/12/2004 passed by the Additional District Judge, South Goa in Land Acquisition Case No. 75/1993, total area acquired was 1,08,025 from survey No. 82/1 of Quitol village and the party No. 1 (Comunidade) had given up its claim over an area of 21,725 square metres, in favour of party No. 3 (Vinodkumar Gosalia) and this Court had remanded the case to the Reference Court for fresh determination regarding the balance area of 86,300 square metres. He submitted that vide judgment and award dated 21/12/2013, passed in the said land Acquisition Case No. 75/1993, the learned Reference Court has held that the entire compensation in respect of the said

balance area of 86,300 square metres is to be paid to the party No. 3. Learned Counsel further submitted that in Land Acquisition Case No. 39/1994, the learned Reference Court had ordered that the entire compensation in respect of the acquired land from survey No. 77/1 of village Quitol, be paid to the party No. 3 herein i.e. Vinodkumar Gosalia. He submitted that First Appeal No. 255/2006 was filed by party No. 1 (Comunidade), against the said judgment and award dated 04/08/2005. Learned Counsel pointed out that by judgment dated 26/7/2013, this Court dismissed the said First appeal No. 255/2006, by confirming that the party No. 3 (Vinodkumar Gosalia) was entitled to receive the entire compensation in respect of the land acquired from survey No. 77/1. He submitted that the acquired land from survey Nos. 71/4 and 73 is from the same property of the party No. 3. He submitted that the deposition of the witnesses, more particularly P3-W1 and P3-W2, was not properly appreciated by the Trial Court. He urged that the sale deeds produced by party No. 3 were registered sale deeds and hence the party No. 3 who has been named as purchaser therein ought to have been presumed to be the title holder of the said property. He submitted that the possession of the acquired land was taken from the party No. 3. According to him, the party No. 3 had produced ample evidence on record to prove his entitlement.

12. On the other hand, Mr. Karpe, learned Counsel appearing on behalf of party No. 2 submitted that the property "Cumbiacondi" was divided into three equal portions or additions for the purpose of sale and what was sold by Vencu Custam Rauto and his wife Gopica to Antonio Borges and Fransico Dias, by sale deed dated 12/04/1893, was the first addition of the property "Cumbiacondi" which had been described in the land registration office under No. 4717 and the third addition of the same property which was described under No. 4718. He further submitted that the additions under Nos. 4717 and 4718 were inscribed under No. 1743 in the names of Antonio Piedade, Ignacia Conceicao Fernandes and sons of late Francisco Dias. Learned Counsel urged that the second addition of the said property was described under No. 8774 and was inscribed under No. 1415 in favour of the Public Prosecutor, for recovery of the amount due from Vencu Kusta Rauto and was purchased by Lawrence Caitan Monteiro in auction. He urged that these were not provisional inscriptions, but final. He submitted that in terms of Article 953 of Portuguese Civil Code, the entry in the registration involves transfer of possession in favour of party in whose favour the entry was made. He further submitted that Article 8 of Decree No. 42.565 provides that the final registration creates presumption of ownership. He then pointed out that by deed of gift dated 09/03/1957, the first addition has been gifted to the party No. 2 by Sebastiao Arcanjo Borges and by the other gift deed dated 13/12/1962, the second addition has been gifted to the party No. 2 by Laurence Caetano Do Rosario Monteiro. He submitted that the evidence of P2-W2, Engineer Krishna Prabhudessai and his plan duly proved the case of party No. 2, to the effect that the property under survey No. 73 and an area of 42,560 square metres from survey No. 71/4 formed part of the property of party No. 2. He submitted that

the survey record in respect of survey Nos. 71/4 and 73 is promulgated and Form Nos. I and XTV show only the names of parties No. 2 and 3 as occupants and the name of party No. 1 does not figure. He submitted that the possession of party No. 2 is backed by lawful title arising from the deeds of gift dated 09/03/1957 and 13/12/1962. He further submitted that party No. 1 does not have any title document and claims the property on the basis of matriz record. He submitted that once the presumption u/s 105 of the Land Revenue Code is available, the presumption, if any, arising under the old existing records (matriz records) ceases to have any value. He relied upon the case of "M/s. Deeksha Holding Ltd. v. Sita Dessai", (1998 (2) Goa Law Times 443). He submitted that the claim of the party No. 3 was rightly rejected by the Trial Court since the title of the vendors of the party No. 3 was not at all proved. He, therefore, urged that the impugned judgment and award is in accordance with settled principles of law and no interference with the same is warranted.

13. I have gone through the original record and proceedings of the Land Acquisition Case No. 72/1993. I have considered the submissions advanced by the learned Counsel appearing on behalf of both the parties.

