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# TITLE REPORT

Date: 13-06-2024

To,
1. Yatin Parekh
2. Karan Parekh

## Brief introduction:

This title report is prepared in respect of a property bearing survey no. 6/2-I, admeasuring an area of 2110 square meters, situated in Village Orgao. The said report is prepared at the request of Mr. Karan Parekh and Mr. Yatin Parekh. The property which is subject matter of this report shall be referred to as the "said property" for the sake of convenience.

## Current owners:

The current owners of the said property are Mr. Yatin Parekh and Mr. Karan Parekh, who purchased the said property from its previous owners Mr. Smita Anand Bhonsle alias Smita Yashwant Parab and Mr. Anand Harischandra Bhonsle by way of a Deed of Sale dated 08/09/2023 registered before the Civil cum Sub-Registrar of Ponda, under no. PON- 1-1459-2023.

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## I. LIST OF DOCUMENTS

I have examined the photocopies of the following documents:

1) Deed of Indenture dt. 30/03/1979 reg under no. 125 at pages 173 to 211 of Book I, volume no. 53, dt. 29/12/1979.
2) Deed of Additional charge dt 12/05/1980 reg under no. 112, at pages 356 to 380 in Book no. I volume no. 59 dt. 31/03/1981.
3) Deed of Sale dated 11/03/1988 reg under no. 77 at pages 335 to 350 in Book no. I volume no.59 dt. 09/01/1992.
4) Manual form I and XIV of survey no. 6/2 of Village Orgao, Ponda Taluka, North Goa, Goa.
5) Deed of Succession dt. 11/01/2016 drawn in Book no. 727 at page 21v onwards at Panaji, Dt. 20/01/2016.
6) Death Certificate dated 01/10/2012 of Esvonta Crisna Porobo
7) Birth Certificate dated 18/04/2013 of Umesh Yeshwant Parab.
8) Birth Certificate dated 04/01/2016 of Smita Yeshwant Parab.
9) Deed of Gift dt. 06/01/2022 reg under no. PON-1-323-2022, Book no. I.

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10) Deed of Rectification dt. 31/03/2022 reg under no. PON-1-504-2022 Book no.1.

11) Form I and XIV of survey no. 6/2 of Village Orgao, Ponda Taluka, North Goa, Goa.

12) Deed of Sale dt. 08/09/2023 reg under no. PON-1-1459-2023.

13) Order dt. 09/02/2024 passed case no. PIPON12-23-1414 by the Inspector of Survey and Land records, Ponda, Goa under section 61 of Land Revenue Code.

14) Form I and XIV of survey no. 6/2-I of Village Orgao, Ponda Taluka, North Goa, Goa.

15) Form I and XIV of survey no. 6/2 of Village Orgao, Ponda Taluka, North Goa, Goa.

16) Old Form I & XIV of property bearing survey no. 6/2 of Village Orgao, Ponda Taluka, North Goa, Goa.

17) NOC dated 24/12/2021 issued by the Dt. Town Planner, TCP Department, Ponda Office

18) Form IX of the property bearing survey no. 6/2 of village Orgao

19) Form III (Index of Lands)

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## II. DESCRIPTION OF THE LARGER PROPERTY AND THE SAID PROPERTY FORMING PART OF THE LARGER PROPERTY.

### SCHEDULE-I

(Schedule of the "LARGER PROPERTY")

All that piece and parcel of land admeasuring approximately 30,600 sq mts. or thereabouts within the local limits of the Village Panchayat or Tivrem-Orgao and which is forming part and parcel of the property surveyed under survey no. 6/2 of village Orgao, which is bounded as follows:

On the North: By Property remaining part of the same property "AFORAMENTO",

On the East: By a public road going from banastari to Marcel

On the West: By Partly by the property belonging to Bhat and by the properties- "Caturlim" and "AFORAMENTO" belonging to Shri Kamalxa Anant Sinai Ghodekar and partly by the village road,

