



BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN
ZONE BENCH, PUNE

Appeal No. 48/2022/ WZ

The Colva Civic & Consumer Forum ... Appellant

v/s

GCMA & Ors.

... Respondents

**REPLY TO MEMORANDUM OF APPEAL
AGAINST THE ORDER DATED 19/09/2022**

MAY IT PLEASE YOUR HONOUR

The respondent no. 9 states and submits as under:

1. With reference to para 3 of the Memo of Appeal it is stated the appellant do not have and locus to present Memorandum of appeal since the proceedings before the respondent No.1 that is bearing case number GCZMA/SAL/SENA/07/26/1193 was based on the purported complaint filed by one Mr. Agostinho Godinho which can be clearly be seen from impugned order dated

Agostinho Godinho

19/09/2022 passed by the respondent no 1 in the said proceeding. Furthermore perusal of documents at exhibit B and Exhibit A colly annexed to the memo of appeal clearly indicate that the proceeding before the respondent no 1 were initiated on the basis of the purported complaint by said Mr. Agostinho Godinho. The Appellant herein is not the complainant and had filed an application for intervention in the said matter. It is therefore not open to the appellant to claim to the complainant in the present proceeding.

2. The contents of para 1, 2 are admitted to be true.
3. With respect to para 3 and 4 of brief facts in the memo of appeal it is stated that respondent no. 9 was not a party to the said proceedings and hence not aware of the facts in the proceeding before he was made a party to the same. However the respondent no. 9 states that after this respondent the was made a party this respondent brought on record various documents which showed that the structure in dispute which is partly in survey no. 12/6 and

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proceeding is a lawful structure but has laid a false claim to its ownership.

4. The contents of para 5 are denied for having no relevance in this matter. That the Judgement and order dated 02/07/2015 passed in Appeal No. 35/2014 has no connection whatsoever with the structure in property bearing no. 12/6 and 12/7 of Village Sernabatim which is the subject matter of this proceeding. The said Judgement and order is produced only to mislead this Hon'ble Court.

5. That the contents of para 6 are partly admitted to the aspect that "After much delay the respondent no. 1 commenced the hearing and issued a notice dated 10/10/2019 to the respondent no. 4 with regards to the survey no.12/7 of Village Sernabatim."

It is denied for want of knowledge with regards to whether the respondent nos. 5, 6, 7, 8, 10 & 11 intervened in the said proceedings.



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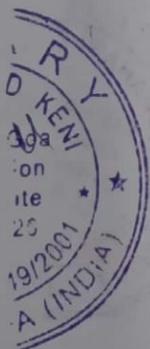
12/7 is in existence prior to 19/02/1991 which is the date of CRZ 1991 notification. The respondent no. 1 passed the impugned order based on the house repair permission along with sketch dated 09/08/1965 and NOC dated 01/10/1985 issued by the village panchayat of Sernabatim, Colva, Vanelim and Gandaulim; the Closure report in FIR No. 57/1999 submitted by the Police Officer, Colva Police Station, Matriz document bearing No. 421, the expert report dated 02/04/2013 by Eng. Neelesh G. Laad and the judgement and Order Dt. 21/08/2018 passed by the Civil Court in Special Civil Suit no. 143/2009(Reg. Civil suit no. 583/2010) and concluded tha the structure in dispute existed prior to 1991. It is further submitted that the respondent no. 4 has always taken an inconsistent stand which has also been mentioned by the respondent no. 1 in the said impugned order. The respondent no. 4 that is Mr.Lindo Furtado has pleaded before the Civil Judge Junior Division in Special Civil Suit no. 143/2009(Reg. Civil suit no. 583/2010) that the structure in dispute in The

P. Laad



That it is denied to be false that the respondent no. 9 intervened in the said proceeding. The respondent no. 9 states that the respondent no. 9 was issued a notice dated 26/10/2020 bearing reference no. GCZMA/SAL/SENA/07/26/859 in respect of the structure in dispute herein which is located partly in survey no. 12/6 and partly in Survey no. 12/7 of Sernabatim Village.

The respondent no. 9 states that the Colva Civic and Consumer Forum seems to have filed the present appeal with vindictive and ulterior motives so as to harass this respondent, the same needs to be properly investigated, since there are other structures within the limits of Sernabatim Village which are also in violation of the CRZ law, furthermore some of the said structures have been demolished and reconstructed however the said Forum doesn't seem to be interested in checking the violations done by the owners of these structures but is only interested in targeting this respondent even after knowing about the legality of the structure in dispute herein.



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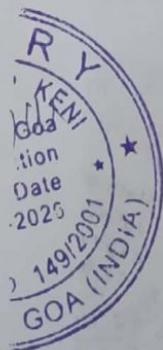
6. The contents of para 7 are denied to be false that the respondent no. 9 states that the respondent no. 9 did not file any intervention but was issued a show cause notice by the respondent no. 1. It is also denied for want of knowledge to the aspect that whether the "Respondent no. 5, 6, 7, 8, 10 and 11 intervened". It is also denied for want of knowledge to the aspect as to whether "the respondent nos. 5,6,7,8,10 and 11 intervened however they did not remain present nor filed any submissions for any of the hearings conducted. It is strongly denied that the documents referred to and relied on by the appellants proved that the structure which is partly located in survey no. 12/6 and 12/7 of village Sernabtum are illegal, within the NDZ area and were constructed well after 1991. That the claim of the appellant based on the documents at para 7(i),(ii),(iii) are disputed and denied. The respondent no. 9 states that merely because the structure is not reflected in the survey plan as referred in by the appellant, cannot lead

Plat ad



to the conclusion as sought to put forth by the appellant. That with regards to para 7(iv) and 7(v), the respondent no. 9 states that the said letters filed by respondent no. 8 and Mr. Joao Inacio Furtado to the respondent no. 1 are not binding on the respondent no. 9 since this respondent was not a party having not received any notice from the respondent No.1 at the time when the order 31.12.2008 of demolition of the structure came to be passed. Furthermore the respondent No. 9 submits that this particular structure was allotted to the respondent and three of his sisters to be run independently by them because of dispute in the family.. It was only after the family dispute among the family of this respondent that he was allocated this structure and he began to use the same as residential premises.

With regards to document at para 7(vi) it is pertinent to note that the exhibit F relied on by the appellants is merely a letter to the police without any conclusion with regards to any forgery being done and also seems to be just



Pratap

a direction to the secretary, village Panchayat colva to render all possible assistance to the police. It may however be noted that the said Block Development officer in the said report at page 1 last line has stated that "However, it is found that the certificate is recorded at serial no. 440 on October 1, 1985 to have been outwarded in the concerned outward register." Which proves that the said documents was used by the village panchayat of colva. With regards to documents at para 7(vii) the respondent no. 9 cannot comment as to the difference in the letters head of the panchayat which is a public document and the same can be answered only the sarpanch or the secretary of the village panchayat who was there that relevant time.

7. The contents of para 8 (i), ii, (iii) (vi) and (v) are admitted to be true and clearly show that the structure is a lawful structure which existed prior to 1991 hence the impugned order is rightly been passed by the respondent no. 1. It is further submitted that the allegations with regards to the

Pratap



forgery are baseless and not proved in the investigation by the colva police station.

8. The contents of para 9 and 10 are admitted. The respondent No. 9 further submits that this structure bears H.No. 106/3 and is registered with the Village Panchayat of SVCG from the year 1993 as the structure was lying vacant and unused no house number was allotted to it prior.

9. That the grounds taken by the appellants are vague, baseless and concocted stories and hence no ground is made out for the present appeal.

10. That the appellants are not entitled for any of the prayers as prayed for.

In view of the above it is humbly prayed that the appeal be dismissed with cost.

Margao

R. Prasad
Respondet No. 9



AFFIDAVIT

I, Mr. Pio Furtado, aged years, son of late Antonio Jose Furtado, resident of, Ambeaxir, Sernabatim, Salcete-Goa, the Respondnet no.9 above named, do hereby solemnly state, affirm and verify on oath that the contents of paras 1 to 10 are true to my knowledge. Nothing is false and nothing is concealed.

Solemnly affirmed at Margao.

Pio Furtado

This 20th day of January 2023.

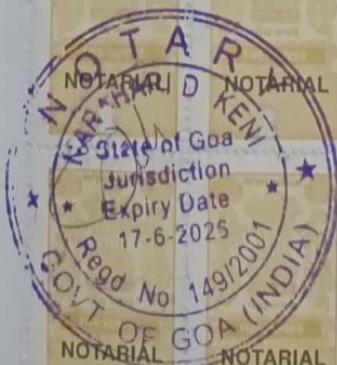
Deponent

Pio Furtado
20/1/23

Read over, explained in Konkani and

Identified by me:

M. Afonso
Advocate
M. Afonso



SOLEMNLY AFFIRMED BEFORE ME BY
By Above Deponent
WHO IS IDENTIFIED TO ME BY
Adv. M. Afonso
WHOM I PERSONALLY KNOW

M. Afonso

NARAHARI D KENI
NOTARY
STATE OF GOA

Place: Margao - Goa dt: 20/01/23
Reg No: 111/2023

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN
ZONE BENCH, PUNE

Appeal No. 48/2022/wz

The Colva Civic & Consumer Forum

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GCZMA & Ors

... Respondent

COMPLILATION-II

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Margao

Adv. For Respondent No. 9

20/01/2023

TRUE COPY

RTI MATTER

No.SP/S-Goa/Reader/ RTI/ 1068 /2010,
Office of the Superintendent of Police,
South Goa District, Margao.
Dated: - 23 /03/2010.

To,
Mr. Pio Furtado,
R/o - 93, Ambeaxir,
Sernabatim, Colva.

Sub: - Information under Right to Information Act 2005.

Ref: - Your application dated 09/03/2010.

Sir,

Refer your application dated 09/03/2010 under Right to Information Act 2005, information called for is as under.

As regards point No. a) and b), copy enclosed.

As regards point No. c), Not Applicable.



Yours faithfully,

(Allen De Sa)
Superintendent of Police (South),
Public Information Officer,
Margao - Goa.



Copy to:-

- 1) APIO/SDPO Margao.
- 2) PI Colva PS.

141

4694
3/8/06

GAO
537
O. W. No.
DATE 24-08-06

Page of

FINAL FORM / REPORT
(Under section 473 Cr. P. C.)

POLICE STATION, SILVA
Forward to 3633
15/9/07

*IN THE COURT OF J.M.P.C. Margas
Colva

1 *Distt. 184 *P. S. *Date 17/08/1999
*Year 2006 *FIR No. 57/99 *Date 03/08/2006

2. Final Report/Charge Sheet No. 18/063. *Date

4. (i) *Act IPC *Sections u/s. 4, 8 IPC
(ii) *Act *Sections
(iii) *Act *Sections
(iv) *Other Acts & Sections

*Type of Final Report: Chargesheet/Untraced/Unoccurred/Not charge-sheeted for want of evidence *A Final

6. *If F. R. Unoccurred : False/Mistake of Fact/Mistake of Law/Non-cognizable/Civil Nature

7. *If supplementary or Original Original

8. Name of the I. O. Shri. B. Parik PSI No.

9. (a) Name of Complainant/Informant : F. X. L. Ferrao

(b) Father's/Husband's Name Block Development Officer Salcete Margas

10. Details of Properties/Articles/Documents recovered/seized during investigation and relied upon (separate list can be attached, if necessary).



Cr.P.C

P/Colva P.S.

Sl. No.	Property Description	Estimated Value (in Rs.)	P. S. Property Register No.	From whom/where Recovered or Seized	Disposal
1	2	3	4	5	6
1.	Outward Register for the year 1984/85-86	---	---	From Secretary Village Panchayat Colva	sent here with Kept Pn P.S.

