
(2013) 04 BOM CK 0109
In the Bombay High Court
Case No : First Appeal No. 161 of 2005

Shri Ajit R. Alve	Vs	APPELLANT
Smt. Laxmi Vithal Gaonkar and Others		RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Evidence Act, 1872 — Section 83

Citation : (2013) 04 BOM CK 0109

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

Bench : Single Bench

Advocate : J.P. Mulgaonkar, for the Appellant; Neha Kholkar, Additional Government Advocate for the Respondents Nos. 9, 10 and 11, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—This appeal has been preferred against the Judgment, Order and Decree dated 9/3/2005 passed by the learned Adhoc Additional District Judge, FTC-II, in Civil Suit No. 128 of 2004 (New)/Regular Civil Suit No. 45 of 1996/A (Old), by which the said suit has been dismissed. The appellant was the plaintiff in that suit, whereas the respondents no. 1 to 8 and 12 were the defendants no. 1 to 8 and 12 and the respondents no. 9, 10 and 11 were defendants no. 9, 10 and 11. The parties shall, hereinafter, be referred to in the same manner as they appear in the cause title of the said suit.

2. The plaintiff had filed the said suit for the following relief:

That the Directorate of Land Survey Panaji and or the Office of the Inspector of Survey and Land Records, South Goa, Fatorda, Margao, be ordered and directed to demarcate the southern boundary of the property "Datrichem Upor" under Alvara No. 1597 & Plan No. 15371 vis-?-vis the northern boundary of the Aforamento under title No. 1959 & the Plan No. 17639 and the plans of survey nos. 21/1, 21/2, and 22/0 of Maulinguem village and to separate the area of the property "Datrichem Upor" under title No. 1597 & Plan No. 15371 included in

survey no. 21/2 of Maulinguem village; that a separate survey holding number be ordered to be given to the separated area and the Mamlatdar, Sanguem and or the Talathi of village Kalay and or the Dy. Collector, Quepem be ordered and directed to record the separated or newly formed survey holding in the name of late Ramanata Govind Alve.

3. Case of the plaintiff, in short, is as follows:

He is Cabeça-de-Casal/Head of the Family appointed by the Court of Civil Judge, Senior Division, Margao in Inventory Proceedings No. 18910/75/A, which are pending and which were initiated upon the death of Shri Ramanata Govind Alve and his wife Smt. Janqui Ramanata Alve, who are parents of the plaintiff. In the said Inventory Proceedings, at Item No. 2 of the list of Assets, a property known as "Datrichem Upor" situated in village Maulinguem, in Sanguem Taluka admeasuring 83627 square metres having the shape and extension as per the Plan No. 15371 which is a Government Aforamento granted to late Shri Ramanata Govind Alve under Title No. 1597, has been listed. The said Aforamento land comprises of various plantations and is surrounded by a barbed wire fence on all sides except on the eastern side to the extent it touches survey no. 17 of Maulinguem village belonging to Government and the northern part of survey no. 23 of Maulinguem village. The plaintiff and his family members have been in possession and enjoyment of the said entire area of 83627 square metres. During the recent survey conducted for the purpose of Record of Rights, the said Aforamento of late Ramanata Govind Alve, to a major extent, came to be surveyed under no. 21/1 of Maulinguem village having an area of 77250 square metres, in the name of said Ramanata, while a substantial area from the remaining area of said Aforamento, came to be surveyed under no. 21/2 of Maulinguem village and has been recorded in the name of late Vithal Vasu Gaonkar. The said late Vithal Vasu Gaonkar has also been granted, by the Government, an Aforamento having an area of 67468 square metres vide Aforamento no. 1959 and having the shape and extension as shown in the Plan no. 17639. Said Vithal Vasu Gaonkar was the husband of defendant no. 1 and the father/father-in-law of defendants no. 2 to 8. The said Aforamento of late Vithal Vasu Gaonkar came to be surveyed under no. 22/0 of village Maulinguem with an area of 63525 square metres and partly in survey no. 21/2 having an area of 7575 square metres. Thus, the name of Shri Vithal Vasu Gaonkar is wrongly recorded as lessee in survey no. 21/2. In the plan no. 15371 pertaining to the plaintiff's Aforamento, the boundary stone marks are numbered and the area of late Shri Ramanata Govind Alve left out and included in survey no. 21/2 is from the stone marks bearing numbers 7-8-9-10-11-7. The plaintiff had filed an application against the heirs of late Vithal Vasu Gaonkar before the Deputy Collector u/s 113 of the Land Revenue Code, praying for demarcation of the Aforamento under title no. 1597 and also the Aforamento based on the Plan No. 15731 and to separate the area of Ramanata Govind Alve shown in survey no. 21/2 and give a new survey holding to the said separated area. The Dy. Collector, however, by order dated 28/9/1995, directed the Inspector of Survey and Land

