

(2014) 01 BOM CK 0066
In the Bombay High Court
Case No : First Appeal No. 74 of 2007

Subray Narayan Prabhu Dessai	Vs	APPELLANT
Government of Goa		RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3, Order 7 Rule 6
Forest Act, 1927 — Section 20, 4, 6
Specific Relief Act, 1963 — Section 34

Citation : (2014) 01 BOM CK 0066

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : N. Sardessai, Advocate for the Appellant; E. Afonso, Government Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The appeal is filed against the Judgment and decree of Special Civil Suit No. 66/1997/(old) which was pending in the Court Civil Judge, Senior Division, Quepem. The suit filed by the appellant was for declaration of his title in respect of agricultural lands, to give survey numbers to the suit property, for setting aside the record of the revenue survey made in favour of the respondent and for relief of injunction is dismissed by the trial court. Both the sides are heard.

2. In short, the facts leading to the institution of the appeal can be stated as follows:

The suit was filed in respect of the area of 2,02,000 square metres from survey no. 62/0 and survey no. 65/1 situated in village Rivona, South Goa.

It is the case of the appellants/plaintiffs that agricultural land which was known as " Predio Rustico Demominado Borodo Poiquim Pandouaglle or Pandousoddo" and which was registered in the office of Registrar of Sanguem at serial no.

25813 from village Rivona, South Goa was owned by the parents of the plaintiff no. 1. It is the case of the plaintiffs that under Gift document dated 6/11/1958, the parents of the plaintiff no. 1 gave this property to plaintiff no. 1 and since then he has been in possession of the property as the owner. It is contended that during general survey of the lands different portions of this property came to be given different numbers like 64/2/(part), 86/1(part), 66/54(part), 66/53, 59/4(part), 59/8(part), 62/0(part), 66/55, 64/1 and 65/1 from village Rivona.

3. It is the case of the plaintiffs that though the area of the property was not mentioned in the gift document, the boundaries were given and they were as under:

Toward the East-the property called as Zamblimollo.

Towards the West-the property called as Pandou Xettoda

Towards the North-the property known as Mota cutumbona and the property of the Dev Vimleshwar of Rivona and towards the South, the property known as Shidem and Paddi Bain.

4. It is the case of the plaintiffs that out of the property bearing survey no. 59(part), the property admeasuring 70,200 square metres is encroached by one R. Prabhu and to recover this property, the plaintiffs have filed suit bearing no. 38/92 in the same Court.

5. It is the case of the plaintiffs that portion admeasuring 2,02,000 sq. metres from survey no. 62/0 belongs to the plaintiffs but it is wrongly recorded in the revenue record in the name of respondent/(Government)/Forest Department. According to the plaintiffs, entire portion of survey no. 65/1 is also wrongly recorded in the name of the Forest Department.

6. It is the case of the plaintiffs that he had allowed one Mr. Barnetto to deposit mineral ore in the suit property in the past. According to the plaintiff, one Purso Bonaiker was mundkar of the plaintiff and he has been in possession of the said property, construction done in survey no. 65/1 since last 25 years. According to the plaintiff, the portion of the survey no. 62/0 is separated from other portion of the survey by rubble stones, since last 50 years. It is the case of the plaintiffs that the suit property is rocky and uncultivable.

7. According to the plaintiffs, the defendant/Forest department has erected cranes on the boundary between the survey no. 65/1 and the suit property surveyed under survey no. 62/0. It is their case that initially they thought that only survey no. 62/0 is recorded in the name of the Forest Department and only after starting of the proceeding before the Dy. Collector that they realized that survey no. 65/1 was also registered in the name of the defendant. During the pendency of the suit, according to the plaintiff, the defendants allowed one agency to do mining activities in the suit property. To that effect the plaint was amended.

8. It is the case of the plaintiffs that remaining portion of survey no. 62/0 belongs to the Comunidad of Rivona but since they abandoned the claim over the said portion, it is standing in the name of the defendant.