TRUE COPY

POLICE INSPECTOR
COLVA P.S

Registered under no. 163/2006/2
dt. 30/08/2006
30/08/2006

11. Particulars of accused persons chargesheeted :
(use separate sheet for each accused)

Sl. No. (i) *Name - NIL - Whether verified

(ii) Father's/Husband's Name

(iii) Date/Year of Birth

(iv) Sex (v) Nationality

(vi) Passport No. Date of Issue

Place of Issue

(vii) Religion Whether SC/ST

(ix) Occupation

(x) Address

Whether verified

(xi) *Provisional Criminal No.
Isidingu

(xii) *Regular Criminal No.
(if known) JIVEE + 2. 411

(xiii) Date of Arrest

(xiv) *Date of release on bail

(xv) *Date on which forwarded to court

(xvi) *Under Acts & Sections

(xvii) *Name(s) and Address(es) of sureties

(xviii) Previous convictions with case references :
.....
.....

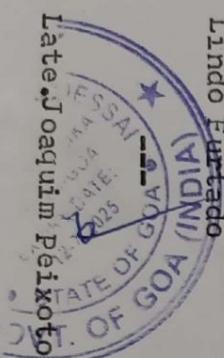
(xi) *Status of the accused :

Forwarded/Bailed by Police/Under Police Custody/Bailed by Court/In Judicial Custody/Absconding/Proclaimed Offenders:



No. 13 List of witnesses to be examined.

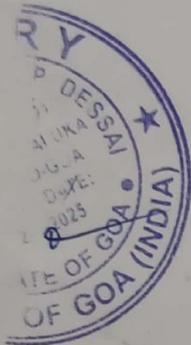
Sr.No.	Name	Father's / Husband's name	age	occupation	Address	Type of evidence
01.	F.X.L.Ferrao	--	--	Block Development Officer	Mar'0	complainant
02.	Francis	Jose Bento Cardozo	37yrs	Business	478/1 IV th ward Colva	witness
03.	Romeo	Joaquim D'Silva	36 yrs	driver	137 Mungul Grande	--do--
04.	Gregorio	George Fernandes	32 yrs	business	252 Laxette Varca	--do--
05.	Shashi	Bqbi Gaonkar	47 yrs	service	33,Poitowaddo CuncoLim	--do--
06.	Jostiano	Roque Pereira	60 yrs	business	177, Adawaddo Majorda	--do--
07.	Lindo	Antonio Inacio	62 yrs	retired	51, Copelwaddo Sernabatim Colva	witness
08.	Agnelo	Vitalino Fernandes	53 yrs	business	62, Villa Nova Colva	--do--
09.	Antonio Sonton	Vincent Francis Bafetto	65 yrs	Clerk	Village Panchayat Colva	--do--
10.	Roque	A.Vaz	--	exSarpanch	Village Panchayat Colva	--do--
11.	Clemente	Late Joaquim Fernandes	50 yrs	Secretary	8361 B Acsona Benaullim	--do--
12.	Subodh Prabhu	--	--	Secretary	Village Panchayat Colva	--do--
13.	Nixon	Lindo Eurtado	35 yrs	business	51, Copelwaddo Sernabatim Colva	--do--
14.	Ch.Gandhi	--	--	DY.Govt. Examiner	DY.Govt.Examiner of Questioned Document Hyderabad	Expert opinion
15.	Brutano	Late.Joaquim Peixoto	30yrs	service	PSI Colva Police Station	I.O



TRUE COPY 14.

16. *Brief Facts of the Case (Add separate sheet, if necessary) :

--- SEPARATE SHEET ATTACHED ---



17. Refer Notice Served Yes/No Date :
(Acknowledgement to be placed)

18. Despatched on

Forwarded by Station House Officer/Officer in-charge

Signature of the Investigating Officer submitting the Final Report/Chargesheet

Name : Shri. Nelson Albuquerque Name : Shri Brutano Paxito

Rank Police Inspector Rank Police Sub-Inspector
Colva Police Station Colva Police Station

Govt. Ptg. Press, Panaji-Goa — 699/50,000 — 10/2000

TRUE COPY

POLICE INSPECTOR
COLVA P.S.

MAY IT PLEASE YOUR HONOUR

It is submitted that on 17/08/1999 Colva P.S. Cr.No 57/99 u/s 468 IPC stands registered upon the complaint of Shri. F. X.L. Ferrao Block Development Officer, Salcete Margao against unknown staff of Colva Panchayat for committing forgeries in preparing the No Objection Certificate for repairing of the existing structure by changing the roof with ribs and the mangalore tiles situated at Ambeaxir Sernabatim village under survey 12/6.

During the course of investigation Shri. Lindo Furtado, the then Sarpanch of V.P. Colva Shri Agnelo Fernandes including the alleged suspect namely 1. Joao Inacio Furtado, 2. Pio Furtado, 3. Selestiano Furtado, 4. Angelico Gracies, the then Secretary of V.P. Colva and the panchayat member Culvert Gonsalves were interrogated. All the relevant documents were collected and also specimen handwritings and signatures of the suspects were obtained and were examined through the Govt. Examiner. Positive results have come in respect of Mr. Culvert Gonsalves so far as effecting entry into the outward register but there is a negative report in respect of the alleged signature. Hence the admitted signature of the Sarpanch who is alleged to be issued with the questioned signature were collected and sent to Govt. Examiner for examination. From the investigation conducted so far the involvement of alleged suspect could not be established as there is insufficient evidence to file chargesheet against the suspect. Also the report of expert received from the Govt. Examiner is proved negative for all the suspects.

After due investigation in the above case all the relevant case papers alongwith the reports received from the Govt. Examiner were forwarded to A.P.P. Margao for his opinion. Shri Shivram A. Patil, Assist. Public Prosecutor Margao after perusing the case papers opined that after going through the evidence collected on record the guilt of the accused is not proved and also the reports received from experts does not incriminate the accused in the present case.

This case is being investigated for a long time and the same remains undetected for want of evidence. Hence the case is being shelved at the moment as there is no chances for the detection in near future. The case will be re-opened as and when any clue is obtained.

In view of the above it is prayed your honour that 'A Final Summary may be granted to the above case. All the case papers duly indexed is appended herewith.'

(Brutano Paxito)
PSI Colva P.S.

Submitted through
SDPO Margao

Submitted

PI Colva P.S.

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POLICE INSPECTOR
COLVA P.S.

Issue notice to complainant
r/o 17/10/06 at 2.30 p.m.

Submitted to J.M.P.C. Margao

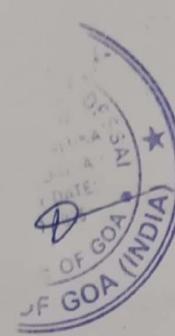
"A final summary" may be granted

J.M.P.C. Margao
SDPO Margao

A final summary is granted.

J.M.P.C. Margao
Margao
Dt: 28/8/07

J.M.P.C. Margao (15/Ad)



(Signature)

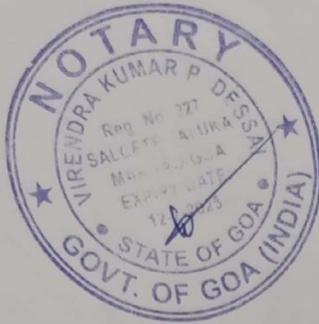
(Signature)



ACCEPTED TO BE TRUE COPY
OF THE ORIGINAL

VIRENDRA KUMAR P. DESSA
NOTARY
MARGAO-GOIA
State of Goa (India)

Reg. No. 311 Date: 20/01/2023



No. GCZMA/SAL/SENA/07/26/859
O/o the Goa Coastal Zone
Management Authority,
Behind Pundalik Devasthan,
Porvorim Goa.
Dt. 26/10/2020

NOTICE OF PERSONAL HEARING

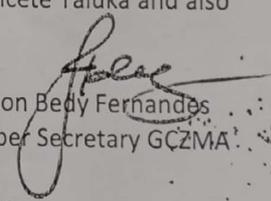
Whereas, the Authority had taken up the matter pertaining to illegal construction carried out in the property bearing Survey No. 12/7 of Village Sernabatim in Salcete Taluka based on the remand order passed by the Hon'ble High Court passed in W.P. No. 145/2009

And whereas during the course of the 232nd hearing held on 22/10/2020, the Respondent was represented through his son Nixon Furtado who brought to the notice of the Authority that the show cause notice was in respect of the property bearing S. No. 12/7 and not in respect of property bearing S. No. 12/6 of village Sernabatim in Salcete Taluka, although the said structure is located in both the properties.

And whereas, the Authority in the meeting held on 22/10/2020 decided that the said show cause notice and order of demolition was limited to property bearing S. No. 12/7 of Village Sernabatim and hence it decided that the same would stand to get corrected so as to include both the survey numbers i.e 12/6 and 12/7 of Village Sernabatim in Salcete Taluka.

And whereas the Authority also decided to issue notices to all the interested parties whose names are recorded in the property bearing Survey No. 12/6 and 12/7 of Village Sernabatim in Salcete Taluka.

Now therefore by this present notice the addresses of the same shall appear before the Authority on **5/11/2020 @ 15.30 hours** on the 2nd floor of the Secretariat Complex, Conference Hall, Porvorim Goa. for filing reply in respect of the said illegal structure located in property bearing Survey No. 12/6 & 12/7 of Village Sernabatim in Salcete Taluka and also to argue the matter on merits.

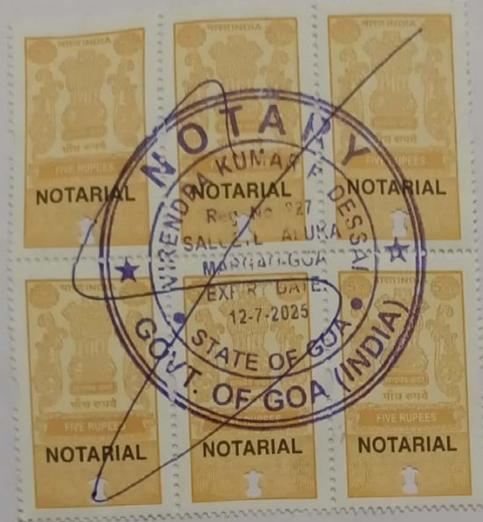

Johnson Bedy Fernandes
Member Secretary GCZMA

To,

- 1) Lindo Furtado, r/o H. No. 51, Copelwaddo, Sernabatim, Colva Goa.
- 2) Linda Furtado, r/o Copelwaddo, Sernabatim, Colva Goa
- 3) Denzil Furtado, r/o Copelwaddo, Sernabatim, Colva Goa
- 4) Vanessa Furtado, r/o Copelwaddo, Sernabatim, Colva Goa
- 5) Dorothy Furtado, r/o Copelwaddo, Sernabatim, Colva Goa
- 6) Maria Filomena Furtado, r/o Ambeaxir, Sernabatim Salcete Goa.
- ✓ 7) Pio Furtado, r/o Ambeaxir, Sernabatim Salcete Goa.
- 8) Shilston Furtado, r/o Ambeaxir, Sernabatim Salcete Goa
- 9) Wanyk Furtado, r/o Ambeaxir, Sernabatim.

