



IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.17 OF 2026

1. Mrs. Adelina Da Sacrada Familia
Carvalho E Fernandes,
Since deceased through her
Legal representatives, ... Original Plaintiff
 2. Shri Maxie Afonso E Carvalho
Since deceased through his
Legal representatives
 2. (a) Smt. Connie Jean Carvalho,
Age-63 Years,
 - 2.(b) Shri. Andrew Marcus Carvalho,
Age-21 Years,
 - 2.(c) Surf. Domnic Joe Carvalho,
Age-20 Years,
 - 2.(d) Miss Aramiita Carvalho,
Age- 65 Years,
 - 2(e) Shri. Archibaldo Carvalho,
Age- 60 Years,
 - 2(f) Smt. Audry Carvalho,
Age-63 Years,
 - 2(g) Shri. Christopher James, ... Appellants/original
Age-64 Years, Plaintiffs
- All represented through their
constituted Attorney,
Shri. Derick Rodrigues,

Son of Succoro Rodrigues
Age-61 years, Occupation-Service
Resident of House No.9, Olvaddo,
Carmona. Taluka Salcete, Goa.

v/s

1. Smt. Sebastiana Fernandes
Alias Maslin
Alias Sebastiana Fernandes e
Carvalho,
Widow of late Agostinho
Francisco
de Piedade Prudencio Carvaiho,
Of major age, housewife,
R/o H. No. 1283, Mazilwaddo,
Benaullim, Taluka Salcete, Goa.
2. Smt. Monica Carvalho E Vaz,
Daughter of late Agostinho
Francisco
de Piedade Prudencio Carvalho,
Major of age, and her husband.
3. Shri. Luis Vaz,
Major of age, landlord,
Both resident at H. No. not known,
Pedda, Varca, Taluka Salcete, Goa.
4. Smt. Juliana Alias Julie E
Carvalho E Barreto,
Daughter of late Agostinho
Francisco de Piedade
Prudencio Carvaiho,
Major of age, housewife,
And her husband,

5. Shri. Antonio Barreto,
Major of age, landlord,
Both residents of H. No. not known,
Fatrade, Varca,
Taluka Salcete, Goa.
6. Smt. Maria Carvalho E Fernandes,
Daughter of late Agostinho
Francisco de Piedade
Prudencio Carvaiho,
Major of age, housewife,
And her husband,
7. Shri. Tito Fernandes,
Major of age, landlord,
8. Shri. Moises Carvalho,
Son of late Agostinho Francisco de
Piedade Prudencio Carvalho,
Major of age, Occupation Service,
and his wife
9. Mrs. Basilia Rodrigues,
Major of age, housewife
10. Shri. Marcom Carvalho,
Son of late Agostinho Fernandes e
Piedade Prudencio Carvalho,
Major of age, Occupation Service,
and his wife,
11. Smt. Milagrina Flaviana Rodrigues,
Major of age, housewife,
12. Smt. Fatima Carvalho,
Daughter of late Agostinho
Francisco de Piedade

Prudencio Carvalho,
Major of age, housewife,
And her husband,

13. Shri. Remedious Fernandes,
Major of age, service,

14. Smt. Pia Carvalho,
Daughter of late Agostinho
Francisco de Piedade
Prudencio Carvalho,
major of age, housewife,
And her husband,

15. Shri. Freddy D'sa,
Major of age,
All above residents of
House No. 1283,
Mazilwado, Benaulim,
Salcete, Goa.

... Original
Respondents.

16. Shri. Filipe Espirito Santo
Carvalho E LEITAO,
Son of late Leopoldo Claro
Carvaiho
Major of age, and his wife,

17. Smt. Flaviana Carvalho,
Major, both residents of Bamado,
Chinchinim, Taluka Salcete, Goa.

18. Shri. Xavier Carvalho E Leिताo,
Son of late Leopoldo Claro
Carvalho,
Major of age, and his wife,

19. Smt. Ida Carvalho,
Major of age,
Both residents of Bamado,
Chinchinim,
Taluka Salcete, Goa.

20. Smt. Marina Carvalho E Leitaio,
Daughter of late Leopoldo
Claro Carvalho,
Major of Age, housewife,
And her husband,

21. Shri. Constancio D'mello,
Major of age,
Both residents of Sudha Building,
Ground Floor, Room No.15,
Patel Compound,
20.Nepean Sea Road,
Mumbai - 400 036.