Records, Margao, to demarcate only the property under survey no. 21/1 and rejected the prayer in respect of survey no. 21/2 on the ground that the name of Ramanata Govind Alve does not figure in the survey records of survey no. 21/2. Hence, the suit.

4. The defendants no. 1 to 6 and 8, in their written statement, alleged that the suit is hit by principles of res-judicata; that the disputed land is not properly identified in the plaint; that the suit fails due to lack of proper identification of the disputed land and that the suit is barred by limitation. It was alleged that the defendants are the heirs of Vithal Vasu Gaonkar, who was granted an Aforamento having an area of 67468 square metres which area is surveyed under nos. 22/0 and 21/2 (Part) of village Maulinguem and since the time of the said grant, said Vithal Vasu Gaonkar and, thereafter, the said defendants are in exclusive, open, continuous and uninterrupted possession of the entire said land. Without prejudice to the above, they further claimed that they have acquired prescriptive title to the remaining part of the survey no. 21/2. They stated that the entire plantation of cashew trees, coconut trees and other fruit bearing trees in survey nos. 22/0 and 21/2 of village Maulinguem has been done by the said Vithal Vasu Gaonkar and thereafter by the defendants. Therefore, the title of the said defendants to the land bearing survey no. 21/2 is crystallized by way of prescriptive and adverse possession for over 38 years. They stated that the southern boundary of their land which is northern boundary of survey no. 21/2 is well demarcated at the site. According to them, since from 1988 till 1996, the plaintiff chose not to file any suit for demarcation and even when the survey was corrected sometimes in 1972-73, the plaintiff did not raise any grievance, the suit is barred by limitation.

5. The defendants no. 9, 10 and 11, in their written statement, admitted the grant of Aforamento to late Shri Ramanata Govind Alve as per Alvara under title No. 1597 and Plan No. 15731 and they alleged that name of the Government is rightly recorded in the occupant's column of survey numbers 21/1 and 21/2. They further stated that demarcation, if any, if required, may be done without affecting the Government's interest in the land.

6. Issues were framed by the trial Court. During the course of evidence before the trial Court, the plaintiff examined himself as PW. 1 and three more witnesses, namely, Prakash Gaonkar, an agriculturist as PW. 2, Vinayak Dharma Karmalkar, a landlord, as PW. 3 and Rasiklal Sridhar Dangui, a Surveyor, as PW. 4. The defendants no. 1 to 6 and 8 examined Shri Mahadev Laximan Gaonkar, Power of Attorney of the said defendants no. 1 to 6 and 8 as DW. 1. The defendant no. 11 examined Head Surveyor attached to the office of D-11, namely Tito D'Cunha as DW. 2.