9. It is the case of the plaintiffs that they had filed application before the Revenue authority to correct the entries made in the revenue record. It is their case that proceeding came to be dropped as the survey was promulgated and it is case of the plaintiff that the present suit is filed as provided u/s 14 of the Goa, Daman and Diu, Land Revenue Code, 1968 and Rules. It is the case of the plaintiff that in view of the section 14 of the Code, the suit is within limitation.

10. The plaintiffs have prayed for the following reliefs.

i. That they are owners in possession of the two suit lands and that the name of the defendant/Forest Department is wrongly recorded in the Revenue record of the suit plots.

ii. For direction to Revenue department to give separate survey numbers to the suit properties described in the plaint and delete the name of the defendant from the revenue record in respect of the suit property.

iii. Injunction against the defendant to protect possession.

11. The suit came to be filed on 14/10/1997.

12. By filing written statement, the defendants have denied the entire case of the plaintiffs in respect of the ownership and possession. The defendants have denied that during revenue survey, a mistake was committed by the revenue authority and due to that wrong entries were made in the record. It is denied that Comunidade of Rivona was owner of part of survey no. 62/0. It is the case of the defendant/forest department that survey no. 62/0 and 65/1 are part and parcel of reserved forests. It is the case of the defendant that the first survey number is admeasuring 11,51,000 sq. metres and the second survey no. is admeasuring 11,725 sq. metres. It is the case of the Forest Department that the reserved forest created at this place which includes other lands also is known as "Xiddemeucullem" and also "TOLSAI" from Rivona. It is also the case of the defendant that notification in that regard was first issued on 30/6/1988 under Forest Act in Official Gazette and then further notification u/s. 6 was also issued. It is the case of the forest department that prior to the survey of the lands, the suit properties were belonging to the forest department and they were listed in the property of the forest department.

13. It is the case of the defendants that forest department has planted acacia trees and other trees in the suit property and in the other part of the forest. It is contended that boundary of cranes is created by the forest department around the forest area including survey numbers. The case of the plaintiffs that one Purso was his mundkar and mining activity was going on in the suit property is denied by defendant.

14. It is the case of the defendants that survey nos. 18, 62, 60, 59(part), 61(part) and 65 of Rivona village had area admeasuring 266.94 hectares which is included in Reserved forest and the officer of the forest department has confirmed by issuing proclamation that this area is the same area which was listed in the property of forest in the past, much prior to the liberation of Goa. It is the case of the defendant that the old cadestral map and revenue map need to be seen and superimposed in this regard and the area under the forest area was at serial no. 17222.

15. It is the case of the defendants that the suit of the plaintiffs is time barred. It is contended that the survey was promulgated about 15 years prior to the date of filing of the suit but no objection was taken by the plaintiffs at the time of promulgation.

16. The trial court framed the following issues:

(i) Whether the plaintiffs prove that they are owners in possession of the suit plots bearing survey no. 62/0 and survey no. 65?

(ii) Whether the defendants prove that the suit properties belong to them?

(iii) Whether the defendants prove that suit is barred under the Indian Forest Act in view of publication to notification u/s 4?

(iv) What relief? What order?

17. Issues no. 1 to 3 are answered in negative by the trial court.

18. In view of the case of the plaintiffs and the reliefs claimed by the plaintiffs, issue no. 2 framed against the defendants was unwarranted. In a case filed for declaration of title, the trial court is expected to decide the issue of title of plaintiffs. In view of this position, the answer given to issue no. 2 cannot be used as against defendant/forest department.

