

(2008) 07 BOM CK 0131

In the Bombay High Court

Case No : Second Appeal No. 98 of 2007

Shree Shantadurga Kumbhar-Juvekarin Marcel, Goa, Orgao,
Marcel, Ponda-Goa

APPELLANT

Vs

Shakuntala Alias Chandi Amonkar, Shree Devaki Krishna
Devasthan and Comunidade of Vargao/Orgao

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Citation : (2008) 07 BOM CK 0131

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : Rohit Bras De Sa, for the Appellant; R.G. Ramani, Advocate for Respondent No.1. Mr. G. Tamba, Advocate for Respondent No. 2., for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard learned Counsel on behalf of all the parties. This is plaintiff's Second Appeal, arising from RCS No. 107/96/B. The plaintiff had filed a suit for permanent and mandatory injunction. For permanent injunction to restrain defendant no. 2 from doing any construction in the suit property and for mandatory injunction to direct the defendants to demolish the suit construction which was carried out by the defendants. The suit property is surveyed under no. 54/1. There is no dispute that it is defendant no.1 who was carrying out the construction in the suit property, having been permitted to do so by defendant no.2.

2. The plaintiff claimed the suit property surveyed under no. 54/1 as part of their property granted to them by the Comunidade of Orgao in the year 1887. However, according to the defendant no. 2, the said property was also granted to them by the same Comunidade and stood registered in the Land Registration Office under No. 4970 for over 100 years. The learned trial Court came to the conclusion that the plaintiff was unable to establish its right of ownership or

possession in respect of survey no. 54/1 except that it had its temple situated therein. The learned trial Court also came to the conclusion that defendant no. 2 had established overwhelmingly through voluminous documentary evidence that suit property is of their ownership and was in their possession and therefore the learned trial Court proceeded to dismiss the suit.

3. The learned first appellate Court came to the conclusion that the trial Court had considered the evidence and the documents and assessed the same in its judgment and the findings were based on ocular and documentary evidence. The learned trial Court therefore found that there was no scope for interference in findings rendered by the trial Court.

4. Shri Arun Bras De Sa, the learned Counsel on behalf of the plaintiff submits that this was a case where there was a dispute as regards to the identity of the property and therefore a Commissioner ought to have been appointed. Learned Counsel further submits that the document produced by the plaintiff has not been interpreted by the Courts below and, as such, wrong interpretation of a document gives rise to a substantial question of law. He relies on the case of P. Chandrasekharan and Others Vs. S. Kanakarajan and Others, . In my view, this is not a case where the identity of the property was in dispute. The disputed property was identified with reference to both new survey as well as old cadastral survey. It was identified as having new survey no. 54/1. The defendant no. 2 was able to demonstrate with documents produced, that this property was registered in their name in the Land Registration Office over 100 years under no. 4970. It was not the case of the plaintiff that the property which was registered in the name of defendant no. 2 with the said land registration number was other than the suit property. The suit property was also recorded in the name of defendant no. 2 under the old cadastral survey number, which survey as rightly noted by the learned first appellate Court took place in the beginning of the 20th century. Not only that a part of the said property was acquired and compensation was paid to respondent no. 2. Moreover, the plaintiff itself had obtained permission of defendant no. 2 to set up a Sabha Mandap by their letter dated 10/01/1982. In case the said property belonged to the plaintiff, the plaintiff would not have sought permission of defendant no. 2 to set up the said Mandap. Both the Courts below therefore were fully justified in coming to the conclusion that both title and possession as regards the suit property was that of the defendant no. 2 with whose permission the defendant no. 1 had done the construction. There is no substantial question of law involved in this Second Appeal, either as formulated or otherwise and, therefore, the same deserves to be dismissed with costs by the plaintiff to defendant no. 2, throughout.