7. Upon analysis of the entire evidence on record, the trial Court found that PW. 4, the Surveyor has not mentioned as to what is the area and/or what are the dimensions of the land/plot of the plaintiff which is wrongly shown in Form No. I and XIV pertaining to survey no. 21/2 and/or which is wrongly surveyed in the

name of Vithal Vasu Gaonkar. The trial Court found that PW. 4 has neither mentioned the exact location of the disputed land, that is, to say on which side of the Aforamento granted to Vithal Vasu Gaonkar, the said disputed land lies nor has he stated the boundaries of the said disputed land. She further found that the said surveyor has not produced on record any plan prepared by him to show and identify the disputed land alleged to be wrongly surveyed in the name of Vithal Vasu Gaonkar. The trial Court held that the property has not been identified at loco by the surveyor. She has held that the surveyor has not identified at loco as to what are the boundaries of the property given as grant to late father of the plaintiff. She found that evidence given by DW. 2, the Head Surveyor, also, does not help the plaintiff. Trial Court held that the suit basically is for correction of survey records, since the cause of action for filing the suit is not illegal possession at loco or wrong demarcation at loco, but is the erroneous survey records. According to her, therefore, the provisions of Articles 2340, 2341, 2342, 2343 and 2344 of the Portuguese Civil Code are not applicable. Learned Judge held that the disputed land has remained unidentified and it is not known as to on which side and to what extent the area of the property "Datrichem Upor" is included in the property "Gauntonavoilo dando". Trial Court also held that the plaintiff came to know about inclusion of the name of Vithal Gaonkar in the survey records of survey nos. 22/0 and 21/2 in the year 1984, but the suit has been filed in the year 1996. She, therefore, held that the suit is barred by law of limitation. Ultimately, the suit came to be dismissed. The plaintiff is aggrieved by the impugned judgment and decree.

8. Mr. Mulgaonkar, learned counsel appearing on behalf of the plaintiff, submitted that the relief as claimed be read as if the plaintiff has prayed for demarcation of the plaintiff's property "Datrichem Upor" under Alvara no. 1597 and Plan No. 15371 and the defendants' property under title no. 1959 and Plan no. 17639. He submitted that there are clear averments in the plaint and the written statement about the exact areas of the Aforamento belonging to each of the parties. According to him, the trial Court could not have dismissed the suit holding that the disputed portion has not been identified. He further submitted that the trial Court ought to have passed a preliminary decree appointing a Commissioner to demarcate the said two properties. He relied upon Articles 2340, 2341, 2342, 2343 and 2344 of the Portuguese Civil Code and pointed out that in terms of Article 2340, the owner as well as any usufructuary or possessor in his own name has right to compel the owner of the adjoining properties to concur for demarcation of the boundaries between their properties and his own property and in terms of Articles 2341, the demarcation shall be done in accordance with the deeds of each of the parties and in the absence of sufficient title deeds, as per the factual possession. He further submitted that the relief of demarcation need not be preceded by exact proof of identification of the property. He invited my attention to the evidence of PW. 4, namely, Rasiklal Dangui, who has specifically stated that he had verified the new survey plan of survey nos. 21/1 and 21/2 at site and had found that all the 18 stones shown in the survey plan

are also shown in plan no. 15371. He pointed out that PW. 4 had enlarged Plan no. 15371 and had superimposed the same on the survey plan of survey no. 21/1 and 21/2 and had found that survey no. 21/2 forms part of plan no. 15371. His grievance is that only since PW. 4 did not prepare the plan, the learned Judge has rejected his evidence. He further submitted that the trial Court framed additional issue mentioned in paragraph 6 of the impugned judgment behind the back of the plaintiff without giving him opportunity of being heard. He submitted that on this ground also in order to enable the plaintiff to lead appropriate evidence on the said issue and to satisfy the trial Court as to how the plaintiff is entitled for demarcation, the case will have to be remanded to the trial court. It is the contention of the learned counsel for the plaintiff that the trial court has failed to consider the issue of identity of the land on the basis of grants in favour of both the parties. He submitted that the proper course, in the interest of justice, would be to remand the case to the trial Court with a direction to appoint a Commissioner for the purpose of identification and demarcation of the two properties.

