

(2008) 04 BOM CK 0134

In the Bombay High Court

Case No : Second Appeal No. 24 of 2008

Shri Vithal Narayan Prabhu Dessai alias Mahadev Narain
Pwrabhu Gaunkar (since deceased) and others

APPELLANT

Vs

Comunidade of Colomba
 Shri Vithal Narayan Prabhu
Dessai alias Mahadev Narain Prabhu Gaunkar (since
deceased) and others Vs Shri Benedito Costa Antao and
others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Citation : (2008) 04 BOM CK 0134

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

Bench : Single Bench

Advocate : M.B. Da Costa, with Mr. J.A. Lobo, for the Appellant;

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Mr. M. B. Da Costa, learned Senior Counsel on behalf of the Appellants. Both these Second Appeals can be conveniently disposed of by this common Order.

2. The Appellants herein were the Plaintiffs in R.C.S. No.38/85 and Defendants in R.C.S. No.53/90.

3. R.C.S. No.53/90 was filed against the Appellants-Defendants by the Comunidade of Colomba claiming that the disputed property surveyed under No.63/1 was part of their property known as "Borongali Dongor" situated at Colomba, enrolled under matrix No.583 but not having any land registration number and bounded on the east by water stream and the property of Naraina Voicunta Porob Gaonkar, on the west by the property of Quexova Sinai Sirvoicar and presently of Anant Prabhu Dessai and on the north by the property of Shri Shantadurga surveyed under No.165/1 and others mentioned in the plaint.

4. On the other hand, it was the case of the Appellants-Defendants that the

disputed property along with survey No.60/4 was part of their property known as "Bandavoril Moll" alias Chudemola having land registration No.2773 and bounded on the east by the property of Venkatesh Gaonkar, on the west by the property of Colomba, on the north by the property of Purshottam Gaonkar and on the south by the property of Purshottam Porob Gaonkar. As per the Appellants, the Defendant No.1 Benedito Antao(in R.C.S. No.38/85) was a lessee of the Appellants in respect of a small portion who was permitted out of compassion to construct a house therein in the year 1975. However, as per the Defendants including the said Benedito Antao the disputed property did not belong to the Plaintiffs/Appellants and that the same was part of the property claimed by the Comunidade. They also stated that the Plaintiffs/Appellants had given false boundaries which did not fit survey nos.60/4 and 63/1 taken together.

5. The learned trial Court in R.C.S. No.53/90 came to the conclusion that the witnesses examined by the Defendants(Appellants herein) do not help the Defendants in proving that the land on the western side of the mullah was that of the Defendants. The learned trial Court also came to the conclusion that the documentary evidence of land registration No.2773 and the matrix nos. 511, 512 and 513 also do not help the Defendants to bring home the point that the land on the western side of the mullah and surveyed under No.63/1 is part of the property of the Defendants. The learned trial Court referred to certificate of matriz No.583 produced by the plaintiff-Comunidade and observed that as per the said certificate the eastern boundary was a stream and Chudia Mollo of Naraina Voicunta Porob Gaonkar. The trial Court also observed that survey no.63/1 admittedly has on the east a water stream and survey no.60/4 which lies on the other side of the mullah and which is Bandavoril Mollo or Chudia Mollo of the Defendants. Ultimately, the learned trial Court came to the conclusion that survey no.63/1 was not part of the property of the Defendants Bandavoril Mollo or Chudia Mollo.

6. In R.C.S. No.38/85, the learned trial Court took note of the admission of the Plaintiffs that they had stated that the boundaries of their property under matriz nos.511, 512 and 513 were not correct. All the said matriz numbers had a water stream on the west. The learned trial Court also observed that if the Plaintiffs had any land on the western side of the stream and if survey no.63/1 was a part of the property Bandavoril Mollo or Colomba or Chudia Mollo of the Defendants then the southern boundary of the Plaintiffs property would be the land of the Comunidade for admittedly survey no.64/1 belongs to the Comunidade but none of the matriz nos. 511, 512 and 513 have on the south or on the west the land of the Comunidade. The learned trial Court also noted that the land registration certificate No.2773 did not show the southern boundary as the land of the Comunidade and other northern boundaries also did not tally.

7. The Appeals filed by the Appellants to the first appellate Court came to be dismissed by separate Judgments dates 30-10-2007.

8. Learned Senior Counsel on behalf of the Appellants contends that the

Comunidade did not produce the "tombo" or plan of the Comunidade. It is nobody's case that the Plaintiff-Comunidade had a tombo prepared since otherwise it is common knowledge that some of the Comunidades do not have their tombo/plan. Learned Senior Counsel further submits that without producing any document of title, the Plaintiff-Comunidade has been held to be the owner in possession of the disputed property surveyed under No.63/1. He further submits that the Appellants-Defendants had produced their title document, namely the certificate of inscription and description having No.2773 and yet the suits were decided against the Appellants. However, learned Senior Counsel was unable to demonstrate with reference to the said Certificate of Inscription and Description that the disputed survey no.63/1 was part of the Appellants property either with reference to the boundaries or adjoining owners.

9. Admittedly, the property claimed by Appellants did not have Land Registration number. Both the Courts below have come to the conclusion that the said Certificate of Inscription and Description produced by Appellants did not help the case of the Appellants at all. On the contrary, both the Courts below after considering the Matriz Documents produced by both the parties as well as oral evidence led in support of their respective claims have come to the conclusion that the disputed survey no.63/1 is part and parcel of the property Borongali Dongor/Borgali Dongor situated at Colomba and enrolled under matriz no.583 and not part of the property claimed by the Defendants as Bandavoril Mollo/ Chudia Mollo having matriz nos.511, 512 and 513. That, in my view, is a finding of fact given by the trial Court and endorsed by the first appellate Court and as such it does not give rise to any question of law much less a substantial question of law for these two Second Appeals to be entertained by this Court. Consequently, both these Second Appeals are hereby dismissed in limine.