On the South: By part of the same Property reserved as access road by the said Kamalaxa Anant Sinai Ghodekar,

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**SCHEDULE-II**

(Schedule of the "SMALLER PROPERTY")

All that piece and parcel of land admeasuring 4000 sq mts. or thereabouts within the local limits of the Village Panchayat or Tivrem-Orgao and which is forming part and parcel of the property surveyed under survey no. 6/2 which is bounded as follows:

On the North: By Property remaining part of the same property "AFORAMENTO",

On the East: By a public road going from banastari to Marcel

On the West: By Partly by the property belonging to Bhat and by the properties- "Caturlim" and "AFORAMENTO" belonging to Shri Kamalxa Anant Sinai Ghodekar and partly by the village road,

On the South: By part of the same Property reserved as access road by the said Kamalaxa Anant Sinai Ghodekar,

**SCHEDULE-III**

(Schedule of the "said PROPERTY")

All that bearing survey no. 6/2-I, admeasuring an area of 2150 square meters, known as "AFORAMENTO" also known as "FONDILBAGA DE ORGAO" or "DHUMEBHAT DE ORGA' "or

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"FONDIL BAGA", of the village of Orgao, within the local limits of the Village Panchayat of Tivrem- Orgao, South Goa, Goa, previously forming a part of the said larger property which is bounded as follows:

On the North: By Property remaining part of the same property "AFORAMENTO" surveyed under survey no. 6 sub division 2 of Village Orgao, Taluka Ponda, South Goa, Goa.

On the East: By a public road

On the West: By Partly by the property belonging to Bhat and by the properties "Caturlim" and "AFORAMENTO" belonging to Shri Kamalxa Anant Sinai Ghodekar and partly by the village road,

On the South: By part of the same Property reserved as access road by the said Kamalaxa Anant Sinai Ghodekar,

## III. TITLE FLOW ALONG WITH OBSERVATIONS:

1) There exists a larger property admeasuring approximately 30,600 sq mts. surveyed under survey no. 6/2 of village Orgao, described in Schedule I above.

2) There was an Indenture of Mortgage dated March 30, 1979, involving Shri Shamdas Buichand Ramchandani, Shri Ram

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Shandas Bharwani, and the Maharashtra State Financial Corporation. This agreement, registered under Sr. No. 125, detailed a loan of Rs. 4,95,000/- (Rupees four lakhs ninety-five thousand only) availed by the said Shri Shamdas Buichand Ramchandani, Shri Ram Shandas Bharwani against a portion admeasuring 4000 square metres forming part of the said larger property admeasuring approximately 30,600 sq mts. surveyed under survey no. 6/2 of village Orgao. The said portion admeasuring 4000 square metres has been described in Schedule II above and shall be referred to as the "smaller property".

3) A Deed of Further Charge was executed on May 12, 1980, supplementing the initial mortgage agreement. Registered under Serial no. 205 on May 12, 1979, this document involved an additional loan of Rs. 1,27,000/- (Rupees one lakh twenty-seven thousand only), strengthening the Maharashtra State Financial Corporation's claim over the smaller property.

4) The record reveals that due to defaults in loan repayments, the Maharashtra State Financial Corporation invoked its rights under the State Financial Corporations Act, 1951 a

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consequently, on January 24, 1985, the Vendor Corporation took possession of the smaller property which was mortgaged, thereby exercising its authority under Section 29 of the said State Financial Corporations Act, 1951.

5) Subsequently, vide a Deed of Sale dated March 11, 1988, the Maharashtra State Financial Corporation sold the smaller property, including land, buildings, and movable assets, to Esvonta Crisna Porobo for a total consideration of Rs. 5,75,000/- (Rupees five lakhs seventy-five thousand only).

6) The old Form I & XIV of the property bearing survey no. 6/2 of village Orgao reflects the name of the said Esvonta Crisna Porobo.