9. The learned counsel appearing on behalf of the plaintiff has relied upon the following judgments:

- (i) REMCO Inds. Workers House Bldg. Coop. Soc. Vs. Lakshmeesha M. and Others,
- (ii) Girish Vasantrao Bhoyar and another Vs. Nimbaji Warluji Bambal [2009(4) Mh. L.J. 371]
- (iii) Tajmulhussain Vs. Satish Chavan,
- (iv) Haryana Waqf Board Vs. Shanti Sarup and Others,
- (v) Daya Singh and Another Vs. Gurdev Singh (Dead) by L.Rs. and Others,
- (vi) Antonio Filipe Vaz and others Vs. Comunidade of Margao and others,
- (vi) E. Achuthan Nair Vs. P. Narayanan Nair and Another, .
- (viii) Kashinath Chopade Vs. Purushottam Tulshiram Tekade and Others,

10. The defendants no. 1 to 8 and 12 have been duly served in the appeal, but have chosen to remain absent.

11. Ms. Kholkar, learned Additional Government Advocate appearing on behalf of the defendants no. 9, 10 and 11, submitted that name of the Government has been rightly recorded in the occupant's column of survey nos. 21/1, 21/2 and 22/0, since Government is the owner of the said survey holdings. She submitted that the order dated 28/9/1995 passed by the Deputy Collector under the Land Revenue Code, by which demarcation was refused has not been challenged. She submitted that the provisions of the Portuguese Civil Code cited by the learned counsel appearing on behalf of the plaintiff apply only if the parties are owners of the land. She submitted that in the present case, it is the Government who is the

owner of the land and the parties are only the lessees and, therefore, the said provisions are not applicable. She submitted that in terms of Section 105 of the Land Revenue Code, there is a presumption of correction of the survey records and in terms of Section 107 of the Land Revenue Code since new survey records have come into force, the old cadastral survey has lost its value. She pointed out that the total area of Aforamento of the plaintiff is 83,627 square metres, whereas, that of survey no. 21/1 is 77,250 square metres, which means that missing area of the plaintiff admeasures 6377 square metres. She submitted that the total area of Aforamento of defendants no. 1 to 8 is 67,468/- square metres, out of which an area of 63525 square metres lies in survey no. 22/0, which means that an area of 3,943/- square metres of the said Aforamento of defendants lies in survey no. 21/2. She further submitted that the total area of the said survey no. 21/2 is 7575 square metres and therefore, by deducting the area of 3,943/- square metres, belonging to the defendants, the balance area is only 3632 square metres, which cannot match with the missing area of the plaintiff and then the question would arise as where lies the balance area of 2745 square metres of the plaintiff's Aforamento. Learned Additional Government Advocate pointed out that if the entire missing area of 6377 square metres of the plaintiff is said to be part of survey no. 21/2, then the balance area of said survey no. 21/2 would be only 1198 square metres and in that event the defendants no 1 to 8 would loose an area of 2627 square metres and the question would arise as to where the said area of 2627 square metres lies. According to the learned counsel unless this dispute is solved, the department would not be in a position to demarcate the two properties at site. She, therefore, submitted that the suit has been rightly dismissed by the trial Court.

12. I have gone through the records and proceedings carefully. I have considered the submissions made by the parties and also gone through various judgments cited by the learned counsel for the plaintiff.

13. The first point which arises for determination is whether the suit is barred by law of limitation. In the case of "Daya Singh" (supra), the Apex Court has held that mere adverse entry in the revenue records does not give rise to cause of action and that right to sue for declaration accrues when there is a clear and unequivocal threat to infringe a right. In view of the above, merely because the plaintiff came to know about the inclusion of name of Vithal Gaonkar exclusively, in other rights column, of the survey records of survey no. 21/2 in the year 1984 and because the suit was filed in the year 1996, it cannot be said that the suit is barred by law of limitation. Mere adverse entry in the survey records and the knowledge of the same may not give cause of action. Cause of action accrues when there is threat to infringe a right. According to the plaintiff, as averred in the plaint, cause of action to file the suit accrued to him when the prayer for demarcation of the property under survey no. 21/2 was rejected by the Dy. Collector, Quepem by order dated 28/9/1995. Hence, the suit for demarcation of the property cannot be said to be barred by limitation. In this regard, the finding of the trial Court that the suit is barred by law of limitation is erroneous and is

set aside.

