(2013) 04 BOM CK 0179

Bombay High Court (Goa Bench)

Case No: First Appeal No. 165 of 2000

State of Goa	APPELLANT
Vs	
Shri Modusudan Camotin Timblo (Shri Auduth Timblo and Others), Smt. Sushilabai Modu Timblo and Shri Daya Bogvonta Mahale	RESPONDENT

Date of Decision: April 5, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 4, Order 20 Rule 4(2), Order 20 Rule 5, Order 41 Rule 23, Order 41 Rule 23A

Citation: (2013) 3 ABR 876 : (2013) 4 ALLMR 594 : (2013) 5 MhLj 233

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

Bench: Single Bench

Advocate: Vivek Rodrigues, for the Appellant; Sudesh Usgaonkar, Advocate for Respondents No. 1(a) to 1(f) and 2, for the Respondent

Judgement

U.V. Bakre, J.

This appeal is filed by defendant no. 2 of Special Civil Suit No. 71/98 (New): Civil Suit No. 20901/65 (Old) against the Judgment, Order and Decree dated 18/8/1999 passed by the Civil Judge, Senior Division, Quepem (trial Court) in the said Suit. The parties shall hereinafter be referred to in the manner in which they appear in the cause title of the said Suit referred to in a paragraph 1 above.

2. Plaintiffs had filed proceedings of temporary injunction before the Comarca Court at Quepem against the defendant no. 1, Daya Bogvonta Mahale, called "Embargo de Obra Nova" or "Servico Novo", which was registered as Processor No. 20070/65. Thereafter, within the prescribed time limit, the said plaintiffs filed the Suit which was registered under

No. 20901/65, against said Daya as defendant no. 1 and the State as defendant no. 2, for following reliefs:

(i) For declaration that the defendant no. 2 to acknowledge that the Plaintiffs are owners and possessors of the property "Purxeaporbulem" situated at Poinguinim, Taluka of Canacona, described in the Land Registration Office under No. 2963 defined in the Plan attached by the Plaintiffs to the said temporary injunction Proceedings No. 20070/65, and consequent removal of the western and southern boundary marks placed on the property of the Plaintiffs;

(ii) For declaration that defendant no. 2 to acknowledge that the military post is situated in the above referred property of the Plaintiffs:

(iii) Said defendant no. 2 to pay to the Plaintiffs compensation of Rs. 60,000/- towards the losses and damages suffered by them.

(iv) The defendants no. 1 and 2 to abstain from doing unlawful acts in the above mentioned property, including the felling of any trees.

(v) Both the defendants to pay to the Plaintiffs compensation of Rs. 1,000/- for the felling of trees, and finally;

(vi) Both the defendants to pay costs and Advocate''s fees.

3. The said Suit pertained to the property known as "Purxeaporbulem", or "Purxea Porbulem" or "Purxea Porbulem" (suit property) situated at Poinguinim of Canacona, described in the Land Registration Office of Quepem under No. 2963 at Book B-10, inscribed in favour of the plaintiffs at book G-28 under No. 22979 and enrolled in the "Matriz" record under No. 89. The plaintiffs claimed that they are the owners in possession of the suit property which has configuration, extension and area as defined in the plan attached to the said proceedings of "embargos" No. 20070. According to the plaintiffs, they had purchased the suit property from Vassudeva Ramacrisna Follo Dessai and wife and Naraina Ramcrisna Follo Dessai and wife, by Notarial Public Deed dated 03/09/1964. The defendant no. 1 was doing illegal works of cutting trees from the suit property due to which the said proceedings were filed and the said proceedings were registered under No. 20901/65. The State, represented by Public Ministry was impleaded as Defendant no. 2, since it was revealed by the Defendant no. 1 that he was only agent of the State having purchased some trees on behalf of his employer Matches Factory from Ponda. Defendant no. 1 claimed that he had purchased some trees from the State in the Government Forest. On account of interference with the suit property by the defendant no. 2, the plaintiffs filed the suit.