7) There was a Deed of Succession dated 11/01/2016, which recorded the demise of Mr. Esvonta Crisna Porobo as on 03/10/2012 at Marcel, Ponda, South Goa, Goa and the fact that he left behind his wife and moiety holder, Mrs. Anandi Esvonta Porobo Siriscar or Anandi Esvonta Porobo and their only two children, his son Mr. Umesh Yashwant Parab and his

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daughter Mrs. Smita Yashwant Parab alias Smita Anand Bhonsle.

8) There was a NOC dated 24/12/2021 issued by the Dt. Town Planner, TCP Department, Ponda Office, recording its no objection for registration of Deed of Gift in respect of the smaller property falls within "General Industry Zone" as per the Regional Plan 2021.

9) In the year 2021, a Deed of Gift was executed, transferring absolute interest and title in respect of the smaller property. Registered on March 4, 2021, this deed involved the transfer of the land from Esvonta Porobo's family members namely his widow Mrs. Anandi Esvonta Porobo Siriscar or Anandi Esvonta Porobo (represented by her son Mr. Umesh Yashwant Parab, duly authorised by Power of Attorney dated 23/10/2021, bearing Registration No. 1769/2021), the said Mr. Umesh Yashwant Parab and the said Mr. Umesh Yashwant Parab's wife Mrs. Varsha Umesh Parab in favour of late Esvonta' Porobo's daughter Smita Anand Bhonsle alias Smita Yeshwant Parab.

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10) There was a NOC dated 24/12/2021 issued by the Dt. Town Planner, TCP Department, Ponda Office, recording its no objection for registration of Deed of Gift in respect of the smaller property within "General Industry Zone" as per the Regional Plan 2021.

11) In pursuance to the said transfer, the name of the said Smita Anand Bhonsle alias Smita Yeshwant Parab was incorporated in the Form I & XIV of the property bearing survey no. 6/2 of village Orgao.

12) There was error crept in the said Gift Deed dated March 4, 2021 as regards to the undivided share of the Donors in the the Principal Deed. Hence, a Deed of Rectification dated 31/03/2022 was executed to rectify the said error in the Gift Deed dated March 4, 2021.

13) By a Deed of Sale dated 8th September 2023, Karan Parekh and Yatin Parekh jointly purchased an area admeasuring 2300 square metres, forming part of the smaller property from the said Smita Anand Bhonsle and her husband Anand Harishchandra Bhonsle.

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14) Thereafter, the names of Karan Parekh and Yatin Parekh were incorporated in the Form I & XIV of the property bearing survey no. 6/2 of village Orgao.

15) The said Karan Parekh and Yatin Parekh filed an application for partition of their property before the Inspector of Survey and Land Records, Ponda. The said application was registered as Case No. PIPON12-23-1414.

16) Consequently, vide an order dated 9th February 2024, the Inspector of Survey and Land Records, Ponda was pleased to confirm partition of the said property admeasuring 2110 sq. mtrs., as per the partition plan prepared by the office and the partitioned portion was given a new sub division no. 2-I. The portion admeasuring 2100 square metres has been described in Schedule III above and is simply referred to as the "said property" for sake of brevity.

17) Subsequently, the names of Karan Parekh and Yatin Parekh came to be inserted in the Form I & XIV of the property bearing survey no. 6/2-I of village Orgao.

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18) Now, I will proceed to make findings based on the information presented in the aforementioned report.

19) The record indicates that an area admeasuring 4000 square metres forming part and parcel of the larger property property bearing survey no. 6/2 of village Orgao admeasuring 30,600, had been subject matter of a mortgage in favour of Maharashtra State Financial Corporation and that the said Corporation had sold the same to one Esvonta Porobo in the year 1988 due to default in payment.