CC to :

- 1) The Collector (S), Margao Goa.
- 2) The Dy. Collector and SDO Salcete, Margao Goa.
- 3) The Mamlatdar of Salcete, Margao Goa. (He shall serve this notice on the violator the addresses mentioned hereinabove)

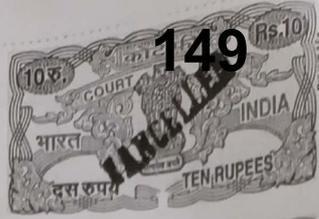


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OF THE ORIGINAL

VIRENDRA KUMAR P. DESSA
NOTARY
MARGAO GOA
State of Goa (India)

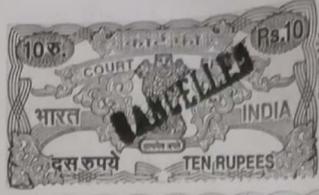
Reg. No. 310 Date 20/01/2023

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19

Superintendent



IN THE COURT OF THE ADHOC DISTRICT JUDGE-1 & ADDITIONAL SESSIONS
JUDGE (FTC-1) SOUTH GOA, MARGAO.

REGULAR CIVIL APPEAL No.99/2018

1. Ludovina Margarida Elvira Dias e Furtado (Deceased)
Lindo Jeronimo Furtado,
aged 72 years, resident of
House No. 51, Capelwaddo,
Sernabatim, Salcete, Goa.
2. Nixon Loyola Furtado,
aged 39 years, businessman,
Resident of House No. 51,
Capelwaddo, Sernabatim,
Salcete, Goa.
3. Nevil Basilio Furtado,
aged 39 years, resident of
Flat No. B-3/S1, Hema Apts.,
Borda, Margao, Goa.
4. Sunita Maria Furtado,
aged 36 years, resident of
Flat No. B-3/S1, Hema Apts.,
Borda, Margao, Goa.



... Appellants

V/s

1. Mr. Joao Inacio Furtado,
aged about 55 years,
School teacher, resident of
House No.93, Ambeaxir,
Sernabatim, Salcete, Goa.

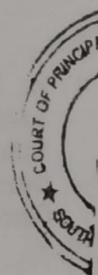
2. Mr. Sylston Furtado,
Aged about 42 years,
Service, resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
3. Mr. Pio Furtado,
aged about 40 years,
Resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
4. Mr. Assumcao Agnelo Bernabe Furtado,
aged about 65 years,
r/o. H. No. 50,
Capelawaddo, Sernabatim,
Salcete, Goa.
5. Mr. Goldwin Furtado,
major of age,
6. Mrs. Christine Furtado,
major of age;
7. Mr. Gordon Furtado,
major of age;
8. Mrs. Serena Furtado,
major of age;
9. Mr. Gleffy Furtado,
major of age;
10. Mrs. Larissa Furtado,
major of age;
11. Mr. Griffith Furtado,
major of age;
12. Mrs. Evelyn Furtado,
major of age;

All with address at Abhudaya Apartments
(2nd Floor), Opp. Santos Garage,
Aquem, Margao, Goa.

... Respondents

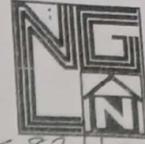
Typed by: 
U.D.C.

Compared by: 
U.D.C.



Superintendent

Neelesh G. Laad



Architectural and Structural Engineer - Approved Valuer

C/o. Ideal Housing Enterprises
 Old Market, Margao - Goa. 403 601
 Phone: 2114006, 2714007
 Mob: 9850471430

Ref. No. :

RCS 583/10
 DWZ/C-177 only
 ll
 07/10/2018

RCS 583/10
 ll
 24/11/19
 Date: 2nd April 2013

INSPECTION REPORT

At the request of Pio Furtado from Sernabatim, I visited the property known as Adompoi on 25th March 2012 situated at Sernabatim bearing Survey Nos.12/5,6,7 and 13.

Scope of the work:

The scope of my inspection is to identify the property enrolled under Matriz No.421 within the Survey Plan.

Documents Perused:

- Survey Plan and Forms I & XIV of land surveyed under Nos.12/5,6,7 and 13 of Sernabatim Village;
- Matriz Certificates of properties enrolled under Matriz Nos.420,421,427,429,430 and 431
- Report of Eng.A Roy Costa Fernandes;
- Certificate from Land Registration Office dated 24.7.08;
- Plaint and written statement in SCS No.143/09/I.

Observations:

- The properties surveyed under No.12/5,6,7 and 13 are touching the high seas.



NEELESCH G. LAAD
 B.E. (Civil) M.I.E., F.I.V.
 ARCHITECTURAL & STRUCTURAL ENGINEER
 APPROVED VALUER, F-3365
 Regd. No. P. W. D. 290 SPD/4 MMC-31
 TCP-92/2010

Superintendent

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2. The property under Matriz No.420 is entered in the name of Alexandre Crescencio Gonsalves (who I have been informed by Pio Furtado is the predecessor of Agostinho Godinho in whose name survey no.12/5 is entered) and is bounded as under :

East : by Praia Velha (old beach) and Nova Quircasona of Francisco

Salvador da Silva and Antonio Modestino da Silva;

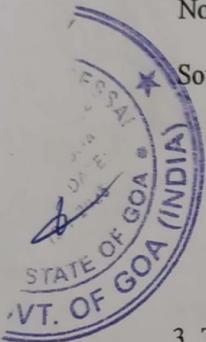
West : by Mar Alto (high seas);

North : by Adompoi of Francisco Adolfo Dias; and

South : by Adompoi of Pedro Bernardino Furtado and Diogo Felipe

Furtado and Caetano Camilo Mouzinho das Augustias Gonsalves

and others.



3. The property under Matriz No.421 is entered in the name of Diogo Filipe Furtado (who I have been informed by Pio Furtado is the father of Antonio Jose Furtado in whose name survey no.12/6) is entered and is bounded as under:

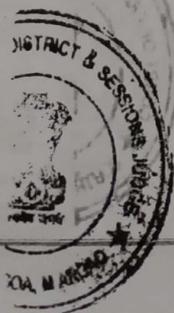
East : by Adompoi and Caetano Camilo Mouzinho das Augustias

Gonsalves;

West : by Mar Alto (high seas);

North : by Adompoi of Crescencio Gonsalves; and

South : by Adompoi of Pedro Bernardino Furtado and Fr. Vincente Mariano Furtado.



NEELESH G. LAAD
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Regd. No. P. W. D. 290 SPD/4 MMC-31
TCP-92/2010

3
Superintendent

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4. The property under Matriz No.429 is entered in the name of Vincente Mariano Furtado and brothers (who I have been informed by Pio Furtado is the father of Joao Menino Furtado and uncle of Antonio Bossuet Furtado in whose names Survey No.12/7 is entered) of Sernabatim and is bounded as under:

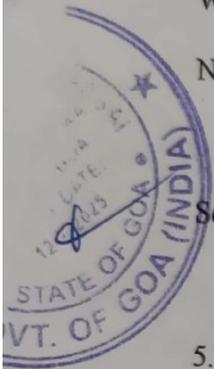
East : by Adompoi of Pedro Bernardino Furtado;

West : by Adompoi of said Bernardino;

North : by Adompoi of Caetano Camilo Mouzinho das Augustias

Gonsalves; and

South : by Adompoi of Luis Menino Lobo.



5. The property under Matriz No.430 is entered in the name of Pedro Bernardino Furtado (who I am informed by Pio Furtado is husband of Ludovina Furtado-plaintiff in SCS No.143/09/I in whose name survey no.12/7) and is bounded as under:

East & West : by Vincente Mariano Furtado;

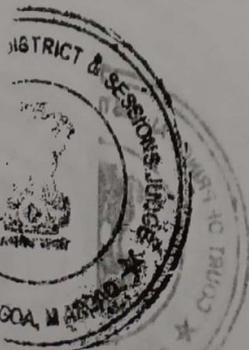
North : by Adompoi of Diogo Felipe Furtado; and

South : by Adompoi of Luis Menino Lobo.



NEELESH G. LAAD
B.E. (Civil) M.I.E., F.I.V.

ARCHITECTURAL & STRUCTURAL ENGINEER
APPROVED VALUER, F-3365
Regd. No. P. W. D. 290 SPD/4 MMC-31
TCP-92/2010



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Superintendent

6. The property under Matriz No.431 is entered in the name of aforesaid Vincente Mariano Furtado and brothers, and is entered in Form I & XIV in the name of Joao Menino Furtado under Survey No.12/7) and is bounded as under:

East : by Adompoi of Pedro Bernardino Furtado;

West : by Mar Alto (high seas);

North : by Adompoi of Diogo Felipe Furtado; and

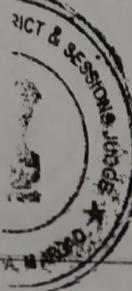
South : by Adompoi of Luis Menino Lobo.

It can be seen from the Matriz documents that the property enrolled under No.421 is owned by Diogo Filipe Furtado. The property surveyed under No.12/6 is entered in Form I & XIV in the name of Antonio J.Furtado who I have been informed by Pio Furtado, is the son of Diogo Filipe Furtado.

The property under Matriz No.421 includes the entire property surveyed under No.12/6 and part of property surveyed under No.12/7. I have drawn a plan in which survey No.12/6 is shown in green and the part of Survey No.12/7 which forms part of property under Matriz No.421 is shown in red.

The area of the entire Matriz No.421 as shown by me in the plan is 13 mts. x 48 mts. = 624 sq.mts.

On observation at site it is also seen that there is a structure in Survey No.12/6 comprising of rooms and which extends into survey no.12/7. The said structure is shown in the plan. The



NEELESH G. LAAD
B.E. (Civil) M.E., F.I.V.
ARCHITECTURAL & STRUCTURAL ENGINEER
APPROVED VALUER, F-3365
Regd. No. P. W. D. 290 SPD/4 MMC-31
TCP-92/2010

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 Superintendent

shown in the plan. The entire structure is in possession of Shri Pio Furtado who opened the rooms in my presence for my inspection.

The boundaries of the matriz no.421 as identified by me in the plan tally with the boundaries as shown in the Matriz Certificate on all four sides.

It can be seen from Matriz Certificate of land enrolled under No.420 that the western boundary of the property is high seas. However, Eng.A.Roy Costa Fernandes has shown the same as high sea and Matriz No.421 which is not as per Matriz Certificate. Said Eng.Costa has shown Matriz No.421 as lying within Survey No.12/5 which is not possible since the entire western boundary of Matriz No.420 (Survey No.12/5) is shown as the high seas and therefore Matriz No.421 cannot be the western boundary of Matriz No.420 (Survey No.12/5). Similarly, Matriz No.421 lies within Matriz No.420 (Survey No.12/5) then the eastern boundary of Matriz No.421 has to be Matriz No.420 which is also not the case as per documents.

From the documents it can be ascertained that the Matriz No.421 includes Survey No.12/6 and land further to the East which is part of Survey No.12/7 as shown in my plan.

The northern boundary of Matriz No.429 is Caetano Camilo M.D.A. Gonsalves. Eng.A.Roy Costa Fernandes has pushed the said property into Matriz No.420 (Survey No.12/5), in his report. His report does not therefore tally with the boundaries of Matriz No.420.

I have gone through the Land Registration Certificate dated 24.7.08. The boundaries of the property Adampoi as mentioned therein cannot be located as none of the boundaries can be ascertained as currently the properties are not in the names of the holders mentioned therein.



NEELESH G. LAAD
 B.E. (Civil) M.I.E., F.I.V.

ARCHITECTURAL & STRUCTURAL ENGINEER
 APPROVED VALUER, F-3365
 Regd. No. P. W. D. 290 SPD/4 MMC-31
 TCP-92/2010

Superintendent

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Moreover, the Matriz Certificates produced by the plaintiff being Matriz Nos.421,427,429,430 and 431 do not tally with the Land Registration document. Hence, it cannot be said that the property shown in the Matriz and in the Land Registration Certificate are one and the same.