4. Defendant no. 1 did not contest the suit. Defendant No. 2 contested the suit and filed written statement claiming that the Plan submitted by the plaintiff as of suit property comprises of a part of Government forest known as "Hatipaula" situated at Poinguinim.

5. Questionnaires were framed on 30/11/1966. Then some queries were framed. Three experts were appointed by the plaintiffs whereas three experts were appointed by the defendant no. 2. They gave their reports.

6. The plaintiffs then examined six witnesses and the defendant no. 2, on its side, examined six witnesses. Various Portuguese documents were produced by the parties. Roznama dated 12/12/1989 in the suit reveals that the plaintiffs had filed written arguments. Defendants were given opportunity to file written arguments. Plaintiffs were directed to supply copies of plaint, issues and depositions in English, to the Court. It is further seen that the matter was adjourned for Judgment to 29/01/1990. On 29/01/1990, defendants were absent and last opportunity was given to the plaintiffs to submit translations of the said Portuguese documents within seven days before the date of judgment. The matter was adjourned for Judgment to 02/04/1990. On 02/04/1990, the defendants were again absent and the plaintiffs did not file translations as directed in the earlier Roznamas dated 12/12/1989 and 29/1/1990. However, the final Judgment was pronounced on that day i.e. on 02/04/1990.

7. Following issues were framed, in the Judgment:

1) Whether the Plaintiffs are the owners in possession of the property Purxeaporbulem described under No. 2963 and shown in the plan annexed to file bearing No. 20070 filed along with temporary injunction.

2) Whether the Military Post existed in the said property.

3) Whether the Plaintiff is entitled for Rs. 60,000/- from the defendant No. 2.

4) Whether the plaintiff proves that the defendants did illegal act by cutting trees.

5) Whether the defendants Nos. 1 and 2 are liable to pay the plaintiff Rs. 1,000/- for cutting trees.

6) Whether this Court has jurisdiction to entertain this suit.

8. The learned trial Court took the issues no. 1 to 5 together and answered the issues no. 1, 2 and 4 in the affirmative. He held that plaintiffs have proved that they are owners in possession of the suit property and that Military Post existed therein and that the defendants had done illegal acts by cutting trees. The other issues were answered in the negative. Mainly, the point of jurisdiction of the Court, covered by issue no. 6 was dealt with separately and it was held that the Civil Judge, Senior Division had no jurisdiction to try the said suit and that in terms of Section 26 of the Goa Civil Courts Act, 1965, it is only the District Court who could try the said suit in which the Government was a party. Hence, it was ordered that the Court had no jurisdiction to try the suit and that the plaint shall be returned to the plaintiff to file the same in proper Court of law after the plaintiff furnishes the copy of the plaint to file in the court file for record. A decree was drawn by the trial

Court.

9. The Plaintiff filed First Appeal No. 77 of 1990 against the said judgment and decree dated 2/4/1990 before this Court. By judgment dated 16/09/1998, in First Appeal No. 77/90, the learned Division Bench of this Court held that the findings of the trial Court that it had no jurisdiction to try the suit, cannot be sustained and said findings are liable to be set aside. The learned Division bench of this Court, accordingly, set aside the said finding of the trial Court on jurisdiction. It was directed that the matter shall go back to the Court of Civil Judge, Senior Division, Quepem for passing appropriate orders in the matter, as the issues on merits have already been answered. The appeal was, accordingly, allowed with no order as to costs.