19. The plaintiffs have examined many witnesses, including one Civil Engineer Mr. K.P. Prabhu dessai. From the plaint, it can be said that the plaintiffs have not come with a case that the private surveyor had come to such a conclusion and so there was cause of action. The case of the plaintiffs shows that on the date of plaint, the plaintiffs were not aware of the fact that survey no. 65/1 was wrongly shown in the revenue record in the name of the defendants. Accordingly, they were not certain about total area which the plaintiff no. 1 had got under the so called Gift document of 1958. As the basic document is the so called gift document, it was necessary for the plaintiffs to prove that in the year 1958, there was the property as described in the document in existence and there were the lands as described on the boundaries of these properties as shown in the gift document. This could have been done by producing similar documents or documents of title of the relevant period of surrounding properties. This could have been done by examining owners of the surrounding properties. Only on the basis of such evidence, the plaintiffs could have proved that the property

bounded by the boundaries described in the document of 1958 was gifted to plaintiff no. 1 the suit property is part of that property and he became owner in the year 1958. The area could have been ascertained on that basis.

20. One certificate of registration was created in the office of the Registrar on the basis of the aforesaid document. This document dated 29/3/1971 shows that the aforesaid document was registered at serial no. 25813 in the Book no. 69. There is one discrepancy in the certificate. On south of the so called gifted property the certificate shows that there was a property described as Paddi Bain and property Shidem. The boundaries as given in the gift document if read the proper description would be Xidem and not Shidem.

21. There is one more document in respect of the property of plaintiffs which is matriz certificate. In this certificate the property of the plaintiffs is described and the boundaries are described as under:

East and South by public road.

West-Xeldem of Naraina Manguexa Sinai and others and north Pandovassodo of Comunidade.

22. The matriz document is treated as equivalent to the revenue record. The boundaries mentioned in this document are not consistent with the boundaries described in the aforesaid two documents and also in the plaint. No explanation at all is given by the plaintiffs in respect of this inconsistency.

23. The provision of Order VII Rule 3 of C.P.C. reads as under:

Where the subject matter of the suit is immovable property.-Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

24. The requirement mentioned in this provision is there to see that the decree given by the court is executed with all precision and without any confusion. If there is no such description of the property in the plaint and decree is given, it becomes difficult to identify the property both for executing court and other persons. It is true that the description of boundaries would prevail over other description in ordinary course, but to identify a suit property, which is only portion of survey number, the boundaries of the said portion need to be described so that the suit properties can be identified. In view of the documents mentioned above, it can be said that on the date of the suit and even till today there is confusion over identification of the property described in the so called gift document. This Court has no hesitation to hold that the property described in gift document cannot be identified on the basis of the evidence given by the plaintiffs and the witnesses. In any case, it was necessary for the plaintiffs to prove that some portion of survey no. 62/0 falls within the boundaries described in the Gift document and survey no. 65/1 also falls within those boundaries.

When no area was given in the document of gift, the evidence of aforesaid nature was necessary.

25. The oral evidence given on the record shows that general survey was done under provisions of Land Revenue Code (in short Code) and Rules of 1968. The witness, Civil Engineer Mr. Prabhudessai examined by the plaintiffs has stated that the survey was probably done prior to the year 1980. Admittedly, in the Form I and XIV, the name of the defendant, of Forest Department is entered in title and possession column of both suit lands. It can be said that the survey was started and completed prior to 1980.

26. The provisions of the Code like Chapter XV relate to survey of lands, Chapter VIII relates to preparation of land record and Chapter IX relates to determination of boundaries at the time of survey.

27. The provisions of Sections 49, 59, 95, 107 and 112 of the Code show that if there was some record in existence to show title that record was expected to be taken into consideration by the survey officer. If there was previous survey or other numbers earlier given to some property or the property was registered, these records were expected to be considered.

28. Section 99 of the Code shows that if the parties are claiming any right or interest in the property they are expected to produce the relevant documents and give necessary proof to see that entries are made in their favour on that basis.

Section 112. Determination of field boundaries.-If at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the land records and according to occupation as ascertained from the village officers and holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

In view of Section 113 of the Code, the dispute is required to be taken before the Collector and the Collector is expected to give the decision on the dispute. Section 114 of the Code runs as under:

Section 113. Disputes regarding boundaries between villages, survey numbers and subdivisions.-If any dispute arises concerning the boundary of a village or a field or a holding which has not been surveyed, or if at any time after the completion of a survey a dispute arises concerning the boundary or any village or survey number or sub-division of a survey number, it shall be decided by the Collector after holding a formal inquiry, at which the village officers and all persons interested shall have an opportunity of appearing and producing evidence.