14. The next points that arise for determination are as under:

(i) Whether the plaintiff has proved that during the recent survey, major portion of the Aforamento granted to late Ramanata Govind Alve under title No. 1597 and Plan No. 15371 came to be surveyed under nos. 21/1 and remaining area of the said Aforamento came to be surveyed under no. 21/2 of Maulinguem village?

(ii) Whether demarcation of the Aforamento under title no. 1597 and Plan No. 15371 and Aforamento under title No. 1959 and Plan No. 17639, vis-?-vis the land under recent survey nos. 21/1, 21/2 and 22/0 of Maulinguem village is possible without proper identification and location of the Aforamento of the plaintiff?

15. There can be no dispute that local investigation is essential for the purpose of resolving the matter in dispute, when the controversy is regarding the identification and location of the land. In such a case, trial court should appoint a commissioner, preferably a trained surveyor. In the case of "Girish Vasantrao Bhoyar" (supra), the learned Single Judge of this Court has held that in a suit filed against petitioners to remove the encroachments and to place respondent in vacant possession, appointment of commissioner to measure the lands and carrying out the local investigation is justified in facts and circumstances of the case. In the case of "Tajmulhussain" (supra), in a suit for perpetual injunction for restraining the defendant from obstructing the plaintiffs' possession, there was dispute as to the location of the land in a particular survey number. The plaintiff's application for appointment of Commissioner to measure the land was rejected and even the application for review was rejected. In the Revision Application filed before this High Court, appointment of Commissioner was ordered. In the case of "Haryana Waqf Board" (supra), the controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial Court was rejected. The Apex Court held that the said application was wrongly rejected and the High Court ought to have considered whether in view of the nature of the dispute and in the facts of the case, local Commission should be appointed for the purpose of demarcation in respect of the suit land. The judgment and decree passed in the second appeal was set aside and the High Court was requested to decide the second appeal in the light of the observations made above. In the case of "Kashinath" (supra), the plaintiffs had filed a suit for declaration that the suit site is owned by them and the defendants be restrained from interfering with their possession over suit site. The house and the open land in front of the house of the plaintiff were described in the suit map which formed part of the decree. It was held that the presumption of accuracy can be drawn only in favour of maps which satisfy the requirements prescribed by first part of section 83 of the Evidence Act. Since accuracy of the map was not established and since neither the city surveyor nor any expert had been appointed for the purpose of making local investigation, the matter was

remanded to the trial Court to appoint commissioner or surveyor.

16. In the case of "E. Achuthan Nair" (supra), the Apex Court has held that a suit for demarcation of boundary separating adjacent lands of different owners is maintainable even if plaintiff himself is uncertain about the precise boundary. It has been observed that whenever there is dispute between two parties as regards the location of a boundary separating their neighbouring properties and if on demand to co-operate in fixing the boundary it is not given, a suit will lie at the instance of the demanding party. It has been held that appointment of Commission by Court in such situation is proper. Therefore, there is force in the submission of learned Counsel appearing for the plaintiff that the relief of demarcation need not be preceded by exact proof of identification of the property. Thus, even if the plaintiff is not sure about the boundary of his property, he can file suit for demarcation of the boundary of his property separating his land from adjacent lands of different owners. But, in my view, if such plaintiff files suit against only one adjacent owner, then he is bound to prove that the disputed portion of his property has gone into the property of the said one adjacent owner only and requires to be separated, though he may not be certain about the precise boundary. If the plaintiff himself is not sure as to where disputed portion of his property has gone, then he will have to file the suit against all the surrounding adjacent owners.

17. In the case of "Remco Inds. Workers House Building Co-op. Socy." (supra), the Apex Court has held that where identity of the land under two grants is vital to the just decision of the case, the powers of the appellate Court are not inhibited by the acts or omissions of the parties. Rule 25 of Order 41 of CPC empowers the appellate court to frame an issue and remit it for trial which has been omitted to be granted and tried by the trial court and which appears to the appellate court essential to the right decision of the case. It has been held that Rule 23-A of Order 41 introduced by the CPC Amendment Act No. 104 of 1976 w.e.f. 1.2.1977 confers powers on the appellate court to remit whole suit for re-trial.