14. The point that arises for determination is as to which of the parties is entitled to receive the compensation.

15. AW 1, Subhash Manju Naik Dessai, the attorney of the party No. 1 has produced on record the Form Nos. I & XIV of survey Nos. 71/4 and 73; the blueprint of the survey plan of said survey holdings and of others; matriz certificate of matriz No. 161 and one lease agreement with Shantilal Khushaldas and Brothers, in respect of the land known as "Tolpamolla. Indisputably, the promulgated Survey Records in Form Nos. I and XIV in respect of survey Nos. 71/4 and 73 show the names of parties No. 2 and 3 in the occupant's column and the name of party No. 1 does not figure in any column. Party No. 1, which is governed by the Code of Comunidades, admittedly, does not have any title document with respect to the acquired land and the case of party No. 1 is only based on matriz certificate pertaining to matriz No. 161. There is no "Tombo I" or "Tombo II" register produced by the party No. 1. According to AW 1, the area of the property under matriz No. 161 is 40,00,000 square metres. But, admittedly, the laid matriz certificate does not mention the area and AW 1 admitted that there is no document with the party No. 1 to show that matriz No. 161 has an area of 40,00,000 square metres. Learned Trial Court has relied upon the judgment of this Court in the case of Fabrica da Igreja de N.S. de Milagres Vs. Union of India (UOI) and Others, wherein it has been held that matriz document is neither an instrument of title nor a source of possession and that the organization of the "matriz predial" is a mere administrative exercise aimed at collecting tax revenues from the land. It is true that neither matriz certificate nor the recent survey records under the Goa, Daman and Diu Land Revenue Code, 1968 (the Code, for short) can confer title. But the promulgated survey records have the benefit of presumption u/s 105 of the Code. The entries in such records

are presumed to be genuine until they are substituted or until the contrary is proved. In the case of "M/s. Deeksha Holding Ltd." (supra), this Court has held that once the presumption u/s 105 of the Code is available from the record prepared under the Land Revenue Code, the presumption of old matriz records, if any, ceases to have any value. In such circumstances, even otherwise there is no value at all to the matriz certificate produced by party No. 1. AW 1, the Attorney of the party No. 1, has stated that they have no records to show that they ever objected to the entries in the survey records and that they have also not filed any civil suit for removal of the said names from the survey records. The said un rebutted survey records establish that the party No. 1 was not in possession of the acquired land. Section 110 of the Evidence Act lays down that 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. Merely because the sale deed dated 12/04/1893 produced by party No. 2 speaks about some undertaking given by the purchasers to pay ground rent (annual cess) to the comunidade, that does not mean that the said property continued to belong to the party No. 1. The same sale deed, otherwise, specifically says that the said property does not in any way belong to the comunidade. It mentions about the certificate, in this regard, issued by the clerk of the administration of Quepem Taluka. The lease agreement is not in respect of the property known as "Chichemolla Othamolla". The cross-examination of Rajendra Appa Naik (P1-W2) reveals that he has messed up the case of the party No. 1. He could not help the party No. 1. The Engineering Consultant, Mr. Vikas Dessai (V-W1) appears to have based his inspection report on the matriz certificate of matriz No. 161 and that also when it admittedly does not mention the area of the property. In the circumstances above, the party No. 1 could not prove its ownership and possession of the acquired land and hence it was not entitled to receive any compensation.

16. P2-W1, the Special Attorney of party No. 2, Avelino Simoes, has produced on record the blue print of survey plan of survey Nos. 68/1 to 3, 73, 75 and 82/1 to 8; land description certificates of No. 4717 and 8774; land inscription certificate of No. 1743 and 1415; deed dated 12/04/1893 of purchase, sale, discharge and obligation; deeds of gift dated 09/03/1957 and 13/12/1962 and the Judgment and decree in Special Civil Suit No. 6/1975. By said sale deed dated 12th April 1893, Vencu Custam Rauto and his wife Gopica had sold to Antonio Piedade Borges and Francisco Dias, the first and the third addition of the property "Cumbiacondy", bounded on the east by pluvial rivulet and public road which leads to Cananguinim and "Cunybaga? of Lodovina Monteiro and others; on the west by "Rumodgaly" of Comunidade of Quitol and perpetual lease of Constantio Fernandes; on the north by perpetual lease of Fr. Aurelio Agostinho Maria Torrado and others and on the south by the land of the said Comunidade. The said deed reveals that for the purpose of the said transaction, the said property was divided into three equal fractions or parcels or additions. The boundaries of all the three additions have been mentioned in this document. The