10. Thereafter, the learned Civil Judge, Senior Division, Quepem by Judgment, order and decree dated 18/08/1999 partly decreed the suit in terms of prayer clauses 1, 2 and 4 with costs. The trial Court, in the judgment dated 18/8/1999, has not discussed the evidence at all, nor has given its own findings. The trial Court observed that the Hon''ble High Court of Bombay at Goa in First Appeal No. 77 of 1990, by the Judgment and order dated 16/09/1998, has, inter alia, held that the matter should go back to the trial Court for passing appropriate orders as the issues on merits were already answered. He, thus, gave the history of what the trial Court had held on merits in earlier Judgment dated 2/4/1990 and decreed the suit partly in terms of the findings on merit already given in the said previous judgment and order. It is against this Judgment and decree that the defendant no. 2 has approached this Court with the present appeal.

11. There is no dispute that the impugned judgment, order and decree dated 18/08/1999 passed by the trial Court has to be read along with the previous Judgment, order and decree dated 02/04/1990, as if the same had merged into the said previous judgment.

12. During the course of arguments, Mr. Rodrigues, learned Additional Government Advocate, appearing on behalf of the defendant no. 2 read out to this Court the entire Judgment dated 02/04/1990 and then the written submissions filed by the plaintiffs in the said suit on 26/04/1989 and pointed out as to how the said Judgment dated 02/04/1990 is a duplicate of the said written submissions filed before the trial Court, except for insertion of the issues and answers thereto, finding on the point of jurisdiction and final order and exclusion of the chart of comparative boundaries given in the written arguments and further change of about 12 words only. He invited my attention to the Roznamas in the said suit in which orders were made requiring the plaintiffs to supply copies of Portuguese documents. He further pointed out that the plaintiffs had not supplied the translations due to which without having translations, in English language, of plaint, issues, depositions etc. which were in Portuguese language, the trial Court had passed the Judgment dated 2/4/1990 which is a replica of written submissions. He pointed out from the impugned judgment that there is neither marshaling of the voluminous evidence produced by the parties on record nor there is application of mind on the part of the trial Court. According to him, this is brazen and patent illegality committed by the trial Court. As an example, he

showed that even the mistakes in spellings which have been committed in the written arguments have been repeated in the impugned judgment. He pointed out that conveniently, all the first five issues have been taken up jointly for discussion and that the issue no. 2 in the suit was regarding existence of military post but there is absolutely no discussion about the evidence on the said issue but the same has been answered in the affirmative for no reasons. He therefore submitted that there is no other option but to set aside the impugned judgment and decree and to direct remand of the case to the trial Court with a direction to pass a fresh judgment by consideration and appreciation of the entire evidence on record.

13. On the other hand, Mr. Usgaonkar, learned Counsel appearing on behalf of the plaintiffs, submitted that remand of case by Appellate Court is envisaged under Rule 23 and 23-A of order XLI of the CPC (C.P.C.) and that the reasons for remand mentioned by the learned Counsel on behalf of the defendant no. 2 do not fall under the said provisions. He further read out Rule 24 of order XLI of C.P.C. which provides that where evidence on record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds. The learned Counsel submitted that this is probably the oldest case being of the year 1965 and more than 45 years have passed and therefore this Court, in the interest of justice, instead of remanding the case, should finally determine the suit by going through the evidence on record. He further submitted that once the trial court had made up its mind after analysis of the entire evidence on record, there can be no illegality in writing exactly that which is mentioned in the written arguments. According to the learned Counsel, the trial Court has done the same as he was satisfied with the correctness of the same. He therefore submitted that this court should allow the parties to argue the matter on merits, on the basis of evidence on record which has not been discussed by the trial Court.

14. Order XX Rule 4(2) of C.P.C. provides that the Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. Rule 5 of Order XX provides that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. From the above, it is evident that it is not only that findings are to be given on all the issues but it is mandatory to give reasons for finding on each issue. In the present case, a bare reading of the Judgment dated 02/04/1990 reveals that there are no reasons at all given for findings on some of the issues. It goes without saying that for giving reasons for decision on issues, the Court has to analyze and marshal the entire evidence on record, oral as well as documentary and after understanding the same has to apply its mind for giving appropriate reasons. In the present case, it is noticed that the learned trial Court had requisitioned the plaintiffs to