Conclusion:

In the light of what is stated above, it is clear that the property under Matriz No.421 owned by Diogo Filipe Furtado includes the whole of survey No.12/6 shown in green colour and part of survey no.12/7 shown in red in my plan totally admeasuring 624 sq.mts. with dimensions of 48.0 x 13.0 mts. In the same area there is also a structure comprising of rooms in possession of Pio Furtado.

The plan forms integral part of this report.



NEELESH G. LAAD (NEELESH G. LAAD)
B.E. (Civil) M.I.E., F.I.V.

ARCHITECTURAL & STRUCTURAL ENGINEER
APPROVED VALUER, F-3365

Regd. No. P. W. D. 290 SPD/4 MMC-31
TCP-92/2010

Reg. No. PWD-290

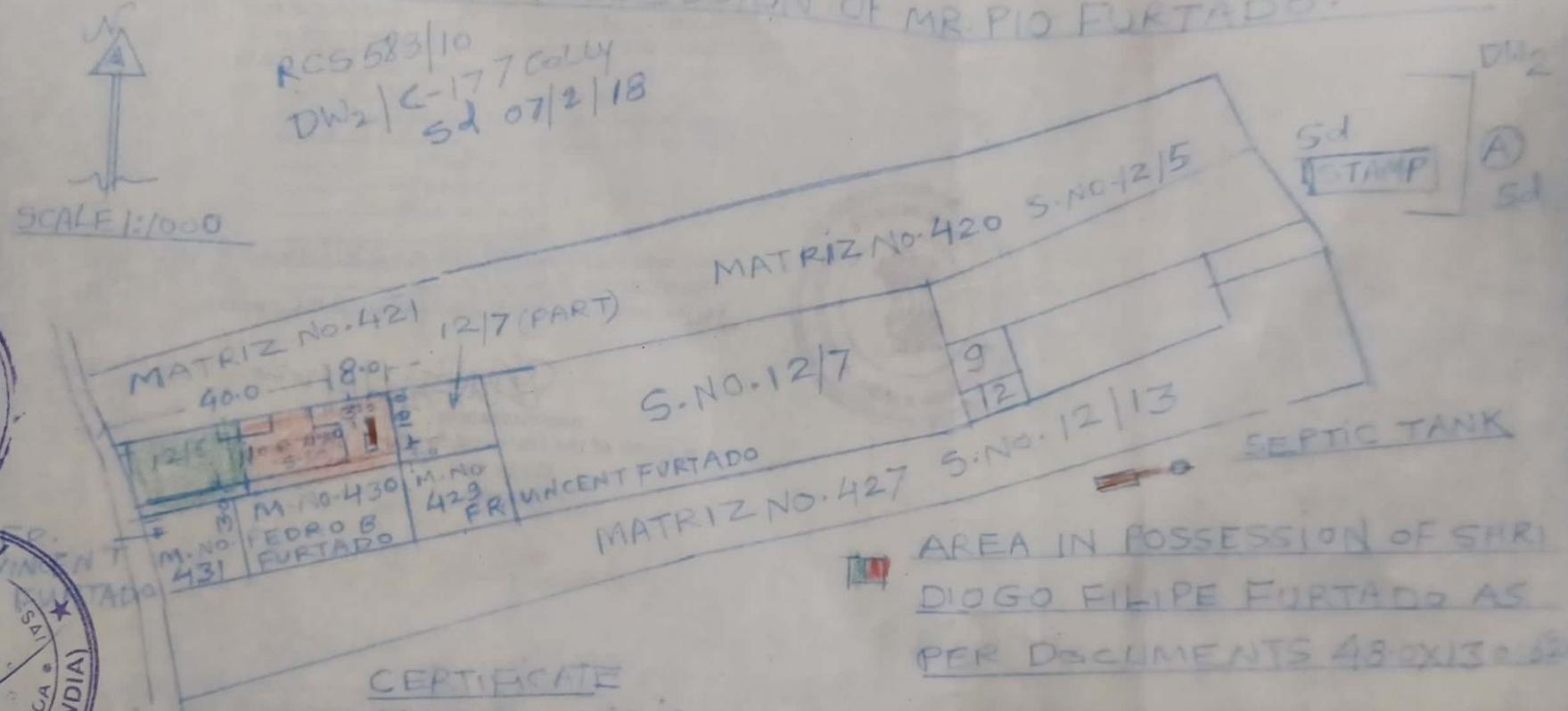
S.P.D.A.-4

FIV 3365

Handwritten signature and date: 29/12/16

*Compared with the original
File.*

STATE PLAN OF PROPERTY SURVEYED UNDER NO 12/2/2/5
 OF VILLAGE SERNABATIM SALCETE SHOWING THEREIN
 THE PROPERTIES UNDER MATRIZ NO. 420, 421, 427, 428, 430, 431
 AND THE AREA IN POSSESSION OF MR. PIO FURTADO.



CERTIFICATE
 I DO HEREBY CERTIFY THAT THIS IS
 A TRUE COPY OF THE PLAN ATTACHED
 AT EXBT. C-177 COLLY IN RCA 99/18
 IN RCS 583/10/II. IN THE DISTRICT
 AND SESSION COURT SOUTH GOA
 AT MARGAO.

- AREA IN POSSESSION OF SHRI
 DIOGO FILIPE FURTADO AS
 PER DOCUMENTS 480X130, 4240
- AREA AS SHOWN PER SURVEY
- EXIST STRUCTURE OF SHRI FURTADO

NG
NEELESH G. LAAD
 B.E. (Civil) M.I.E., F.I.V.
 ARCHITECTURAL & STRUCTURAL ENGINEER
 APPROVED VALUER, F-3365
 Regd. No. P. W. D. 290 SPD/4 MMC-31
 TCP-92/2010

P. F. O.

CERTIFIED COPY

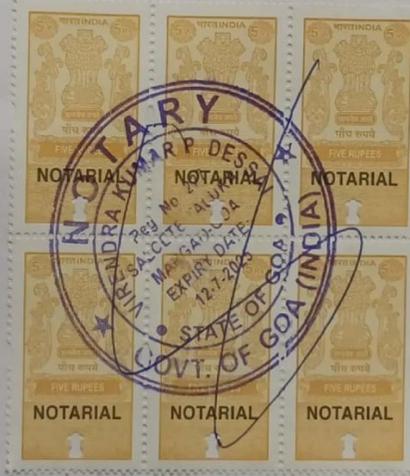
Reg. No. 740/2020 (V) No. 252/2020
 Date on which copy applied for 04/12/2020
 Date on which application completed 04/12/2020
 Date given for taking delivery 07/12/2020
 Date on which copy was ready 07/12/2020
 Date on which copy delivered 22/12/2020

Copying fee Rs. _____
 Comparing fee Rs. _____
 Paper charges Rs. _____
 Total: _____

Paid under Receipt No. 32727 dt. 04/12/2020 & R. No. 35561
 Affixed Court fee of Rs. 25 Dt. 22/12/2020
 For the purpose of For further proceeding



Slaw 22/12/2020
 Superintendent
 Order of the District & Sessions Judge
 South Goa
 Margao



CERTIFIED TO BE TRUE COPY
 OF THE ORIGINAL

VIRENDRA KUMAR P. DESSA
 NOTARY
 MARGAO, GOA
 State of Goa (India)

Reg. No. 309 Date 20/01/2023

Office Of the Village Panchayat
Sernabatim, Vanelim, Colva & Gandaulim
Salcete-Goa Pin Code 403 708

Date 01.10.85

Re. No. VP/SVCG/4485-86



NO OBJECTION CERTIFICATE

This is to certify that this village Panchayat of Sernabatim, Vanelim, Colva & Gandaulim has no objection to Shri. Joao Inacio Furtado of Sernabatim Ambeaxir to undertake the repairs of the existing structure by changing the roof with ribs and mangalore tiles, situated at Ambeaxir, Sernabatim village under survey No.12/6.

This certificate is issued at the request of the interested party in order to start the above said works.

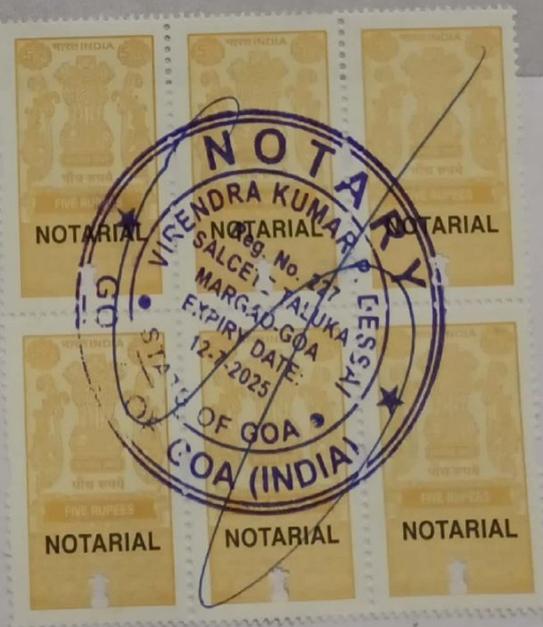


(VICENTE RODRIGUES)
SARPANCH
Village Panchayat,
Sernabatim, Vanelim, Colva & Gandaulim

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

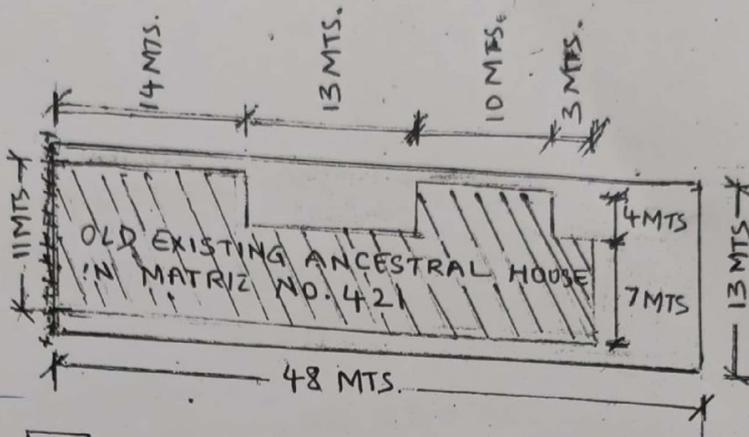
VIRENDRA KUMAR P. DESSAI
NOTARY
MARGAO-GOIA
State of Goa (India)

Reg No 33... Date 04/01/28



SKETCH

SHOWING THE LOCATION OF THE OLD EXISTING ANCESTRAL HOUSE OF SHRI ANTONIO JOSE FURTADO IN MATRIZ NO. 421 OF SERNABATIM VILLAGE FOR REPAIR WORK.



-  AREA OF MATRIZ NO. 421 IS 624.0 M²
-  OLD EXISTING HOUSE IN MATRIZ NO. 421
-  EXISTING RETAINING WALL

SCALE 1:500



Shri Antonio Furtado

Sertão,
VILLAGE PANCHAYAT,
Sernabatim, Vazilha, Colva
and Sertão



CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

[Signature]
SANDEEP B. DESSAI
NOTARY
SALCETE TALUKA
State of Goa (India)

Reg. No. 3159/2022
Date: 8/4/2022

Superintendent

Exbt - 194
A

IN THE COURT OF THE ADHOC SENIOR CIVIL JUDGE AT MARGAO.

Special Civil No.143/2009(Old)
Regular Civil Suit No.583/2010/II.