29. In view of the procedure given in the Code, it was necessary for the plaintiffs

to show all the record and give all the information to the survey officer for making entries in their favour. The case of the plaintiffs show that in respect of some lands, the names of the plaintiffs are entered in the revenue record. The survey numbers are mentioned in the plaint by the plaintiffs. Thus, it is not open for the plaintiffs to claim that they had not shown the aforesaid record to the survey officer and the entries were not made on the basis of the record. In the present case, it was open to the plaintiffs to produce copy of relevant revenue record and forms prepared during survey to show that the basis on which the survey numbers were given to the properties standing in their names. It was necessary for the plaintiffs to show that the previous cadastral survey maps, if any and the maps prepared during general survey are inconsistent. This is also not done by the plaintiffs.

30. Form I and XIV in respect of survey no. 61 is produced and it shows that property given name "Zambli Malo" is standing now in the name of Chicodo. This boundary can be found in the document of 1958. Therefore, it was necessary for the plaintiffs to examine the owner of this property and produce record of his title document. He is not examined. Similarly, it is the case of the plaintiff's that one Damodar P. Dharwardkar is the owner of the property known as Xidem. This witness is also not examined. The revenue map of the village could have helped plaintiffs to support the evidence of these witnesses. No such village map is also produced.

31. On the other hand, the forest department has produced copy of official gazette dated 11/1/1951 to show that from said village Rivona, many lands were belonging to Government/forest department. All the lands from Rivona were demarcated by laterite stones. There is record like correspondence made by Forest Settlement Officer with the Conservator of Forest. The record shows that on 5/7/1988, the notification was issued u/s. 6 of the Forest Act and after action taken u/s. 4 of the Act on 30/6/1988, area of 266.96 hectares was declared as Talsai forest in the year 1988. Boundary of this portion was given in the notification, but in the year 1995-1996. The survey numbers which were part and parcel came to be mentioned and they were survey nos. 18, 62, 60, 59(Part), 61(part) and 65 of Rivona. The witness, Suhas of the forest department has given evidence that gazette published in the year 1951 includes survey no. 62 and 65 and that time property was described as Devdangar. The list shows Devandongor, Melandor with its parts like Caljor dongor, Caldega dongor, melan dongor i.e. hilly rocky portions were forest portions, forest property. Thus, the case of the forest department is consistent with their record and that record must have been considered by the survey officer at the time of preparation of Record of Rights.

32. The evidence of Civil Engineer appointed as Private surveyor shows that he was appointed prior to the date of the suit and he took many years for preparation of the report. The evidence of this Engineer Prabhu dessai cannot be used against the defendant as the measurements done by this witness was done

behind the back of the defendant. Even if the evidence of this witness is considered, the same is not convincing and is not consistent with the record. It is not possible to believe this witness. The survey needs to be made on the basis of some record and that includes old record. The documents are available in the office of the Registrar and the concerned department of the Government. The evidence of this witness shows that in the examination in chief, he has given information on almost every point of the case of the plaintiff. This is not expected from witness like surveyor. He appears to be an interested witness. In cross examination he has admitted that he carried out survey of only two suit lands and his evidence shows that he did not verify the boundary of entire survey no. 62 but he limited himself with only the boundaries of the suit property from survey no. 62. His evidence shows that the boundaries were not verified on the basis of important documents like matrix document. He did not visit the survey office to see the old cadastral plan.

33. This Court has no hesitation to hold that even if the evidence of this surveyor is used, it cannot prove the title, as the evidence is not sufficient to identify the property described in the so called gift document.