... Original Defendants/
Respondents

22. Shri Maxie Afonso E Carvalho,
Son of late Shri. Jose Manuel
Carvalho,
Major of age, (deceased)
Through Legal Representatives,

22.(a) Smt. Connie Jean Carvalho,
Major of age,

22.(b) Shri. Audrew Marcus Carvalho,
Major of age,

22.(c) Shri. Dommc Joe Carvalho,
Major of age,

23. Miss Aramita Carvalho,
Daughter of late Shri. Jose
Manuel Carvalho,
Age- about 38 years,

24. Shri Archibaldo Carvalho,
Son of late Shri. Jose
Manuel Carvalho,
Aged about 30 years, employed;
And his sister,
25. Smt. Audry Carvalho,
Son of late Shri. Jose
Manuel Carvalho,
Aged about 35 years,
And her husband,
26. Shri. Christopher James,
Son of Jimmy James,
Aged about 35 years, employed;
All presently residing at
House No. 31A,
Olvaddo, Carmona, Salcete, Goa.

Transposed as Plaintiffs

27. Shri. Desmond Vaz,
Of major age, landlord,
R/o H. No. not known,
Pedda, Varca, Salcete, Goa.

... Respondent

Mr. Sudesh Usgankar, Senior Advocate with Ms. Marie Rosette Pereira and Mr. Jitendra Adkonkar, Advocates for the Appellants.

Mr. Byron Rodrigues (through V. C.), Advocate for Respondent Nos. 2, 6 to 15 and 27.

CORAM: VALMIKI MENEZES, J.

DATED: 24TH APRIL, 2026.

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.

2. This Appeal arises from order dated 14.10.2025 passed by the District Judge-1, South Goa in Regular Civil Appeal No. 49/2019 in a First Appeal, setting aside the Judgment and Decree dated 16.03.2019, passed by the Civil Judge Junior Division 'C' Court at Margao in Regular Civil Suit No. 3/2008/C and remanding the case back to the Trial Court with a direction to give a finding as to whether the Plaintiff's prayer for declaration should be granted or not and when to consider, whether the reliefs of partition by way of amendment should follow.

3. Since this is an Appeal from order against setting aside of the Decree of the Trial Court in the appeal, on hearing the Appellant, I admit the Appeal on the following substantial questions of law:

(a) Whether on the basis of the pleadings of the parties and the evidence led before the Trial Court, the Appellate Court was justified in setting aside the Judgment and Decree dated 16.03.2019 of the Civil Court and remanding the matter back for adjudicating, on the issue of whether the relief of declaration should be granted without there being any ground under Order 41 of Rule 23 or 23A CPC.

4. Learned Advocate Mr. Byron Rodrigues waives service for the contesting Respondents. With the consent of the parties, I

proceed to dispose of the Second Appeal and consider the substantial question of law under which the same was admitted.

5. At the outset, one would have to consider this Court's ambit under the provision of the Order 41 Rule 23A of the CPC, where an Appellate Court is permitted to remand the matter back to the Trial Court under certain circumstances. Under this provision, there may be a direction to set aside the Decree and Order, full remand keeping all questions open or a partial remand specifying the limited scope and issues on which the matter is sent back to the Trial Court. Both these courses of action are to be followed by the Appellate Court after considering the entire evidence on record, pleadings of the parties and arriving at the specific findings as to reasons why such remand is necessitated.

6. Perusal of the impugned Judgment and order and the reasons set out in the impugned order, do not justify the exercise of the remand jurisdiction under the aforesaid provisions of law. The Appellate Court, in my opinion, has wrongly considered the suit filed by the Plaintiff/Appellant herein as a suit for declaration of Plaintiff's exclusive right of ownership along with Defendant Nos. 22 to 26 of the Northern half of the property, which is the subject matter of the suit. On a plain reading of the plaint, it is understood that the suit was for partition/demarcation of a specific area of the property under Survey No. 413/1, which was subject matter of the unregistered Partition Deed dated

16.05.1983, which was admittedly executed between husband of Defendant No. 1 and husband of Appellant No.1 amongst other parties.