20) The said sale was effected in terms of Section 29(1) of the State Financial Corporations Act, 1951. The said provision reads as under:-

*29. Rights of Financial Corporation in case of default.—(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof 1 [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the 2 [right to take over the*

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*management or possession or both of the industrial concerns], as well as the 3 [right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation*

21) Section 29(2) of the State Financial Corporations Act, 1951 reads as under:-

*"Any transfer of property made by the Financial Corporation, in exercise of its powers 4 *** under sub-section (1), shall vest in the transferee all rights in or to the property transferred 5 [as if the transfer] had been made by the owner of the property."*

22) Considering the said provisions, it is clear that the same If an empower the Financial Corporation to take appropriate action in the event an industrial concern fails to repay a loan, installment, or breaches its agreement with the Financial Corporation. The Corporation is specifically granted the authority to take over the management or possession of the concern.

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23) Additionally, the Corporation is also granted the right to transfer, through lease or sale, and realize the pledged, mortgaged, hypothecated, or assigned property to recover its dues.

24) The provision further contemplates that any property transfer made by the Financial Corporation, exercising its powers under Section 29(1), will transfer all rights in the property to the transferee, as if the transfer had been made by the property owner. This means that when the Corporation transfers property to recover dues, the transferee receives all rights to that property, similar to if the property owner had directly transferred it.

25) The Maharashtra State Financial Corporation is a Financial Corporation as defined under Section 2(b) of the State Financial Corporations Act. The recitals in the Indenture of Mortgage dated March 30, 1979 read with the Deed of Further Charge was executed on May 12, 1980 contemplate that on failure of redemption of the said Mortgage by the Mortgagors, the Mortgagee i.e. the Maharashtra State Financial Corporation would by default acquire the title of the said property and

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would have the rights to sell the said larger property in order to recover the amount that was advanced as mortgage.

26) There are no documents made available in support of the recitals in the said Deed of Sale dated 11/03/1988 reg under no. 77 at pages 335 to 350 in Book no. I volume no.59 dt. 09/01/1992 in respect of the mortgage. However, the said document has been in public domain for the last more than 35 years and has remained unchallenged, which further substantiates the authenticity of the recitals in the sale deed. The said transaction is by a public institution and is an exercise of power under the statute and therefore stands on a different pedestal.

27) Be that as it may, the Hon'ble Apex Court in the case of Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr., 2009 (7) SCC 363 has held as under:-

*"Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to*

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*people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."*

28) In the case of Damodhar Narayan Sawale (D) through LRs. Versus Tejrao Bajirao Mhaske (2023 SCC OnLine SC 566), the Hon'ble Apex Court held that a registered sale deed is final and conclusive document conveying the title of the property when

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executed with due compliance and that a registered Sale Deed having recitals for transfer of right, title and interest in favour of recipient along with recitals of sale considerations shall give a presumption of valid title.

29) There is no document furnished to me which even remotely suggests that the validity and/or operation of the aforesaid Deed of Sale dated 11/03/1988 is subject matter of challenge in any proceeding. The recitals of the said deed records default in payment of the outstanding loan amounts and the consequent taking over of possession of the smaller property by the Corporation in exercise of its powers under the applicable law. The Deed of Sale dated 11/03/1988 is a registered deed and in light of the ratio laid down in Suraj Lamps (supra), the said Deed of Sale dated 11/03/1988 can be considered as a secure transaction which can form the basis for this title due diligence in the context of the foregoing paragraphs.

30) In view of the same, it must therefore be construed that in view of the default in payment, the said Maharashtra State Financial Corporation had the necessary powers to execute the

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Deed of Sale dated 11/03/1988 in respect of the smaller property admeasuring 4000 square metres, thereby conveying and transferring all rights in the same to the transferee Esvonta Porobo and that the said Deed of Sale dated 11/03/1988 is a valid and legally binding document.

31) The Form IX of the property bearing survey no. 6/2 of village Orgao reveals that based on an application of Esvonta Crishna Parab, the Talathi was directed to include his name in the Form I & XIV in the occupant's column in the year 1990.