1. Ludovina Margarida Elvira Dias e Furtado,
aged 102 years, resident of
Cansaulim, represented by her
Attorney Lindo J.Furtado,
House No.51, Capelwaddo,
Sernabatim, Salcete, Goa (Expired).
- 1a. Mr. Goldwin Furtado,
s/o late Gentil B.L.Furtado,
major in age,
- 1b. Mrs. Christine Furtado,
w/o Mr. Goldwin Furtado,
major in age, Amendment carried as per
Order dated 08-01-15 by this
Hon'ble Court .
- 1c. Mr. Gordon Furtado,
s/o late Gentil B.L.Furtado,
major in age,
- 1d. Mrs. Serena furtado,
w/o Mr. Gordon Furtado,
major in age.
- 1e. Gleffy Furtado,
s/o late Gentil B.L.Furtado,
major in age,
- 1f. Mrs. Larissa Furtado,
w/o Mr. Gleffy Furtado,
major of age,



- 1g. Mr. Griffith Furtado,
s/o late Gentil B.L.Furtado,
major in age,
- 1h. Mrs. Evelyn Furtado,
w/o Mr. Griffith Furtado,
major in age,
all above with the residential address
at Abhudaya Apartments,
2nd floor, Opp. Santos Garagre,
Aquem Margao-Goa.
2. Lindo Jeronimo Furtado,
Aged 72years, resident of
House No.51, Capelwaddo,
Sernabtim, Salcete, Goa.
3. Nixon Loyola Furtado,
Aged 39 years, businessman,
Resident of House No.51,
Capelwaddo, Sernabatim,
Salcete, Goa.
4. Nevil Basilio Furtado,
aged 39 years, resident of
Flat No.B-3/S1, Hema Apts.,
Borda,Margao, Goa
5. Sunita Maria Furtado,
aged 36 years, resident of
Flat No.B-3/S1, Hema Apts.,
Borda, Margao, Goa.

... Plaintiffs.

Vs.

1. Mr. Joao Inacio Furtado,
aged about 55 years,
school teacher, resident of
House No.93, Ambeaxir,
Sernabatim, Salcete, Goa.
2. Mr. Sylston Furtado,
Aged about 42 years,
Service, resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
3. Mr. Pio Furtado,
Aged about 40 years,
Resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
4. Mr. Assumcao Agnelo Barnabe Furtado,
Aged about 65 yrs.,
Resident of House No.50,
Capelavaddo, Sernabatim,
Colva, Salcete-Goa

... Defendants.



✓

Exbt - $\frac{193}{A}$

Presented on : 19.09.2009
 Registered on : 22.09.2009
 Re-Registered on : 15.10.2010
 Decided on : 21.08.2018

Duration: Days Months Years
 29 08 08

Judgment reserved on : 21.07.2018

Judgment delivered on: 21.08.2018

IN THE COURT OF THE ADHOC SENIOR CIVIL JUDGE AT MARGAO.

(Before: Shri Ram S. Prabhu Dessai, Adhoc IInd Addl. Senior Civil Judge, Margao)

Special Civil Suit No.143/2009.

Regular Civil Suit No.583/2010/II

1. Ludovina Margarida Elvira Dias e Furtado, aged 102 years, resident of Cansaulim, represented by her Attorney Lindo J. Furtado, House No.51, Capelwaddo, Sernabatim, Salcete, Goa. (Expired).



- 1a. Mr. Goldwin Furtado, s/o late Gentil B.L. Furtado, major in age.

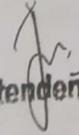
55.

Superintendent

- 1b. Mrs. Christine Furtado,
w/o Mr. Goldwin Furtado,
major in age,
- 1c. Mr. Gordon Furtado,
s/o late Gentil B.L. Furtado,
major in age.
- 1d. Mrs. Serena Furtado,
w/o Mr. Gordon Furtado,
major in age.
- 1e. Mr. Gleffy Furtado,
s/o late Gentil B.L. Furtado,
major in age.
- 1f. Mrs. Larissa Furtado,
w/o Mr. Gleffy Furtado,
major in age.
- 1g. Mr. Griffith Furtado,
s/o late Gentil B.L. Furtado,
major in age.
- 1h. Mrs. Evelyn Furtado,
w/o Mr. Griffith Furtado,
major in age,
all above with the residential
address at Abhudaya Apartments,
2nd floor, Opp. Santos Garage,
Aquem, Margao, Goa.
2. Lindo Jeronimo Furtado,
aged 72 years, resident of
House No.51, Capelwaddo,
Sernabatim, Salcete, Goa.
3. Nixon Loyola Furtado,
aged 39 years, businessman,
resident of House No.51,
Capelwaddo, Sernabatim,
Salcete, Goa.
4. Nevil Basilio Furtado,
aged 39 years, resident of
Flat No.B-3/S1, Hema Apts.,
Borda, Margao, Goa.
5. Sunita Maria Furtado,
aged 36 years,
resident of Flat No.B-3/S1,
Hema Apts.,
Borda, Margao, Goa.

... Plaintiffs.




Superintendent

Vs.

1. Mr. Joao Inacio Furtado,
aged about 55 years,
school teacher, resident of
House No.93, Ambeaxir,
Sernabatim, Salcete, Goa.
2. Mr. Sylston Furtado,
aged about 42 years,
service, resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
3. Mr. Pio Furtado,
aged about 40 years,
resident of House No.93,
Ambeaxir, Sernabatim,
Salcete, Goa.
4. Mr. Assumcao Agnelo Barnabe Furtado,
aged about 65 yrs.,
resident of H.No.50,
Capelavaddo, Sernabatim,
Colva, Salcete, Goa.

Defendants.

Learned Advocate C. Mascarenhas for the Plaintiffs.

Learned Advocate R. Gracias for the Defendant Nos.1 to 3.

Learned Advocate A. D'Cruz for the Defendant No.4.

J U D G M E N T(Delivered on this the 21st day of the month of August, of the year
2018)

1. This Judgment and Order shall dispose of the suit of the plaintiff
for declaration of title.

PLAINTIFFS CASE

2. There exists in ward Adampoi of village Sernabatim, Taluka of
Salcete, Goa a landed property also known as "Adampoi". The said
property was originally a coconut grove and bounded on the east with
the property of the same name belonging to heirs of Joaquim Mariano
Furtado of Sernabatim, on the west with the high seas, on the south
with the property of the same name of the heirs of said Joaquim
Mariano, Joao Furtado and Avelino Furtado of the same village and on

37
Comandante

the north with the property of the same name of the heirs of the said Joaquim Mariano Furtado.

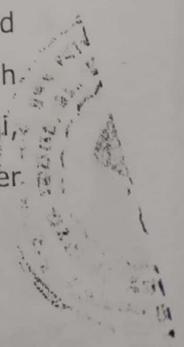
3. The said property is described under No.2883 in the erstwhile Land Registration Office of Salcete. The said property has been surveyed under survey Nos. 12/6 and 7 of revenue village Sernabatim in the cadastral survey carried out by Government of Goa under provisions of Goa D.D. Land Revenue Code 1968, with the area of 4,325 square metres.

4. The said property has been inscribed on 1st October, 1870 in the said Land Registration Office in favour of the late Antonio Inacio Furtado and Joao Francisco Furtado on the strength of the purchase made by them on 28.09.1870. Said Antonio Inacio Furtado was the father of Pedro Bernardino Furtado, whose son was Antonio Ignacio Bossuet de Loyola Furtado, also known as Antonio Inacio Furtado, who was married to the plaintiff No.1. The plaintiff No.2 is the son of the said Antonio Inacio Furtado and plaintiff no.1. The plaintiff Nos. 3,4 and 5 are the children of plaintiff No.2 and his late wife Elizabeth Furtado. The plaintiffs are therefore the co-owners in possession of the said property.

5. In the said property there is an old structure, which has been variously used for purposes of dwelling as well as storage of agricultural produce.

6. It appears that on or about 15.12.1997 a complaint was made to the Deputy Collector of Salcete at Margao that defendant had erected a construction in the said property without obtaining the sanction of the statutory authorities to convert the said land to non-agricultural use. The plaintiffs herein were not made parties to the hearing of the said complaint, which was registered as Case No.LRC/Ileg-Conv/59/98, nor were they otherwise aware about the said proceedings.

7. The plaintiffs later learnt that the Deputy Collector had passed a Judgment dated 27.10.2000 in the said matter, against which defendant had filed an appeal in Administrative Tribunal at Panaji, which was withdrawn on 20.11.2008. The plaintiffs have thereafter filed an appeal on or about 02.02.2009, which is pending.



8. Said structure was originally a dwelling house and thereafter used as a store-room for coconuts by the family of the plaintiffs herein. Sometime in the early 1990's the local Village Panchayat has assessed the said structure for house tax purposes under House No.106/3. Around the same time the Electricity Department of Government of Goa has provided electric supply to the said structure under Installation No.14893.

9. Since around year 2000, the plaintiffs have modified the said old structure and used the same to provide paid accommodation to tourists under the name and style of 'Sundance'. The structure has the area of about 450 square metres spreading across both the sub division Nos.6 and 7 of survey No.12. The structure was split up into twelve rooms. There is also a bar counter and four stone platforms around the said structure, which are used as base for temporary huts. The said establishment 'Sundance' is recorded in the recent survey of coastal areas conducted by Goa Coastal Management Authority in the belt of two hundred metres from the high tide line. The existence of the said structure and establishment is also mentioned in the Report dated 10.08.2007 made by the Talathi of Colva addressed to Deputy Collector of Salcete as part of the survey of the coastal areas. The said establishment also maintained a website with the address www.sundance.goa.com till last tourist season ending May 2009. The said establishment is also featured and advertised in the website of the agency Lonely Goa.

10. The defendant no.1 is a school teacher by occupation. He resides permanently with his wife and children at the address given in the cause title above. The other defendants are his brothers.

11. Sometime in the year 2005, a doubt had arisen between the plaintiffs and defendants as to the identity of the person who is recorded as occupant of sub division 6 of survey No.12. In this connection the defendant no.2 and his mother Maria Filomena Furtado had sworn an affidavit dated 8th August 2005 before Notary Public Adv. J.J. Rodrigues to the effect that their late husband and father (Antonio Jose Furtado or Antonio J. Furtado) did not have any right, title or interest in the said property.

~~Superintendents~~

The plaintiffs have now discovered that the defendant no.1 herein is purported to be recorded as the occupant of House No.106/3 in the local Village Panchayat, which number is said to be related to the structure in the survey No.12/6 and 7 belonging to plaintiffs in the house tax assessment register of the Panchayat. The electricity consumption meter in the said structure bears Installation No.14893, which is also recorded in the name of defendant no.1.

13. Over the last month or so the defendants have been making claims upon the said structure in survey no.12/6 and 7 apparently on the strength of the said house tax number and electricity meter.

14. On 3rd August last, at around 9.00 p.m., the defendant nos.2 and 3 personally came to the site in the company of over twenty labourers and broke into seven rooms of the 'Sundance' establishment, six from the southern side and one from the north. In two rooms the roof rafters and beams as well as the asbestos roof covers have been destroyed. The said persons have also damaged the northern wall and southern windows.

15. The plaintiffs lodged the complaint against the defendants and the police registered FIR against the defendant nos.2 and 3.

16. The defendants without having any right, title or interest in survey no.12/6 and 7 of village Sernabatim are attempting to interfere in the said property in the blatant breach of proprietary rights of the plaintiffs and hence the present suit is filed.

CASE OF DEFENDANT NOS.1 TO 3:

17. The suit is bad for non joinder of necessary parties as the defendants are not the sole owners of the property.

18. It is denied that the property described under no.2883 in the Land Registration Office of Salcete corresponds to the property under survey no.12/6 and 12/7 of village Sernabatim.