18. In the light of the above Judgments, it is to be seen whether is necessary to remand the case to the trial Court to appoint a Commissioner to locate, identify and demarcate the property of the plaintiff vis-?-vis that of the defendants no. 1 to 8.

19. The Aforamento of Vithal Vasu Gaonkar totally admeasures 67468 square metres. There is no dispute that survey no. 22/0 forms part of the Aforamento of Vithal Gaonkar. The area of survey no. 22/0 is 63525 square metres whereas the total area of survey no 21/2 is 7575 square metres. If the Aforamento of Vithal Gaonkar is taken to be surveyed under survey no. 22/0 and partly under survey no. 21/2 of Maulinguem village, then it will mean that an area of 3943 square metres of the Aforamento of said Vithal Gaonkar lies in survey no. 21/2. In that case, the extra area in survey no. 21/2 which does not form part of Aforamento of Vithal Vasu Gaonkar would be 3632 square metres. The total area of the

Aforamento of father of the plaintiff is 83627 square metres. There is no dispute that survey no. 21/1 is part of the said Aforamento. But survey no. 21/1 admeasures 77250 square metres. Hence, an area of 6377 square metres of the Aforamento of the plaintiff's father is missing. If the said entire missing area of 6377 square metres of the Aforamento of plaintiff's father falls in survey no. 21/2, then it will mean that an area of 1198 square metres only will remain balance and in that case an area of 2745 square metres of the Aforamento of Vithal Vasu Gaonkar would be missing.

20. There is no dispute regarding the areas of the Aforamentos of the respective parties. The total area of the two Aforamentos would be 1,51,095 square metres. There is also no dispute that the entire survey no. 21/1 is part of the Aforamento of the plaintiff's father. Similarly, there is no dispute that the entire survey no. 22/0 forms part of the Aforamento of the husband of the defendant no. 1. The total area of survey holdings no. 21/1, 21/2 and 22/0 is 1,48,350 square metres only. Hence, for making up the area of both the Aforamentos, an additional area of 2745 square metres is required. Land from some other survey number/s, i.e. other than survey nos. 21/1, 21/2 and 22/0, is required for making up the total of both the Aforamentos. Certainly there is dispute whether the entire balance(missing) area of 6377 square metres of the Aforamento of plaintiff's father, or any portion thereof, lies in survey no. 21/2. The defendants have specifically pleaded in their written statement that the plaintiff has no right, title or interest of whatsoever nature to any portion of the land bearing survey no. 22/0 and 21/2. By way of demarcation, therefore, the plaintiff is claiming the area from survey no. 21/2 which otherwise is claimed by the defendants. Survey holdings no. 21/1 and 21/2 are adjacent to one another. Similarly, survey holdings no. 21/2 and 22/0 are adjacent to one another. Merely because the southern boundary of Aforamento of plaintiff's father touches the northern boundary of Aforamento of the husband of defendant no. 1, and southern boundary of survey no. 21/1 touches the northern boundary of survey no. 21/2, that does not prove that the entire balance area of 6377 square metres of the Aforamento of plaintiff's father or any portion thereof lies in survey no. 21/2. There are survey nos. 17, 19 and 23 on other sides of survey no. 21/1. It was incumbent upon the plaintiff to have engaged an expert surveyor who had to superimpose the Plan no. 15371 of title no. 1597 on the survey plan of survey nos. 21/1, 21/2 and other surrounding survey nos., after preparing all the plans in the same scale and identify the fixed stone marks and based on the same draw another plan as to show where the balance area of the Aforamento of the plaintiff's father lies. This exercise has not been done.