32) As mentioned in the sequence of events narrated above, the old Form I & XIV reflected the name of the said Esvonta Porobo. There is no quarrel with the settled proposition of law that a mere mutation entry does not confer any right, title or interest in favour of the person and that a mutation entry in the revenue record is only for the fiscal purpose under Section 105 of the Goa Land Revenue Code.

33) Be that as it may, an entry reflected in Form I & XIV is presumed to be true unless substituted by an appropriate proceeding in terms of law. In view of the same, there is

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presumption of possession in favour of a person reflected in Form I & XIV rebutted by cogent evidence in a Court of Law. The survey records were created in the year 1971 to 1975 and the entries are relatable to the said period of 1971 to 1975.

34) In the case of Diksha Holdings V/s Sita Rama Naik reported in 1998(2) GLT 444, the Hon'ble High Court of Bombay at Goa has held that *"upon promulgation of survey under the Goa Land Revenue Code, all the previous surveys ceased to exist and the presumption under Section 105 shall prevail".*

35) In the case of Shri. Damodara Ranum Porobo Loundo versus Shri Bhaskar R. Jalmi and others, reported in 1990(2) GLT 407, the Hon'ble High Court of Bombay at Goa has held as under:

*"In fact, Section 105 of the Land Revenue Code provides hat an entry in the Record of Rights and a certified entry in the register of mutation shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore. In other words, the presumption of correctness of the entries in the Record of Rights stands until duly rebutted or until the said entry is substituted by a fresh one."*

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*"Therefore, affidavit evidence has got only prima facie value and does not constitute sufficient and conclusive proof to disprove and rebut a presumption that arises by law in respect of the entries made in the Record of Rights after due inquiry."*

36) Applying the said provision to this case, it can be presumed that upon acquiring rights in the smaller property admeasuring 4000 square metres by the said deed of sale dated 11/03/1988, the said Esvonto Porobo took possession of the same and undertook the necessary steps to effect mutation to insert his name in the records.

37) There is no document furnished to me, which in any manner indicates that there was any litigation relating to the smaller property admeasuring 4000 square metres, between the time of acquisition in the year 1988 till the year 2021, when the said smaller property came to be gifted to Esvonta Porobo's daughter Smita Parab by her mother Mrs. Anandi Esvonta Porobo Siriscar or Anandi Esvonta Porobo (represented in the transaction by her son and Power of Attorney holder Mr. Umesh Yashwant Parab), her brother Mr. Umesh Yashwant Parab and her sister-in-law Mrs. Varsha Umesh Parab.

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38) As per Article 529 of the Portuguese Civil Code, 1867, when the possession of immovable property has lasted 30 years, prescription shall operate regardless of bad faith or lack of title. The said provision of law essentially means that the principle of prescription shall be in favour of the occupant even if the same has been occupied in absence of a legal title document. For convenience, the provision is transcribed as under:-

*"Article 529 – Absence of registration, bad faith and absence of title – When, however the possession of immovables or immobile rights mentioned in the preceding article, has lasted for 30 years, prescription shall operate, regardless of bad faith or lack of title, save for the provisions of Article 510."*

39) If one were to apply the said provision in the present case, it must be construed that the principle of prescription shall apply in favour of the original occupant namely Esvonta Porobo. There is nothing on record to indicate that the there was any interference vis-à-vis possession of the smaller property admeasuring 4000 square metres between from the year 1988 (when the same was purchased by Esvonta Porobo) till the year 2012 (when Esvonta Porobo passed away). There is no record

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any claims made in respect of the smaller property admeasuring 4000 square metres even between the year 2012 till 2023, when an area admeasuring 2300 square metres forming part of the smaller property was purchased by its present owners, Mr. Karan Parekh and Mr. Yatin Parekh.

40) In the case of "Shaikh Mohammad Sharif Ibrahim Mamlekar vs. Hawa Bi" (Second Appeal No. 51 of 2006) before the Hon'ble High Court of Bombay at Goa, the said principle relating to prescription, as under Article 529 of the Code was discussed and reiterated.