34. The plaintiffs have contended that at least two other adjoining owners have made encroachments and the plaintiffs have filed suit against these persons. It is the case of the plaintiffs that an area of more than 80,000 from the property described in the gift document is encroached by other persons also and for possession of this portion, the plaintiffs have filed two suits. This circumstance shows that the plaintiffs have dispute over the boundary and in respect of encroachment with others also. In view of the nature of the dispute not only the property of the plaintiffs ought to have been measured but the properties of the adjoining owners also ought to have been measured. This was possible after ascertaining area from gift document. This is not done. In any case, in view of the record of the forest officer which started from the year 1951 and which was accepted during revenue survey not much could have been achieved by taking the measurements of all the adjoining lands. Basically, the plaintiffs were required to prove their title over the suit properties and they were required to prove that suit area was given to them under the Gift document.

35. As per Sections 95 and 98 of the Code, the record of possession is also expected to be prepared. Entry about the possession is also expected to be made in Form I and XIV. If the plaintiffs were in possession at any time, of the suit property, during annual inspection which is required to be done to ascertain possession and cultivation, the authorities would have found that the plaintiffs were in possession. In any case, the plaintiffs have not come with a specific case of plantation of trees in the suit property or cultivation in the suit property. The plaintiffs wanted to prove the possession on other circumstances, which are not proved. On the other hand, the plaintiffs have contended in the pleadings as well as in evidence that the defendant/forest department has erected cranes on the boundary and acacia trees are planted in suit property by the forest department.

Thus, there is admission of the plaintiffs in respect of possession of the defendant over the suit property.

36. As per Section 105 of the Code, there is presumption of correctness of the entries in Record of Rights. The revenue entries also speak about possession. After lapse of such time, (more than 17 years) plaintiffs were debarred from disputing the correctness of entries made in favour of the defendants. The entries could have been ignored only if the plaintiffs had proved possession. The submission made by the learned counsel for the appellants that the entries are only for fiscal purpose and they do not give title, is correct. But when the plaintiffs fail to prove the possession and the case of the other side is consistent with the revenue record, the presumption u/s 105 of the Code comes into play. It can be used as one of the circumstances against the case of the plaintiffs.

37. The aforesaid record then leads to other point, that is point of limitation i.e. whether the suit is within limitation or not which needs to be ascertained from the cause of action. The cause of action is not limited only to pleading in plaint. It also includes all material facts which need to be considered for granting the relief claimed in the suit. The suit is filed for declaration of title, but the plaintiffs were not in possession of the suit property on the date of filing of the suit and so the entries made in the revenue record during the general survey are relevant for ascertaining cause of action. In such a case, the cause of action would arise on the date of publication of record of right or promulgation, declaration by the Government u/s 75 of the Code. At the most the time when the entries were actually made in the revenue form, like Form I and XIV, can be considered as the starting point for counting of limitation. The suit is filed for relief of declaration and in view of the relief claimed, this Court holds that the case falls under Article 58 of Limitation Act which is a residuary article of Limitation Act. The reliefs claimed by the plaintiffs involve relief of setting aside revenue record so also declaration of title of the plaintiffs. The limitation period prescribed under this Article is three years. In view of this circumstance, this Court holds that the suit filed by the plaintiffs is not within limitation.

38. In the plaint, the aforesaid circumstances are not mentioned to make out cause of action. It can be said that there is clever pleadings to show that the cause of action was different. It appears that in view of Order 7 Rule 6 of C.P.C., the contention is made by the plaintiffs that first the proceeding was filed u/s. 14 of the Code and after dismissal of the said proceeding, suit was filed. It is the case of the plaintiffs that in view of Section 14(4) of the Code the suit was required to be filed within one year from the date of decision and accordingly he has filed the suit within one year. Though there is such pleading and in the written statement the defendant/forest department has contended that the revenue survey was there and there was promulgation, the trial court has not framed issue of limitation. It appears that with regard to provisions of section 20 of the Indian Forest Act and on the basis of the contentions of the defendants that notification was issued under the Forest Act, to declare the suit property as

Forest, some issue of jurisdiction was framed. The issue could have been there only if there was the proof of title from the plaintiff. The question of determination of such issue arises only on the proof of title. Thus, the issue of limitation was not framed. In any case, it is the duty of this Court also to see that the suit is within limitation. This point was known to the plaintiffs and that can be seen from the pleadings.