one third i.e. first parcel or first addition is described under land registration No. 4717 and this document mentions that this extract was made in view of public deed dated 12/04/1893. Land description No. 8774 is in respect of the second parcel of the same property and it shows that the northern boundary is the first parcel; southern boundary is the third parcel and eastern boundary is the hill "Othamolla" e "Chinchemolla" of Comunidade of Quitol. It is seen from inscription No. 1743 that first and third parcel (addition) of the said property "Cumbiacondi" under registration Nos. 4717 and 4718 were inscribed in the name of Antonio Piedade Borges, Ignacio Conceicao Fernandes, the widow of Fransisco Antonio Dias and her sons. It is seen from inscription No. 1415 that the said second addition of the property under land registration No. 8774 along with other properties described under land registration Nos. 8772, 8773, 8775 and 8776 were inscribed in the name of Public Prosecutor to recover from Vencu Custam Rauto, a sum of Rs. 132/- arising out of costs and stamps in some Criminal Proceedings, in which he was convicted.

17. (a) Article 953 of the Portuguese Civil Code provides as under:

"The entry in the registration of a property about a conveyance without condition precedent involves independent of any other formality, the transfer of possession in favour of person in whose favour the entry was made".

(b) Article 8 of the Decree No. 42.565, lays down:

"The final registration, creates presumption, not only to the effect that the right registered does exist but that the same belongs to the person in whose name the entry is found registered, in precise terms of the registration effected".

18. Since Vencu Kusta Raut was the owner of the property and since it was specifically mentioned in the sale deed dated 12/04/1893 that the said property does not in any way belong to the Comunidade and that there is certificate, in this regard, issued by the clerk of the administration of Quepem Taluka, Article 1566 of the Portuguese Civil Code has no application. The said first addition was gifted to the party No. 2 by Sebastiao Borges and his wife under the deed of Gift dated 9th March 1957. In the said deed of gift, it is clearly recorded that the gifted property is the first addition of "Combiacondi" under land registration No. 4717. Again, under the gift deed of 13/12/1962, Lawrence Monteiro gifted to party No. 2 the second addition of the same property "Combiacondi". This gift deed mentions that the property gifted was registered under No. 8774. P2-W1, the previous attorney of party No. 2 has stated that the property under land registration No. 8774 was inscribed under No. 1415 in favour of the Public Prosecutor, for recovery of the amount due by Venku Kusta Rauto and this property was purchased by Lawrence Caitan Monteiro in auction. In this gift deed of 1962, there is mention of exclusion of the area occupied by a road which crosses this addition and which road is utilised by M/s. Shantilal and Brothers Company for transporting iron ores. Thus, this gift deed shows that the mining road used by M/s. Shantilal and Brothers Company was crossing the said second

addition. The Attorney of party No. 1 i.e. P1-W1, namely Subhash Manju Naik Dessai has himself stated that on the north of Survey No. 87/1, there is a road used by said M/s. Shantilal and Brothers Company for transporting the ore, which road culminates in the property of Comunidade where M/s. Shantilal and Brothers Company dumps the ore. He has admitted that this road passes on the west of Survey No. 68/1. On the eastern side of the property of the party No. 2 lies the property of the party No. 1 as per the documents of the party No. 2. Indisputably, survey No. 69/1, which stands in the name of one Tito Vaz in survey records, on the strength of an aforamento given by the comunidade, originally belonged to the party No. 1 and it is on the eastern side of survey No. 68/1.

19. The Church of Our Lady of Immaculate Conception of Betul (party No. 2) and the Apostolic Administrator of the Archdiocese of Goa and Daman had filed Special Civil Suit No. 6/1975 against M/s. Shantilal Khushaldas & Bros. Pvt. Ltd. (party No. 3), for demarcation, declaration and consequential reliefs. The suit pertained to the same first and second addition of the property "Combiacondi" and it has been declared that the plots of the first and second addition of the said property belonged to and possessed by the party No. 2 herein. The suit has been decreed vide judgment and decree dated 16/01/1989. The party No. 3 has not filed any appeal against the said judgment and decree. Therefore as between the parties No. 2 and 3, it cannot be disputed that the first addition under registration No. 4717 and the second addition under land registration No. 8774 of the property "Cumbiacondi" belongs to the party No. 2. It is pertinent to note that in the First Appeal No. 281/2006, filed by party No. 3, though the party No. 3 has expired and legal representatives have been allowed to be brought on record, no amendment has been carried out to the cause title, even after having given several opportunities to do the same. In the Land Acquisition Cases No. 75/1993 and 39/1994, acquired land from survey Nos. 82/1 and 77/1 of village Quitol was concerned with which the Fabrica of Betul (party No. 2) had no interest. The judgments in those cases would not help the party No. 3 against the party No. 2. The interested parties to the said cases were only the parties No. 1 and 3.