21. In paragraph 4 of the plaint, it is pleaded that the Aforamento of the plaintiff's father, to a major extent, came to be surveyed under no. 21/1 having an area of 77250 square metres while a substantial area from the remaining area of the said Aforamento came to be surveyed under no. 21/2. In paragraph 11 of the Plaint, the plaintiff has pleaded that it is necessary to demarcate the southern boundary of the Aforamento "Datrichem Upor" under title no. 1597

based on the Plan no. 15371 vis-?-vis the northern boundary of Aforamento of Vithal Vasu Gaonkar under title no. 1959 based on Plan no. 17639 and whatever area of the Aforamento under title no. 1597 and Plan no. 15371 is shown in survey no. 21/2 should be excluded and taken out and the same should either be included in survey no. 21/1 or a separate survey holding should be given to the separated area and the same should be recorded in the name of late Ramanata Govind Alve. Thus, though the plaintiff very well knew that the missing area of the Aforamento of his father is 6377 square metres, however, he has not pleaded that the entire said missing area admeasuring 6377 square metres falls in survey no. 21/2. As already stated above, prior to the filing of the suit, the plaintiff did not carry out the exercise of engaging an expert to draw a plan showing that the said entire missing area falls in survey no. 21/2.

22. PW. 1, who is the plaintiff, has stated in his Affidavit-in-Evidence that the Aforamento granted to his father, to a major extent, having an area of 77250 square metres, came to be surveyed under No. 21/1 of Maulinguem village while a portion thereof came to be surveyed under no. 21/2. PW. 1 did not state that the entire remaining area came to be surveyed under no. 21/2. He did not specify the area of the Aforamento which came to be wrongly surveyed under no. 21/2. PW. 2, Prakash Gaonkar and PW. 3, Vinayak Karmalkar have specifically stated in their Affidavit-in-Evidence that a portion of the Aforamento of the plaintiffs which falls in survey no. 21/2 admeasures about 7500 square metres and that this land falls within the barbed wire fencing. If PW. 2 and PW. 3 are believed, then total area of the Aforamento belonging to plaintiff's father becomes 84750 square metres, which is admittedly not possible as the said total area is 83,627 square metres.

23. PW. 4, Mr. Dangui, the surveyor engaged by the plaintiff, has stated that he had referred to the blue print of the Plan no. 15371, xerox copy of the Plan no. 17639, survey plan of survey nos. 21/1, 21/2 and 22/0 and the Forms No. I & XIV pertaining to the said properties. According to PW. 4, he found all eighteen boundary stone marks as per the Plan no. 15371, at the site. He has further stated that he enlarged the Plan no. 15371 and superimposed the same on the survey plan of survey nos. 21/1 and 21/2 and found that survey no. 21/2 forms part of the Plan no. 15371. He stated that after verifying the Plan no. 15371 and the survey plan pertaining to survey no. 21/1 and 21/2, he came to the conclusion that survey nos. 21/1 and 21/2 comprises of the property "Datrichem Upor" granted by way of Aforamento to Shri Ramanata Govind Alve. According to him, survey no. 21/2 is part of property "Datrichem Upor" and not that of the property "Gautanavoilo Dando". Even DW. 2, the Head Surveyor of defendant no. 11 stated in his cross-examination that he found that survey no. 21/2 forms part of Aforamento land granted to said Alve. The above is impossible as the total area of Aforamento under Plan no. 15371 is 83,627 square metres whereas the total area of survey nos. 21/1 and 21/2 together is 84,825 square metres. Hence, if total area of survey no. 21/2 is out of the Aforamento of the plaintiff's father, then plaintiff gets more area than that of the Aforamento. If the balance

area of 6377 square metres of the Aforamento of plaintiff's father is taken to be the part of survey no. 21/2, then what would remain in that survey no. 21/2 is an area of only 1198 square metres and thereby the defendants would lose an area of 2745 square metres of their Aforamento. PW. 4 did not produce any plan prepared by him by alleged superimposition of the plans. PW. 4 did not identify the property "Gautonavoilo Dando" at loco. He did not identify at loco the properties on eastern side, western side and northern side of the property under title no. 1597.