produce translations of the plaint, issues and depositions which were in Portuguese language, to be furnished in English language. It is seen from the records that the translations as required by the trial Court were not produced by the plaintiffs. It is further noticed that even the documents which were produced by the parties were in Portuguese language and no translations were produced before the trial Court. This Court had directed the Defendant no. 2 to furnish the translations of Portuguese documents, which has been done by the Defendant no. 2, in this appeal. It is difficult to believe that without having the translations of pleadings, issues and depositions and the various documents produced by the parties, the trial Court would be in a position to apply its mind to the case and render decision on each issue with reasons. It is in this background that the fact that the Judgment dated 02/04/1990 on which the impugned Judgment dated 18/08/199 is passed is almost an exact duplicate copy of the written submissions filed by the plaintiffs in the suit except with few changes in the words and insertion of issues, etc., goes to the root of the case and raises a reasonable and serious doubt as to whether the trial court has applied its mind. The name of one witness has been wrongly mentioned in the written submissions as "Dotu Zonem Gacca" instead of "Dotu Zonem Gacca". In the Judgment, the same mistake in surname has been committed. In the written arguments, the surname of one person has been wrongly stated as "Tubquix" in stead of Tubqui. In the Judgment, the same mistake is repeated. In my view, the trial Court has passed the said Judgment dated 02/04/1990 without application of mind and has mechanically written the contents of the written submissions in the said judgment and has decided the matter.

15. It may be that such a case is not covered by the provision of remand under order XLI Rule 23 or 23-A of Order XLI of C.P.C. However, there is provision u/s 151 of C.P.C. which provides that nothing in this Court shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. In my view, the Judgment dated 02/04/1990 amounts to a brazen and patent illegality, as contended by the learned Additional Government Advocate on behalf of Respondent no. 2. The same is an abuse of the process of the Court. The same is in contravention of the provisions of Rules 4 and 5 of Order XX of C.P.C. This is not a case where the trial Court has proceeded on certain grounds and the appellate Court, after going through the evidence, can agree with those grounds or proceed on some other grounds. There are no grounds at all stated in the Impugned Judgment, for some findings. The trial Court has nowhere observed that it has gone through the entire material on record. The evidence on record has not been analyzed. The translations of the pleadings of the parties, questionnaires on the basis of which issues have been re-casted in the Judgment, depositions, reports of experts, etc. are not before this Court. This Court is not conversant with Portuguese language. In the circumstances above, it would not be proper for the Appellate Court to determine the suit, like the Court of first instance, only because there is sufficient evidence on record, as contended by the learned Counsel for the Plaintiff, merely because the matter is very old. I am of the considered opinion that this matter requires remand for fresh judgment on merits by the trial court after analysis of the entire evidence on record oral as well as

documentary. In the result, the appeal is partly allowed.

(a) The impugned judgment, order and decree dated 18/08/1999 and the findings on merits given in the earlier Judgment dated 2/4/1990 are quashed and set aside.

(b) The Special Civil Suit No. 71/98 (New) i.e. Civil Suit No. 20901/65 (Old) is remanded to the trial Court.

(c) The trial Court shall give one final opportunity to plaintiffs to produce translations of the questionnaires, depositions, reports, documents, etc., which are in Portuguese language; shall give one final opportunity to the defendant no. 2 to file written submissions, if any; shall hear fresh arguments and shall deliver fresh judgment by marshaling entire evidence on record both oral and documentary and upon proper application of mind and by rendering findings on each issue with proper reasons, in accordance with law.

(d) Let the above exercise be completed expeditiously and in any case within a period of six months from the date of appearance before the trial Court.

(e) Records and proceedings shall be forwarded to the trial Court by the Registry within two weeks hereof.

(f) Parties to appear before the trial Court on 02/05/2013 at 10.00 a.m.

(g) Appeal stands disposed of accordingly, with no order as to costs.