41) The communication on record, more particularly the NOC dated 24/12/2021 issued by the TCP Department, reflects that the smaller property admeasuring 4000 square metres, out of which, the said property admeasuring 2100 square metres is carved, is zoned under General Industry Zone.

42) Based on the title search conducted and considering the facts and circumstances stated above, I am of the opinion that Mr. Karan Parekh and Mr. Yatin Parekh, the current owners of the said property admeasuring 2110 square metres surveyed under

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survey no. 6/2-I of Orgao Village, have a clear and marketable title, subject to inspection of originals of the Deed of Sale dated 11/03/1988, Deed of Gift dt. 06/01/2022 and the Deed of Sale dt. 08/09/2023 and issuance of public notice.

## IV. ADDITIONAL OBSERVATIONS:

a) No tenants/Mundkars are reflected in the survey records of the property bearing survey no. 6/2-I of Orgao Village.

b) The Urban Ceiling Act is not applicable to the State of Goa.

c) Conversion Sanad is not furnished.

## V. EVIDENCE OF POSSESSION:

The provisions of the Portuguese Civil Code on prescription support the original occupant Esvonta Porobo's possession from the year 1988 till his demise in 2012. Moreover, the Deed of Sale dated 8th September 2023 records that right of the purchasers Mr. Karan Parekh and Mr. Yatin Parekh to possess the said property upon execution of the deed.

## CERTIFICATE

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From the documents produced for my scrutiny, I hereby certify that Mr. Karan Parekh and Mr. Yatin Parekh, the current owners of the said property admeasuring 2110 square metres surveyed under survey no. 6/2-I of Orgao Village, have a clear and marketable title, subject to inspection of originals of the Deed of Sale dated 11/03/1988, Deed of Gift dt. 06/01/2022 and the Deed of Sale dt. 08/09/2023 and issuance of public notice.

- General Qualifications and Assumptions:
  - This report on title is prepared solely on the basis of documents furnished to me as more particularly set out at above.
  - For the purpose of issuing this report on title:
    i. I have not carried out a negative search in respect of litigations in relation to the said property admeasuring 2110 square metres surveyed under survey no. 6/2-I of Orgao Village.
    ii. I have not inspected the originals and/or certified copies of the documents.
    iii. I have taken the Deed of Mortgage dt. 30/03/1979, Deed Of Additional charge dt

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12/05/1980, Deed of Sale dated 11/03/1988, Deed of Succession dt. 11/01/2016, Deed of Gift dt. 06/01/2022 and the Deed of Sale dt. 08/09/2023 as the root of the title.

- For the purpose of issuing this report on title, I have assumed:
  i. the legal capacity of all natural persons, the genuineness of all signatures, the conformity to original documents of all documents of title submitted to me, as set out above, as photocopies or scanned copies and the authenticity of the originals of such documents;
  ii. that the documents of title set out in the report above have not been modified in any manner and are valid, subsisting and remain in force;
  iii. that all the documents relating to the property admeasuring 2110 square metres surveyed under survey no. 6/2-I of Orgao Village and furnished to me have been validly executed and delivered by

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provision in the title documents to the contrary. The report on title has been prepared in accordance with and is subject the laws of India.

- This report is prepared based on the information available as of the date mentioned and is subject to any subsequent changes or developments in the title status of the property admeasuring 2110 square metres surveyed under survey no. 6/2-I of Orgao Village.

- While efforts have been made to ensure the accuracy and completeness of the information provided in this report, no warranty or representation, express or implied, is made as to its accuracy, reliability, or completeness.

- The conclusions drawn in this report are based on the available information and legal analysis conducted by the preparing attorney. However, they are subject to the inherent uncertainties of legal proceedings and may be affected by future events or developments.

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Place:- Panaji-Goa.

Date:- 13/06/2024

**(Adv. Shivan S. Desai)**

SHIVAN S. DESAI
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