39. Exhibit 73 is the copy of the order made by the Deputy Collector in the proceeding filed by the plaintiff u/s 14(3) of the Code. Section 14 says that the suit can be filed within one year of giving of the decision of such proceeding.

Section 14 of the Code is as under:

14. Title of Government to lands, etc.--(1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or beside the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto, which are not the property of any person, are and are hereby declared to be the property of the [] Government subject to right of way, and all other rights, public and individual, legally subsisting.

Explanation:--In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year.

(2) Unless it is otherwise expressly provided in any law for the time being in force or in the terms of a grant made by the Government, the right to mines, minerals and mineral products shall vest in the [] Government and it shall have all the powers necessary for the proper enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the [] Government or by any person as against the [] Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, be decided by the Collector or [an officer authorised by the Government in this behalf.].

(4) Any person aggrieved by an order made under subsection (3) or in appeal or revision there from may institute a civil suit to contest the order within a period of one year from the date of such order, and the decision of the civil court shall be binding on the parties.

(5) Any suit instituted in any civil court after the expiration of one year from the date of any order passed under sub-section (3) or, if appeal or revision application has been made against such order within the period of limitation, then from the date of any order passed by the appellate or revisional authority, shall be dismissed (though limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

40. The aforesaid provision shows that the Collector is expected to decide the dispute in respect of the property described u/s 14(1) of the Code. When the land is not the property of anybody as described in Section 14(1) and there is a dispute of ownership, such dispute can be taken before the Collector. In the present case, there was a survey and on the basis of the inquiry made during the survey, the record was created in favour of the forest department and now there is dispute over the survey and the settlement. For redressal of such grievance not the provision of section 14 of the Code but provisions in Sections 113 and 115 of the Code can be used. In these provisions, the limitation of one year is given. However, it was not open to the plaintiffs to use these provisions in the year 1986-1988, as the survey had become final promulgated prior to 1980, in view of section 75 of the Code and Rule no. 14 of revenue survey Rules 1969 such application could not have been considered by the authority. An attempt was made by the plaintiffs to use Section 14 of the Code for showing that his suit is within limitation. In ordinary circumstances, the suit to challenge such entries could have been filed within one year from the date of cause of action which accrued after the general survey. In the present case the plaintiffs are claiming relief of declaration of title and so Article 58 of the Limitation Act needs to be used. This Court holds that the suit needs to be dismissed on the point of limitation.

41. Section 34 of the Specific Relief Act reads as under:

34. Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

42. The suit is filed for declaration of title claiming that the plaintiffs have been in possession. The Court found that the plaintiffs were not in possession. Plaintiffs ought to have filed suit for possession also and within period of limitation. In view of provisions of Section 34 of the Specific Relief Act as no such relief is claimed, the discretionary reliefs of declaration of title and injunction cannot be granted.

43. On the date of suit, as per the record and the evidence, the plaintiffs were not in possession. It can be said that as on the date of suit, the suit for possession was time barred. Thus, nothing can be achieved by considering the suit on other points.

44. The Learned counsel for the appellant has produced copies of two judgments

delivered by this Court:

(i) Second Appeal No. 24 of 2004 dated 6/12/2013 in the case of Mr. Bento Antonio Gomes alias Antonio Bento Gomes Vs. Rosario Salvador Carneiro and others.

(ii) First Appeal No. 43 of 2008 in the case of Shri Sudesh M. Salelkar and ors. Vs. Forest Department.

On the basis of the observations made by this Court in the second case, the learned counsel made a request to remand the matter back, Commissioner be appointed to identify the property and then the matter be decided by the trial court. This Court holds that in view of the discussion already made, nothing can be achieved by remanding the matter back and by appointing a Court Commissioner.

45. In view of the discussion made above, this Court holds that the appeal is devoid of merits. In the result, the appeal stands dismissed with costs.