19. It is the case of these defendants that the property Adampoi is enrolled in the Land Revenue Office under Matriz No.421 in the name of Diogo Filipe Furtado and the said whole property is presently surveyed under No.12/6 and portion of the property under survey.

no.12/7. That the said property is enjoyed openly and peacefully by the defendants and other co-owners and prior to that it was enjoyed by the ancestors of the defendants and it admeasures 450 square metres (hereinafter referred to as the '**defendants property**'). That the possession of the defendants' property is well within the knowledge of the plaintiffs atleast from the year 1997, when the plaintiffs started lodging complaints against these defendants.

20. That the property towards southern boundary of Matriz No.421 is the property under Matriz No.430, which is enrolled in the name of Pedro Bernardino Furtado, who is the grandfather of the plaintiff no.1.

21. That in the proceedings before GCZMA, the plaintiff no.2 had filed reply alongwith the several documents, including the Matriz certificate under No.430 and further claiming that the suit property bearing survey no.12/6 and 12/7 is enrolled under Matriz No.430.

22. It is further contended by these defendants that in the Writ Petition pending before the Hon'ble High Court of Bombay at Goa the plaintiff no.2 in his reply had contended that there was no structure existing in survey no.12/6 and that the structure existing in his property under survey no.12/6 has been illegally constructed by Maria Filomena Furtado, who is the mother of these defendants.

23. It is the further case of these defendants that said property was exclusively owned by the defendants, who have been having the business of renting rooms in the defendants' property. There are eight rooms in the defendants' property. Three rooms were rented to the tourists. Said premises were earlier registered as 'Furtado Beach House' with the Tourism Department. However, the defendants closed the restaurant and converted the said rooms into storerooms and as residences for the staff employed by them. Said structure is registered under House No.106/3 in the name of defendant no.1 in the Village Panchayat and same is owned by the family of the defendants. There is also an electric connection to the said premises, which is in the name of the defendant no.1.

24. It is denied that the business of the plaintiffs under name and style "Sundance" is carried out in the defendants property. It is

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further contended that said business was carried out in the remaining portion of survey no.12/7, over which the plaintiffs claim ownership alongwith Dr. Gleffy Furtado and others.

25. It is denied that the defendant no.2 had sworn affidavit before Notary J.J. Rodrigues. It is further contended that it is a fraudulent document. It is denied that the defendants broke into seven rooms on 03.08.2009. It is further contended that the plaintiffs have filed a false complaints against the defendants before the police.

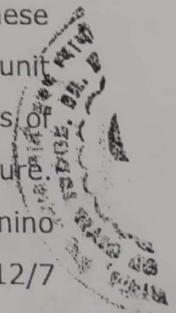
26. It is further case of these defendants that the plaintiffs were never in possession of this structure existing in the defendants property and said property exclusively belongs to the defendants and other co-owners and prayed for dismissal of the suit

CASE OF DEFENDANT NO.4:

27. It is denied that the plaintiffs were using the old structure/room existing in the suit property for the storage of coconuts or any other purpose whatsoever.

28. It is admitted that the portion of the structure of defendant nos.1,2 and 3 is located in the property under survey no.12/7 and that said rooms are always occupied by the said defendants till the time of its construction many years ago. It is further admitted that the structure existing in the defendants property is owned by family of defendant nos.1,2 and 3 and that said defendants are running their business of renting rooms, bar and restaurant.

29. That Fr. Vicente Mariano Furtado was owner of the properties enrolled in the Land Revenue Office under Matriz Nos. 424, 429 and 431. That Joao Menino Furtado whose name appears as co-occupant of survey no.12/7 in Form I & XIV is the direct legal heir of said Vicente Mariano Furtado and has inherited property through him. The plaintiffs are the descendants of Pedro Bernardino Furtado who was owner of property under Matriz Nos. 425, 428 and 430. All these six properties enrolled in Matriz are jointly surveyed as one unit under survey No.12/7 including the portion claimed by legal heirs Diogo Filipe Furtado and upon which they have part of their structure. The defendant no.4 is the son and legal heir of late Joao Menino Furtado, whose name appears as co-occupant of survey no.12/7



alongwith the name of Anthony B. Furtado who is the late husband of plaintiff no.1. The property was jointly surveyed since it was enjoyed in common by both families.

30. The entire survey no.12/7 was co-owned by late plaintiff no.1 and her husband Anthony Bossuet Furtado, who had two sons and two daughters, who are their legal heirs. The plaintiff no.2 is one of the sons. The plaintiffs alongwith all the legal heirs of plaintiff no.1 and her late husband are entitled for half share in the property. The defendant no.4 is entitled for the other half.

31. Heard Ld. Advocate Shri C. Mascarenhas on behalf of the plaintiffs. Ld. Advocate Shri R. Gracias on behalf of the defendant Nos. 1 to 3 and Ld. Advocate Shri A. D'Cruz on behalf of the defendant No.4. Also perused the written submissions filed by the parties. Based on the pleadings and documents, the following issues were framed by my predecessor and my findings thereon are as follows:

Sr. Nos.	Issues	Findings
1.	Whether the plaintiffs prove that they are the exclusive owners of the property bearing survey nos.12/6 and 12/7 of village Sernabatim?	In the negative.
2.	Whether the plaintiffs prove that the defendants are attempting to interfere in the said property belonging to them i.e. survey nos. 12/6 and 12/7 of village Sernabatim?	In the negative.
3.	Whether the defendants prove that survey nos. 12/6 and 12/7 of village Sernabatim belongs exclusively to the defendants, who are also in possession of the same?	In the affirmative.
	What relief? What order?	As per final Order.

REASONS

32. The plaintiffs have examined Mr. Nevil Furtado as PW1 and produced the following documents namely Deed of Sale dated 28.09.1870 alongwith English translation at Exbt. 35 colly, Document

of Description No.2883 alongwith English translation at Exbt.36 colly, updated survey plan at Exbt.37, Form I & XIV of survey no.12/6 of village Sernabatim at Exbt.38, Form I & XIV of survey no.12/7 of village Sernabatim at Exbt. 39, Form III pertaining to survey nos. 12/6 and 12/7 at Exbt.40, Form I & XIB of survey no.12/22 at Exbt.41, Form I & XIV of survey no.12/5 at Exbt.42, Form I & XIV of survey no.12/8 at Exbt.43, Form I & XIV of survey no.12/9 at Exbt.44, Form I & XIV of survey no.12/11 at Exbt. 45, Form I & XIV of survey no.12/12 at Exbt.46, Form I & XIV of survey no.12/13 at Exbt. 47, Order dated 5.5.1995 at Exbt. 48, Birth certificate of Pedro Bernandino Furtado alongwith English translation at Exbt. 49 colly, Birth Certificate of Antonio Ignacio Bossuet de Loyola Furtado alongwith English translation at Exbt.50 colly, Birth Certificate of Lindo Furtado alongwith English translation at Exbt. 51 colly, Death Certificate of Antonio Furtado at Exbt.52, Affidavit of Maria Filomena and Shilston Furtado at Exbt. 53, Report dated 10.8.2007 made by Talathi of Colva to the Dy. Collector alongwith panchanama attached therein and sketch which was obtained under RTI at Exbt. 54 colly, Undated Report at Exbt.55, Show cause notice dated 23.10.2007 at Exbt. 56, Letter dated 30.10.2007 issued by Maria Furtado at Exbt. 57, Letter dated 27.11.2007 issued by Lindo Furtado at Exbt.58, Letter dated 30.11.2007 at Exbt.PW1/57 colly, Delivery challan dated 9.1.2008 at Exbt.PW1/58, Letter dated 18.11.2008 at Exbt.PW1/59, Electricity bill at Exbt.PW1/60, Letter dated 9.5.2008 at Exbt.PW1/61, Letter dated 10.09.2008 at Exbt.PW1/62, 4 photographs marked as X for identification, Demolition notice bill at Exbt.PW1/63, Show cause notice at Exbt.PW1/64, Order dated 31.12.2008 at Exbt.PW1/65, two order of the Coastal Zone Management Authority dated 31.12.2008 at Exbt.PW1/66 colly, Demolition Order at Exbt.PW1/67, FIR at Exbt.PW1/68 colly Writ Petition bearing No.145/09 at Exbt.PW1/69, Order At Exbt.PW1/70, Scene of Offence panchanama at Exbt.PW1/71, Order of the Sessions Court on the anticipatory bail at Exbt.PW1/72, Order dated 10.08.2009 at Exbt.PW1/73, Extract of Electoral roll at Exbt.PW1/74, Grouchier at Exbt.PW1/75, Order dated 28.8.2009 at Exbt.Pw1/76, Copy of power of attorney at Exbt.PW1/77, Order of the Commissioner at Exbt.PW1/78, Order of health Authority at Exbt.PW1/79, Application for increment alongwith affidavit marked as

X for identification, survey plan of survey no.12/5 at Exbt.PW1/80, Site Inspection report and the survey plan at Exbt.PW1/81 colly, Inspection report of the surveyor A. Roy Fernandes alongwith plan marked as X for identification, Affidavit dated 29.10.1997 at Exbt.PW1/92 colly, Tourist Register at Exbt.PW1/100 colly, Application filed with Land Revenue Code at Exbt.PW1/101, Affidavit sworn by defendant no.2 dated 27.10.1997 at Exbt.PW1/102, survey plan at Exbt.PW1/103, photograph alongwith negatives at Exbt.Pw1/105 colly, matriz certificate of the property under survey no.420 alongwith English translation at Exbt.C-138 colly (in cross), Land Description No.25832 alongwith English translation at Exbt.C-141 colly and Matriz Certificate of Matriz No.420, 421 and 427 alongwith English translation at Exbt.C-142 colly. The plaintiffs have also examined Engineer Alvaro Roy Costa Fernandes as PW2, Sushant Lotlikar as PW3, Delano D'Costa as PW4 and thereafter closed their case.

33. The defendants have examined defendant no.3, Shri Pio Furtado as DW1 and produced the documents namely Matriz Certificates No. 423, 424, 425 and 428 in Portuguese alongwith English translation at Exbt.C-156 colly, Matriz Certificates No. 420, 421, 422, 427, 429, 430 and 431 in Portuguese alongwith English translation at Exbt.C-157 colly, replies dated 10.12.1998 and 19.1.1999 filed by the plaintiff no.2 in Writ Petition No.418 at Exbt. 158 colly, 4 house tax receipts issued by the Village Panchayat, at Exbt. C-159 colly, four Electricity Bills at Exbt. C-160 colly, Birth Certificate of my father at Exbt. C-161, Death Certificate of my father, at Exbt. C-162, records and proceedings of case No. LRC/Illeg-cons/45/98 at Exbt. C-163, records and proceedings of case No. LRC/Illeg-cons/59/98 at Exbt. C-164, licence dated 15.10.2008 issued by Department of Tourism in favour of plaintiff no.2, at Exbt. C-165, affidavit dated 23.11.2007 of plaintiff no.2, at Exbt. C-166, Site plan in respect of the proposed shack and huts at Sernabatim at Exbt. C-167, Sketch at Exbt.C-168, Registration of Furtado Beach House and endorsement of cancellation of certificate dated 20.08.2002 at Exbt.C-171 (in cross), letter dated 22.2.2010 at Exbt.C-175. The defendants have also examined Engineer Shri Neelesh Laad as DW2 and produced the report and the plan at Exbt.C-177 colly and thereafter closed their case.

34. **Issue No.1 and 3:** Ld. Advocate J. Ramaiya for the plaintiffs submitted that the plaintiffs have established their title by producing the title document namely Land Registration Certificate and the Sale Deed. He further submits that the matrix document relied by the defendants cannot be considered as a title document and as such, the defence based on such matrix certificate as a title document has to be rejected. Ld. Advocate Ramaiya further submitted that in the Report submitted by the Talathi of Village Sernabatim to the Collector (Exbt.C-54), the possession of the plaintiffs has been clearly mentioned, which fact has remained uncontroverted in the evidence.

