

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-OCW-46-2020

Ranjana Divakar Kakodkar & Ors ...Appellants

v/s.

Vinod Laximan Mujumdar & Anr. ...Respondents

Shri Parag Rao, Advocate for the appellants.

Coram:- NUTAN D. SARDESSAI, J.

Date :- 30th June,2020

P.C.:

Heard Shri Parag Rao, learned Advocate for the appellants.

2. Admit on the following substantial questions of law:

(I) Whether the impugned Decree, which upholds the Judgment and Preliminary Decree of the Trial Court, is without jurisdiction, inasmuch as the Ld. Trial Court had exercised powers in terms of Order 20 Rules 18(1) C.P.C. read with Section 54, without recording a finding that the said property was assessed to the payment of revenue to the Government, more particularly considering the legal position that the powers of the Collector

would come into play only if the said property was assessed to the payment of revenue to the Government?

(II) Whether the 1st Appellate Court has committed a fundamental error in an attempt to get over the argument of lack of jurisdiction of the Trial Court as raised qua Section 54 of C.P.C., by observing that no evidence was produced to prove that the said property is not assessed to the payment of revenue to the Government, ignoring the fundamental principle that it was impossible to prove the negative and only positive evidence could have been led to show that the said property was indeed assessed to the payment of revenue to the Government, which lay entirely on the Respondents?

(III) Whether the 1st Appellate Court ought to have called upon the Respondents to correct the valuation, which would have gone above ₹1,00,00,000/-, even if the property was valued at ₹1,000/- per sq.mt. The property being in the heart of Margao city, would have easily fetched an amount upwards of ₹10,000/-per sq.mt. The Ld.

1st Appellate Court by accepting the whimsical and fanciful valuation by the Respondents, has failed to exercise the jurisdiction vested in it?

(IV) Whether the 1st Appellate Court failed to appreciate that Section 7 Clause 4 of the Court Fees Act, did not empower the plaintiffs to place any whimsical or fanciful valuation in the suit and therefore erred in not even questioning the valuation on this count alone?"

3. In the meantime, ad-interim relief granted in terms of prayer clause 'b', which reads thus :

"(a) During the pendency and disposal of the present Second Appeal, this Hon'ble Court be pleased to stay the operation of the impugned Decree dated 12.03.2020 as well as the Judgment and Preliminary Decree dated 29.09.2018 passed by the Court of Civil Judge Junior Division at Margao in Regular Civil Suit No.56/2010/C."

4. Issue notice to the respondents, returnable on 21/07/2020.

5. The parties to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI,J.

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