20. P2-W2, Shri Krishna Prabhudessai, the Civil Engineer, examined by the party No. 2, prepared the plan of the property of party No. 2. He demarcated the property on the basis of the land Registration documents of registration Nos. 4717 and 8774 i.e. of the first and second addition of the property "Cumbiacondi" and the gift deeds dated 09/03/1957 and 13/12/1962. He visited the property and the Special Attorney showed to him the land at site in possession of the party No. 2. He found that the property of party No. 2 could be easily identified and demarcated since there was an addo (rubble stone wall) on western and southern boundaries to the full extent and also on the northern and eastern boundaries to some extent. He found the internal road leading to Cananguinim, through the two additions, which is mentioned in the gift deed dated 13/12/1962 and he has shown the same in the plan. He compared the

boundaries mentioned in the land registration documents by checking the survey plan, Forms No. I & XIV and he also made enquiries at loco. According to him, the entire survey No. 73 forms the part of the property of the party No. 2 and a portion admeasuring 42560 square metres from survey No. 71/4 forms the part of the property of the party No. 2. As has been rightly observed by the Trial Court, out of the three expert witnesses examined by the parties namely V-W1, Vikas Dessai, P2-W2, Krishna Prabhudessai, and P3-W2, Rasiklal Dangui, the evidence of P2-W2, Krishna Prabhudessai is found to be most reliable.

21. The total area of survey No. 71/4 is 44000 square metres. The acquired land from this survey holding admeasures 43,400 square metres. No doubt, on account of the claim of party No. 2, in its written statement, only to an area of 42500 square metres from survey No. 71/4 and the report of P2-W2, Krishna Prabhudessai that the portion admeasuring 42560 from said survey No. 72/4 belongs to the party No. 2, question arises about the balance area of about 900 square metres or 840 square metres of land from survey No. 71/4. However, the evidence on record establishes that the party No. 3 cannot have any claim to the acquired land from survey No. 71/4. The gift deed dated 13/12/1962, which pertains to the second addition, bearing land registration No. 8774, of the property "Cumbiacondi", shows that the area occupied by a road which crosses the said addition and utilized by Shantilal Khushaldas and Brothers Company Ltd. for transportation of iron ore was excluded. As per the survey plan, on the eastern side of the road lies survey No. 71/4 and on the western side lies the survey No. 73. P3-W1, Shri Vinodkumar Gosalia admitted that the road is on the eastern side of survey No. 73 as shown on the plan of Dangui and that he does not claim any land on the western side of the said road as per the plan. The Form No. I & XIV of survey No. 71/4 shows the name of the parties No. 2 and 3 to be the occupants. But from the evidence on record, it is found that the party No. 3 cannot have any claim to survey No. 71/4. Therefore the Trial Court has rightly held that the entire compensation in respect of the acquired land from survey No. 71/4 should go to the party No. 2.

22. The party No. 3 namely Vinodkumar Gosalia (P3-W1) produced on record the sale deed dated 03/09/1969; rectification deed dated 03/09/1969; blueprint of the plan drawn by the surveyor Shri Rasiklal Dangui; and the Certificate of memorandum of demarcation along with translation. Obviously, no survey numbers are mentioned in the said sale deeds. No area of the property is mentioned in the said sale deed. P3-W1 has, in his deposition, stated about the corresponding survey numbers of the property purchased by him. There is no document on record to prove the title of the vendors of the party No. 3 i.e. of Govind Balsu Naik Dessai and his wife to the properties sold by the said sale deed. There is mention of land registration Nos. 8789, 4372 and 4371, but even these land registration documents have not been produced. As already stated earlier, in Special Civil Suit No. 06/1975, filed by the Church of Betul (party No. 2) against Shantilal Khushaldas and Brothers Pvt. Ltd. (party No. 3), vide judgment and decree dated 16/01/1989, the party No. 2 has been declared the

owner in possession of the first addition under land registration No. 4717 and second addition No. 8774 of the property "Combiacondi". The party No. 3 did not file any appeal against this judgment and decree. In the said Special Civil Suit, the party No. 3 (Vinodkumar Gosalia) himself had deposed as party witness. It has been held in the said judgment dated 16/01/1975 that the sale deed dated 03/09/1969 cannot prove the title of the party No. 3 since no attempt was made to produce the title antecedent of the vendors. When the main witness i.e. P3-W1 failed to prove his title to the property, the evidence of surveyor, Shri. Rasiklal Dangui (P3-W2) need not be discussed. Even otherwise, the Trial Court has minutely discussed the evidence of each witness and in my view, the evidence has been correctly appreciated. Amongst the parties to the reference, the party No. 2 established better title.

23. In view of the above, the point for determination gets answered in favour of the party No. 2. The impugned judgment and award is in accordance with the settled principles of law and no interference with the same is warranted. Both the appeals are therefore, dismissed, with no order as to costs.