

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.73 OF 2019**

1. Atchut Kashinath Siquerkar
(Dec.) Thr. Lrs., Appellant.

V/s.

1. Maria Alice Almeida
and 5 Ors. Respondents

Shri. R. G. Ramani, Advocate for the appellant.

Coram : NUTAN D. SARDESSAI, J.

Date : 6th November, 2019.

P.C.:

Heard Shri. R.G. Ramani, the learned Counsel for the appellant.

2. Admit on the following substantial questions of law:

a) Whether in the light of the pleadings in the plaint and in the absence of any evidence to establish that the property bearing Survey No.2/0, 3/0 and 4/0 of Paddi Village Quepem Taluka was the property described under No.5112, the impugned decree is sustainable?

b) Whether the reliance by the learned Courts below upon the Judgment dated 26/7/2001 passed ex-parte in Sp. Civil Suit No.64/1998 declaring the respondents no.1 to 4 to be the owners of the property bearing Survey No.2/0, 3/0 and 4/0 of Paddi Village Quepem Taluka wherein the appellants were not the parties to hold that the respondents no.1 to 4 to be the owners of the suit property bearing Survey No.2/0 contrary to the provisions of S.35 of the Specific Relief Act, 1963 and S.43 of the Indian Evidence Act, 1872?

c) Whether the learned Courts below were justified in granting the reliefs of possession and permanent and mandatory injunction to the respondents no.1 to 4 in the absence of the pleadings of the facts constituting cause of action to seek the said reliefs or evidence in support thereof?

d) Whether the impugned Decree is vitiated by the refusal of the learned lower Appellate Court to consider the documents sought to be produced under O.41 R.27 r/w S.151 of the C.P.C.?

NUTAN D. SARDESSAI, J.

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