24. Thus, the plaintiff has miserably failed to prove that the balance area of the Aforamento granted to his father, all or portion thereof, lies in survey no. 21/2. It may be that the plaintiff need not identify exactly as to where in survey no. 21/2 his balance land lies, as that exercise can be done by a commissioner ordered to demarcate the property, on the basis of the plans and other documents. However, unless and until the plaintiff proves that his entire balance land lies in survey no. 21/2 only, question of demarcation of the southern boundary of "Datrichem Upor" under Alvara No. 1597 and Plan no. 15371 vis-?-vis the northern boundary of the property "Gautonavoilo Dando" under title no. 1959 and Plan no. 17639 and the plans of survey nos. 21/1, 21/2 and 22/0 and separation of the area of the property "Datrichem Upor" included in survey no. 21/2, does not arise. There is no need for this Court to go into the question whether Articles 2340 to 2344 of the Portuguese Civil Code are applicable or not.

25. The plaintiff has, inter alia, prayed for a direction to the Directorate of Land survey, Panaji or the Office of the Inspector of Survey and Land Records, South Goa, Fatorda, Margao, to correct/amend the survey records. Insofar as prayer to direct Land Survey Department to amend the survey record, is concerned, it is well settled that such a direction cannot be given by Civil Court in view of provisions of The Goa, Daman and Diu Land Revenue Code, 1968 (The code). Section 106 of The Code provides that no suit shall lie against the Government or any Officer of the Government in respect of a claim to have an entry made in any record or register that is maintained under this Chapter or to have any such entry omitted or amended. Such function is assigned to revenue authorities under The Code. In the case of Narayan Mugu Teli, Since deceased through heirs and legal representative (Smt. Bhagirathibai Narayan Rahate, Shri Vasant N. Rahate, Shri Sakharam N. Rahate, Shri Sakharam N. Rahate, Shri Anant N. Rahate, Shri Chandrakant N. Rahate, Smt. Vaishali Yeshwant Rahate, Smt. Indira Dhondur Salunke and Smt. Bhagyashri Prakash Ikade) Vs. Ramchandra Mugu Teli and Others , it has been held that it is not the function of Civil Court to issue direction for making or deleting entries in the record of rights and this function is assigned to the revenue authorities under the Maharashtra Land Revenue Code. It is further held that the proper relief which could be prayed was for declaration of the title to the suit land and once such a declaration is obtained from the Court, the revenue authority will have to make or correct the entries accordingly in the record of rights in respect of the suit land. The provisions of The Code are almost similar to the Maharashtra Land Revenue Code. In the case of "Anandi

Bhicaro Veluskar and others Vs. Kustanand Vithu Veluskar and others", reported in [2006 (6) Bom. C.R. 384], learned Single Judge of the Panaji Bench of this Court has relied upon the judgment in the case of "Narayan Mugu Teli" (supra), and has held that the appellate Court could not have directed insertion of names of the plaintiffs in the survey records. Again, in the case of Narendra Voikunt Raikar Vs. Amaral Pereira, , a similar view has been taken. Learned Counsel for the plaintiff contends that there is no need for the plaintiff to ask for declaration in a suit for demarcation. In the case of "Antonio Vaz" (supra), relied upon by the learned Counsel appearing on behalf of the plaintiff, it has been held that relief of demarcation implies that plaintiff claims to be owner of the property and consequently it is unnecessary and redundant for the plaintiff to seek declaration of his title also. But what is relevant is that it is further held in the case supra that the plaintiff will not get the relief of demarcation unless and until he proves his title to the property which is sought to be demarcated. In the present case, since the survey record is promulgated and the name of the husband of the defendant no. 1 is shown as lessee of survey no. 21/2, and since there is presumption of correctness of the survey entries, as provided by Section 105 of The Code, the plaintiff will have to prove his title to the land admeasuring 6377 square metres, from survey no. 21/2. In any case, the plaintiff is not entitled to get the relief of amendment of the survey records from the Civil Court.

26. In the circumstances above, the propositions laid down by the judgments in cases relied upon by the learned Counsel appearing for the plaintiff do not help the plaintiff in any manner. Both the points (i) and (ii) formulated in paragraph 15 above for determination get answered in the negative. The impugned judgment and order is in accordance with the settled principles of law based on correct appreciation of the evidence on record. No interference is called for. In the result, the appeal is dismissed, with no order as to costs.