35. Per contra, Ld. Advocate R. Gracias for the defendant nos.1 to 3 argued that the plaintiffs have miserably failed to prove that the property under survey no.s.12/6 and 12/7 of village Sernabatim corresponds to the title document as well as matrix document relied by the plaintiffs. He further submitted that the admissions made by the plaintiff no.2 in the Writ Petition and before various authorities regarding the ownership of the structures existing in the above survey holdings are clear and unambiguous and same are sufficient to dismiss the present suit. Ld. Advocate R. Gracias further submitted that the defendant nos.1 to 3 have totally proved their exclusive possession over the defendants property and the structures existing therein. He further submits that the registration of the said structure in the name of the defendant no.2 in the Village Panchayat records and the Electricity connection in the name of the defendant no.1 in respect of the structures establishes beyond the doubt that the defendant nos.1, 2 and 3 are in exclusive possession and occupation of the suit structure.

36. The admitted facts pertaining to the above controversy are as under:

a. That the existing structure (suit structure) is spreading across the survey no.12/6 and 12/7 of village Sernabatim and it is single structure.

b. The suit structure is registered with the Village Panchayat under House No.106/3 and same is registered in the name of defendant no.1.

c. The electricity connection to the suit structure is in the name of defendant no.1.

d. That the suit structure is not shown on the Government Survey Plan of survey nos.12/6 and 12/7 of village Sernabatim.

37. The title documents produced by PW1 is the Deed of Sale dated 28.09.1870 (Exbt.C-35 colly) and the Land Description Certificate under No.2883 (Exbt.C-36 colly).

38. By virtue of the Sale Deed at Exbt. C-35 colly Antonio Inacio Furtado and Joao Francisco Furtado had purchased in equal proportion, the portion of the property i.e. (3rd part) of an Aforamento known as "Adampoi", situated on the seashore of village Sernabatim from one Maria Joaquina Rebello.

39. Pursuant to the execution of the above Sale Deed, an endorsement in respect of the said transaction was made in the Land Registration Records and same is reflecting in the Land Registration document produced by the plaintiffs at Exbt.C-36 colly.

40. In view of both the above documents, the purchase of the property mentioned in the Sale Deed by the persons named therein stands duly proved.

41. In so far as the relationship between the plaintiffs and the said purchaser namely Antonio Inacio Furtado is concerned, the plaintiffs have produced the Birth certificates at Exbt.C-49 colly and C-51 colly, which clearly prove the above relationship.

42. Now coming to the identification of the property vis-à-vis the title document, in view of the specific defence taken by the defendants that the property under survey nos.12/6 and 12/7 have no connection with the above Sale Deed and Land Registration document, it was incumbent upon the plaintiffs to establish the above fact regarding the identification of the property vis-à-vis their title documents.

43. PW1 in his cross examination has admitted that there are several properties in the locality having the name "Adampoi". PW1

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 has further deposed that their property comprises of 3 Matriz holdings and that survey no.12/6 and 12/7 is comprised of several properties having different matriz numbers bearing 429, 430, 431 and many more. The fact regarding the enrollment of the suit property in the Matriz records is conspicuously missing in the pleadings. PW1 could not give the area of the above matriz numbers. PW1 also could not tell the total area of the property covered under above three matriz numbers. PW1 did not know the matriz number of the property surveyed under no.12/6. PW1 does not know as to how many properties as described in the matriz constitute the property now surveyed under no.12/7.

44. PW1 has admitted that as per the plan of Engineer Roy Costa, the matriz no.421 is shown as western boundary of matriz no.420 alongwith the high seas as a western boundary. PW1 could not explain the difference. The cross examination of PW1 starting from page 34 onwards is directed against the identification of the suit property vis-à-vis the matriz document. It is seen that PW1 could not explain the ambiguities remained in identification of the suit property vis-a-vis the matriz records.

45. The expert witness examined by the plaintiffs namely PW2 Engineer Alvaro Fernandes to identify the suit property based on Matriz numbers so also to disprove the defence of the defendants that the defendants property is enrolled under Matriz No.421. PW2 has produced his Inspection report dated 24.08.2011 alongwith the plan drawn by him which is marked as 'X'. According to PW2, survey no.12/6 is the part of the properties enrolled under matriz numbers 430 and 431 and that matriz no.421 corresponds to the property under survey no.12/5 located on the north of survey no.12/6.

46. It is pertinent to note that the plaintiffs have not pleaded anything about enrollment of the suit property in the matriz records in the plaint. It is not even their case in the plaint that suit property and/or the property under survey no.12/6 corresponds to matriz no.430 and 431. Resultantly, the evidence of PW2 in so far as identification of the survey no.12/6 based on matriz records has no evidentiary value on account of lack of pleadings in that regard. Further, PW2 has not given any opinion in respect of identification of

the property based on Land Description No.2883, which find place in the pleadings of the plaintiffs.

47. Irrespective to the above discrepancy, after perusal of the evidence of PW2, it can be certainly held that the opinion given by him in his report is not based on the documentary evidence and same appears to be inconclusive and doubtful.

48. I say so because Pw2 has deposed that the property described under No.2883 has several matrix numbers, including matrix nos.429, 430 and 431 and that besides the above matrix numbers, there could be several more numbers constituting the property under description no.2883. PW2 could not give the other matrix numbers. PW2 at the same breath has deposed that he cannot conclude based on Land Registration Certificate No.2883 and the matrix numbers 429 , 430 and 431 that these three matrix numbers alongwith other properties constitute property under Land Registration No.2883.

49. Resultantly, it transpires that the plaintiffs are not sure whether the property under Land Registration No.2883 is the same property as enrolled under Matrix No.429, 430 and 431.

50. PW2 further admits that names mentioned in the Form No.I & XIV of survey nos. 12/6, 12/7 and other numbers referred by him in his report do not tally with the names of the owners of the properties or the boundaries of the properties as mentioned in the Land Description Certificate No.2883 and/or Matrix Certificate of 429, 430 , 431 and others. PW2 has voluntarily given the explanation stating that the boundaries and the names of the owners do not tally on account of lapse of time and subsequent inscriptions.

51. The above explanation though appear to be probable, same cannot be taken at its face value, in absence of any pleadings in that regard in the plaint. Nothing prevented the plaintiffs from incorporating the facts regarding change of ownership etc. in respect of the properties adjoining the suit property, during period between the preparation of the matrix records and survey records. Hence, the above explanation given by the witness cannot be considered.

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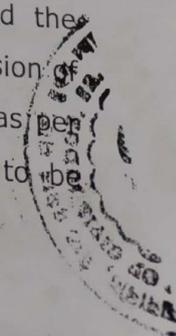
52. Pw2 further admits that boundaries of the property under Land Description No.2883 do not tally with the boundaries of matrix nos. 429, 430 and 431. Again the explanation is given by PW2 stating that the boundaries described under Land Registration No.2883 relate to the whole property and matrix are fragmented portions of the whole property. The pleadings in respect of the above ambiguity are totally missing and hence, the above explanation cannot also be accepted as sufficient.

53. In the plan annexed to the Inspection report, the western boundary of the property under matrix no.420 is shown as the high sea and the property under matrix no.421. However, in the cross examination PW2 has admitted that as per the Matriz certificate No.420, the said property is entirely bounded towards west by the high sea. Again, PW2 could not explain the above discrepancy.

54. The testimony of PW2 as discussed hereinabove portrays some glaring shortcomings in the Inspection report as well as the plan prepared by PW2. There are several discrepancies in the testimony of PW2, which after cumulative appreciation are sufficient to hold that the opinion given by PW2 in so far as identification of the properties is defective and as such, same cannot be relied for the purpose of deciding the controversy involved in the present matter.

55. Thus, the plaintiffs have failed to prove that the property under survey nos.12/6 and 12/7 corresponds to either Land Registration Certificate No.2883 or to the Matriz No.429, 430 and 431 and resultantly, have failed to establish their title to the above survey holdings based on the title documents.

56. Now coming to the possession, Ld. Advocate J. Ramaiya for the plaintiffs strenuously submitted that the report of the Talathi at Exbt.C-54, the correspondence exchanged between the authorities at Exbt.C-55 and C-56, the demolition notice and the show cause notice issued by the Village Panchayat at Exbt.C-63 and C-64 and the affidavits given by the defendants, clearly establish the possession of the plaintiffs over the suit property. He further submits that as per Section 110 of the Indian Evidence Act, the plaintiffs are to be presumed to be the owners of the suit property.



57. Per contra, Ld. Advocate R. Gracias for the defendant nos.1 to 3 submitted that the possession of the structure with the defendants is admitted by the plaintiffs. He further submits that in the complaint lodged by the plaintiff no.2 at Exbt.C-163 colly, the plaintiff no.2 has unambiguously admitted the possession of the defendants. He drew my attention to the Order passed by Commissioner of Excise at Exbt.C-78 and other documents to substantiate the possession of the defendants. Ld. Advocate R. Gracias further argued that there are no pleadings as to how and when the plaintiffs have recovered the possession from the defendant nos. 1 to 3.

58. It is seen that the affidavit executed on 08.05.2005 by defendant no.2 and his mother namely Maria Filomena Furtado is produced by PW1 at Exbt.C-53. In the said affidavit both the above executants have given their no objection to record the name of Antonio Bossuet Furtado and his heirs in respect of the property under survey no.12/6. The report of the Talathi dated 10.8.2009, alongwith the panchanama and the sketch dated 11.08.2002 is at Exbt.C-54 colly. The Report of the Deputy Collector of Salcete forwarded to the Collector, South Goa is at Exbt.C-55.

59. In so far as the report of the Talathi is concerned, in the said report the Talathi has given the details of the structure existing in the suit property. It is further stated that the construction was carried out by Lindo Furtado (plaintiff no.2) and that said construction is of more than 8 years of age and has been illegally done. It is further stated that neither the defendant no.1, 2, Maria Filomena Furtado, Bernabas Furtado nor Dr. Glefy Furtado have done any construction in the survey nos.12/6 and 12/7.

60. Admittedly, the plaintiffs have not examined the Talathi, who had prepared the said report at Exbt.C-54 colly. By producing the said report, the plaintiffs at the most have proved the fact that such report was prepared by the Talathi in the said proceedings. However, in absence of non examination of the author of the said document namely the Talathi, the contents as well as the veracity and/or genuineness of the contents of the said report remained to be proved. The Talathi has categorically stated that he had noticed that construction is carried out by plaintiff no.2. On what basis he had

It is also come to the above conclusion is not stated in the report. It is also not known as to the source of information based on which the Talathi had come to the above conclusion. Therefore, the examination of the Talathi to prove the contents as well as the genuineness of the contents was imperative. In absence of the same, it cannot be said that the plaintiffs have proved the said report and resultantly, same cannot be read in evidence. It is needless to state that the other correspondence exchanged between the Deputy Collector and the Collector based on said report loses its evidentiary value in support of the plaintiffs' case.

61. DW1 has produced the certified copy of an applications dated 10.12.1998 and 19.01.1999 made by the plaintiff no.2 in Writ Petition No.418 (Exbt.C-158 colly). In the said applications the plaintiff no.2 had categorically stated that there is no structure existing in survey no.12/6 of village Sernabatim, while disputing the claim of the respondent in the said Writ Petition that said structure existed in the said property since the year, 1985. The plaintiff no.2 has further admitted that the said construction is illegally done by the defendants.

62. The above stand taken by the plaintiff no.2 in the above Writ Petition is totally contradictory to the pleadings in the present suit, wherein it is pleaded that the structure existed in the suit property was originally old dwelling house and subsequently converted into storeroom by the plaintiff's family.