7. Even the plaint seeks a declaration, the declaration in a partition suit is implicit in the relief for separation of a specific area of a property, in which the parties claim to have pre-existence right. The document which formed the basis of the suit is an unregistered Partition Deed dated 16.05.1983, which the Plaintiffs claim to be the basis for seeking demarcation of their partition of the larger property under Survey No. 413/1, and to separate/demarcate, the portion allotted to them under the Deed jointly to the Plaintiffs and Defendant Nos. 22 to 26.

8. These averments are mainly contained in paragraph Nos. 14 to 17 of the plaint. In answer to these averments, para 16(a), 16(b) and 17, the Defendant No. 1 does not, in any way, deny the execution the unregistered Partition Deed dated 16.05.1983. That Deed was executed by her husband, who is now deceased. She also does not challenge the Deed of Partition dated 16.05.1983 by way of a counterclaim to seek a declaration that the same is void or that it was not executed by Defendant No. 1. She claims that she was not a signatory to the Partition Deed along with her husband, as this was so at the relevant time, they were abroad.

9. On the further perusal of the para 16(a), 16(b) and 17 of the written statement, Defendant No.1 also does not claim any

exclusive or independent right to the suit property nor does she set up a title other than the one which is stated as the pre-existence right of ownership in the Partition Deed of 16.05.1983. On these pleadings along no amount of evidence to show possession whether exclusive or otherwise in the Defendant No.1 and her children would render the plaintiff's suit nullity.

10. The Trial Court has considered the contents of the Partition Deed, the evidence on record of the Plaintiffs and of Defendant No. 1 to grace the witness box, and had arrived at a conclusion that the Plaintiffs have proved the pre-existing rights on the basis of the partition deed. The Trial Court has also considered the fact that the Partition deed is an unregistered documents and nevertheless has concluded that partition of a property and shares can be determined even if such a document is not a registered document, since essentially a Partition Deed does not operate as a transfer of a title in the property.

11. The Appellate Court, on reconsidering the evidence on record appears to have proceeded purely on the basis that the suit was for declaration of a title, and only such title was declared if the Plaintiffs were worthy to show how they were entitled to the consequential relief of partition. The fact of the matter is that the plaint was sought to be amended by filing an application seeking the alternative prayer of the partition, which was rejected, since according to the Trial Court it was not required. It was on this

count that the Appellant Court, proceeding on the premise that the suit was essentially for declaration, that the remand was directed to first decide the claim of declaration and only if the Court concluded and decided that relief, should the Trial Court decide whether the amendment was to be considered. The order of remand, has not considered the ambit and scope of the power vested in Appellate Court under Order 41 Rule 23 or under Order 41 Rule 23A of the CPC, which makes it amply clear that the power to remand can be within certain very narrow circumstances, none of which existed in the light of the pleadings before the parties and the evidence led before the Court.

12. Consequently, the substantial question of law is required to be answered in the affirmative. For the reasons stated above, the impugned Judgment and Decree passed in Regular Civil Appeal No. 49/2019 is quashed and set aside. However, since the Respondent's First Appeal i.e. Regular Civil Appeal No. 49/2019, will now have to be heard on its own merits, after considering the evidence and pleadings of the parties, I deem it appropriate to restore Civil Appeal to file of the District Court, with a direction to decide the Appeal on its merits based on the evidence before the Appellate Court and dispose of the same preferably within four months from the receipt of this order.

13. For the reasons stated above, the Appeal is allowed. The Judgment and Decree dated 16.03.2019 stands quashed and set

14.10.2025, passed by the District Judge-1, South Goa in Regular Civil Appeal No. 49/2019

Correction carried out as per order dated 07.05.2026. Sd/-

aside. The Appellate Court shall now deal with Regular Civil Appeal No. 49/2019 in the light of the observations made above. The Registry to draw the Decree accordingly. No costs.

14. In view of the Judgment passed in the present Appeal, pending applications, if any, shall stand disposed of. Parties to appear before the District Court on 02.05.2026 at 10.00 am.

VALMIKI MENEZES, J.