63. The complaint dated 28.04.1998 lodged by plaintiff no.2 is produced by PW1 at Exbt. C-163. Said complaint was lodged to the Member of Parliament. In the complaint, it was categorically mentioned by PW2 that the defendant no.1 has illegally built a pucca structure in survey no.12/6 and 12/7 and that the defendant no.1 is running a guest house, bar cum restaurant since the year, 1993. DW1 has also produced the two complaints of Dr. Glefya Furtado dated 11.11.1997 and 15.12.1997 (Exbt.C-162) lodged before various authorities. In both the complaints said complainant has also stated that Mrs. Maria Filomena Furtado, who is the mother of defendant nos.1,2 and 3 has constructed illegal structures in survey no.12/6. PW1 in the cross examination has admitted that such complaints

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were filed by Dr. Glefy. DW1 has further admitted that they have many properties in Colva apart from the suit property and same are owned by them alongwith Dr. Glefy Furtado and others.

64. In all the above three complaints, the plaintiff no.2 as well as Dr. Glefy, who is one of the co-owner of the said property have admitted that the construction of structures existing in the survey no.12/6 is done by the family of the defendants. The above stand is again totally contradicts the pleadings and evidence led by the plaintiffs. The above discrepancy in evidence has also not been satisfactorily explained by the plaintiffs.

65. The Order passed by the Commissioner of Excise at Exbt.C-78 is produced by the plaintiffs. In para 2 of the said Order, it is clearly mentioned that cancellation of the bar licence granted to plaintiff no.1 was done based on the complaint lodged by plaintiff no.2. Said Order further discloses that the plaintiff no.2 had lodged the complaint stating that the defendant no.1 had carried illegal construction and encroachment in the property of the plaintiffs surveyed under nos.12/6 and 12/7. Said Order in fact fortifies the case of the defendants regarding the possession over the suit structure.

66. It is pertinent to note that several documentary evidence viz the correspondence exchanged by the plaintiffs and the defendants with various authorities, the show cause notices issued by the Village Panchayat, GCZMA, the replies filed by plaintiffs as well as defendants to such notices etc. are produced by either of the parties.

67. Interestingly, in some notices are issued by the authorities in respect of the same survey numbers alleging that the illegal construction is done by the plaintiff no.2 and in some notices it is alleged that the illegal construction is either done by Maria Filomena Furtado, the defendant no.1 and/or defendant no.2. There is absolutely no material on record to know on what basis/information such notices were issued by the authorities. Some appear to have been issued only based on some complaints lodged by the members of the public. Thus, no credence can be given to such notices in so far as the authenticity of the information in respect of the person,

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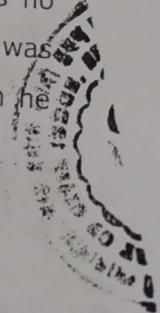
who has allegedly undertaken the construction in the said survey holdings.

68. In so far as affidavit of defendant no.2 and his mother (Exbt.C-53) is concerned, even if it is taken at its face value, same cannot bind the remaining defendants and other co-owners. It is also pertinent to note that the said affidavit only pertains to the property surveyed under no. 12/6 and it does not speak anything about the structure existing therein. Further, the main prayer sought in the present suit is against the defendant no.1 only and therefore, any admission made by the defendant no.2 shall not be sufficient to bind the defendant no.1.

69. Now coming to the oral evidence in so far as possession is concerned, PW1 admits that 12 rooms existing in the suit property are being run as guest rooms and that he has no idea who is running the said rooms presently, as he had locked the same in the year, 2009. PW1 further states that the structures in dispute before the Dy. Collector and the Administrative Tribunal are not the same structures which are in dispute in the present suit. This is again contrary to the pleadings. It further suggests that the plaintiffs are not sure in respect of the structures involved in the present suit. PW1 further admits that he was running the business illegally and that he was paying the electricity bill in the name of defendant no.6.

70. PW1 further admits that the structures existing in the suit property are registered in the name of defendant no.1 since the year, 1990 and that electricity connection is also in the name of the defendant no.1 since the year, 1990. PW1 does not know whether the structure under House No.106/3 has a water connection from PWD.

71. PW1 further admits that he does not have any documents to show that he was operating rooms in the suit premises to run the tourist business in the same. PW1 further admits that there is no house number shown to indicate that the business of Sundance was being run from the suit premises and that the permission which he possess does not contain house number.



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72. The above testimony of PW1 also does not support the case of the plaintiffs regarding the exclusive possession of the suit structure existing in the said property.

73. The evidence of other two witnesses examined by the plaintiffs namely Sushant (PW3) and Delano (PW4) gives the exact survey numbers of the said property. It is surprisingly to note that being mere visitors, they could also tell about the survey numbers of the suit property. Further, in the backdrop of inherent discrepancies in the documentary as well as oral evidence of the plaintiffs, the testimonies of both the above witnesses shall be of no utility to prove the plaintiffs possession over the suit structures.

74. Now coming to the citations relied by the plaintiffs, the ratio laid down in the decision of the Hon'ble Bombay High Court at Goa in Communidade of Quitol Vs. The President, Fabrica of Betul Church & Ors. in First Appeal No. 255 of 2006 decided on 26.07.2013, shall not apply to the facts of the present case, since the plaintiffs have failed to prove that the Sale Deed relied by them pertains to the suit property. Further, as the plaintiffs have failed to prove their title as well as possession based on the documentary evidence, the ratio laid down by the Hon'ble Apex Court in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi & Ors. (AIR 1960 SC 100), with due respect, shall not support the case of the plaintiffs.

75. Since the plaintiffs have failed to establish their title based on the Sale Deed and Land Description document, the ratio laid down by the Hon'ble High Court of Bombay at Goa in Fabrica da Igreja de N.S. de Milagres Vs. Union of India and Ors. 1995 (1) Bom CR 588, shall not assist in any manner the case of the plaintiffs.

76. In view of the above discussion, the plaintiffs have failed to prove that they are exclusive owners in possession of the property bearing survey nos. 12/6 and 12/7 of village Sernabatim based on title as well as based on exclusive possession. On the contrary, the defendant nos.1 to 3 have proved their possession over both the survey holdings and resultantly, in absence of any title, the defendant nos.1 to 3 alongwith other co-owners are presumed to be owners of

the said property. Hence, I answer the issue no.1 in the negative and issue No.3 in the affirmative.

77. **Issue No.2:** Since the plaintiffs have failed to prove their ownership as well as possession over the suit property and on the contrary as the defendants have established their possession, the question of any attempts to interfere in the suit property made by the defendants does not arise and hence, I answer the above issue in the negative.

78. Before parting, I would like to address the argument advanced by Ld. Advocate R. Gracias that the present suit is bound to fail, since declaration of title of the plaintiffs is not sought. He further submits that even the prayers are taken at its face value, in order grant prayer clause (a), all the co-owners of the said property were proper and necessary parties.

79. Per contra, Ld. Advocate Ramaiya submitted that the plaintiffs in the present suit only seek the negative declaration that the defendant no.1 does not have any right, title or interest in the structure existing in the survey no.12/6 and 12/7 and as such all the co-owners are not necessary and proper parties in the present proceedings.

80. After perusal of the pleadings, it is clear that the stand taken by the defendants in the written statement had certainly raised a cloud of suspicion over the title of the plaintiffs. Resultantly, the plaintiffs ought to have amended the plaint seeking a declaration regarding their title, which exercise is admittedly not done by the plaintiffs.

81. Further, even if it is considered that the plaintiffs are seeking only a negative declaration, even then the presence of all the co-owners of the suit property was very much essential. Merely because the issue of non joinder is not framed, though it was raised by the defendants in the written statement, it shall not dispense with the necessity of arraying all the co-owners as the parties in the suit for declaratory relief.

Superintendent

82. Further, there is ample statements and admissions made by Pw1 during the cross examination regarding the existence of several co-owners to the suit property either from the plaintiffs or the defendants side, who are not made parties in the present proceedings.

83. Thus, in absence of all the co-owners, no declaratory relief as prayed can be granted. I am of the further view that the present suit is also bound to fail in absence of the prayer for declaration of title by the plaintiffs.

84. It is a settled law that the plaintiffs must prove their case on their own and cannot rest it on the weakness of the defence. Resultantly, though there are shortcomings in the defence, the plaintiffs cannot accrue any advantage out of the said shortcomings.

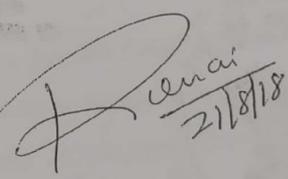
85. In the backdrop of the above discussions, I pass the following:

ORDER

The suit is dismissed with costs.

Decree to be drawn accordingly.

Proceeding Closed.


(Ram S. Prabhu Dessai)
Ad-hoc IInd Addl. Senior Civil Judge,
Margao

Compared with original
duly
use

Case No. 2969/18

Date on which copy applied for 21/8/18
 Date on which application entered 21/8/18
 Date given for filing of copy 31/8/18
 Date on which copy filed 29/8/18
 Date on which copy issued 6/9/18

92/-
 Receipt No: 92/-
 dt. 21/8/18
 129754
 Record.



[Signature]
 District Judge

DECREE

Suit filed on: 22.09.2009

Suit Decided on: 21.08.2018

This is a suit filed by the Plaintiffs against the Defendants for declaration of title and prayed as under:-

- a) that it be declared that Defendant No.1 does not have any right, title or interest in any structure existing either in Survey No.12/6 or 12/7 of village Sernabatim, taluka of Salcete;
- b) that the Defendants, their family members and representatives be restrained by an Order of permanent injunction from interfering with Survey No.12/6 or 12/7 of village Sernabatim, taluka of Salcete in any manner whatsoever;
- bb) In alternative to relief prayed at prayer clause (b) grant relief of recovery of possession to the Plaintiff herein and direct the Defendants to handover and deliver vacant possession of the suit structure to the Plaintiff.
- c) For costs of the suit; and
- d) For any other Order that may be just and proper.

This suit is coming on this day for final disposal before Shri Ram S.Prabhu Dessai, IInd Addl.Adhoc Senior Civil Judge, South Goa, Margao, in the presence of Learned Advocate Shri J.Ramaya for the plaintiff, Learned Advocate Shri M.Naik holding for Adv. Shri A. D'Cruz for the defendant No.4, and defendant No.3 in person, and in the absence of defendant Nos.1 and 2. It is hereby ordered as under :-

The suit is dismissed with costs.

BILL OF COSTS

Sr.No.		Plaintiffs		Defendants	
		Rs.	Ps	Rs.	Ps
1	Stamp for Plaint	3 400	00	00	00
2	Stamp for Exhibits	54	00	26	00
3	Stamp of Power	07	00	06	00
4	Stamp for Process fee	155	00	00	00
5	Pleaders fee on the value of Rs.100,001/-	900	00	900	00
	TOTAL	4516	00	932	00

Given under my hand and the seal of the Court, this 21st day of August, 2018.



Ram S. Prabhu Dessai
24/8/18
(Ram S.Prabhu Dessai)
IInd Adtl.Adhoc Senior Civil Judge
Margao

Prepared by: *[Signature]*
U.D.C.
Checked by: *[Signature]*
Head Clerk

Advocate for the Plaintiffs
Advocate for the Defendant Nos. 1 to 3
Advocate for the Defendant No.4

2969/18
Date on which copy applied for 21/8/18
Date on which application completed 21/8/18
Date given for delivery 31/8/18
Date on which copy delivered 29/8/18
Date on which copy received 6/9/18



Compared with original
[Signature]
use
161-
129754
21/8/18
Recd.
[Signature]
In the presence of the