

Vinita Palyekar
Advocate

24/07/2019

To,
Casa Luxury Realty Five LLP,
having registered Office at 42-A,
First Floor, Impression House,
G.D. Ambekar Marg, Wadala (West),
Mumbai-400031,
Through its Authorized Signatory,
Vishal Subedar.

Respected Sir,

Kindly find enclosed the Title Opinion of Senior Advocate Sudin M.S. Usgaokar with respect to an immovable property known as "MATTO PEQUENO" alias "MATA PAQUENO" also known by the names, "MADUNGO" alias "MADUNGA", totally admeasuring an area of 2,200 sq.mts., situated in the ward Madungo, Village Assagao, within the limits of the Village Panchayat of Assagao, Taluka and Registration Sub-District of Bardez, District of North Goa, Goa, bearing Survey No. 97/4 of Village Assagao.



VINITA PALYEKAR

M. S. Usgaonkar

Senior Advocate

24/07/2019

To,
Adv. Vinita Palyekar

TITLE OPINION

This opinion relates to the title of Casa Luxury Realty Five LLP, to an immovable property known as "MATTO PEQUENO" alias "MATA PAQUENO" also known by the names, "MADUNGO" alias "MADUNGA", totally admeasuring an area of 2,200 sq.mts., situated in the ward Madungo, Village Assagao, within the limits of the Village Panchayat of Assagao, Taluka and Registration Sub-District of Bardez, District of North Goa, Goa, bearing Survey No. 97/4 of Village Assagao and bounded as follows :-

- East: by the property which is a reserved access surveyed under Survey No. 97/2 belonging to the Comunidade of Assagao, beyond which lies the property bearing Survey No. 98/1 of the same Village;
- West: By the properties bearing Survey Nos.97/3 beyond which lies the property bearing Survey No. 97/1 of the same Village;
- North: By the property bearing Survey No. 97/1 of the same Village and
- South: By the property bearing Survey No. 97/2 of the same Village belonging to the Comunidade of Assagao, which is a reserved access beyond which



lies the property bearing Survey No. 97/6 of the same Village.

Hereinafter the property bearing Survey No. 97/4 of Village Assagao is referred to as the said property.

THE FOLLOWING DOCUMENTS HAVE BEEN FURNISHED FOR SCRUTINY:

- a. Old Cadastral Records pertaining to the properties bearing Old Cadastral No. 2562 and Old Cadastral No. 2563 of Village Assagao (Old Cadastral Plan and the Registo do Agrimensur/Register of Survey);
- b. Corresponding Certificates bearing Nos. 9(02)-49/DSLRL-19 dated 21/06/2019 and 9(02)-49/DSLRL-19/1758 dated 7/06/2019 issued by the Superintendent of Survey and Land Records, Directorate of Settlement and Land Records, Panaji-Goa;
- c. Affidavit of Pedro Agostinho D'Souza, son of Sebastiao Santana D'Souza and grandson of late Pedrinho D'Souza, executed on 16/09/1991 before Adv. Caetano Revasco Costa e Moniz, Notary, Mapusa-Goa, bearing Registration No. 2660 dated 17/09/1991;
- d. Form III (Index of Lands), Form IX and Manuel (handwritten) Survey Form I & XIV pertaining to the said property and its adjoining property bearing Survey No. 97/3 of Village Assagao.
- e. Documents pertaining to Inventory Proceedings bearing No. 88/1990 and those bearing No. 87 of 1990 instituted in the Court of the Civil Judge Senior Division of Mapusa-Goa, instituted in the Court of the Civil Judge Senior Division of Mapusa, Goa.
- f. Proceedings under Section 103 of the Goa Land Revenue Code, 1968, bearing Case No. 18/44/92-LRC/Misc., instituted in the Court of the Deputy Collector & Sub-Divisional Officer, Mapusa Sub-Division, Mapusa-Goa;
- g. Deed of Sale dated 12/06/2006 duly registered with the Sub-Registrar of Bardez, Goa, under No. 3152, recorded at pages 115 to 133 of Book No. I, Volume No. 1691 dated 14/06/2006;

- h. Survey Form I & XIV bearing No. 506/55528 dated 2/11/2006 alongwith the Survey Plan pertaining to the said property;
- i. Deed of Sale dated 14/01/2019 duly registered with the Sub-Registrar of Bardez, Goa, under No. BRZ-1-67-2019, recorded in Book -I Document dated 16/01/2019;
- j. Recent computerized Survey Form I & XIV bearing No. 100007439250 dated 12/06/2018 with respect to the said property.
- k. Land Zoning Information bearing Ref No. TPBZ/ZON/5462/ASSG/TCP-19/413 dated 18/01/2019 issued by the Deputy Town Planner, Office of the Senior Town Planner, Town & Country Planning Department, North Goa District, Mapusa-Goa
- l. Nil Encumbrance Certificate bearing No. 1442 of 2019 dated 5/07/2019 issued by the Civil Registrar cum Sub-Registrar of Bardez, Goa and
- m. Survey Plan pertaining to the said property and the adjoining property bearing Survey No. 97/3 of Village Assagao.

I HAVE CAREFULLY PERUSED THE DOCUMENTS FURNISHED FOR SCRUTINY AND OPINE AS UNDER:

1. The said property is said to be found neither registered in the Land Registration Office of Bardez, Goa nor found enrolled in the Taluka Revenue Office of Bardez, Goa.
2. The said property is said to be originally surveyed under the Old Cadastral No. 2562 of Village Assagao. The same is evident from the Corresponding Certificate bearing No. 9(02)-49/DSLRL-19 dated 21/06/2019 issued by the Superintendent of Survey and Land Records, Directorate of Settlement and Land Records, Panaji-Goa, the same being issued by superimposition of the New Survey Plan over the Old Cadastral Plan pertaining to the said property. Also if one compares the Old Cadastral Plan with the New Survey Plan, it is explicitly evident that the said property

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corresponds to the property bearing Old Cadastral No. 2562 of Village Assagao.

3. It is said that the said property originally formed part of a larger property known by the name "MATTO PEQUENO" alias "MATA PAQUENO", which is presently surveyed under two Survey Nos. i.e. its western portion bearing Survey No. 97/3 (and the eastern portion bearing Survey No. 97/4 (i.e. the said property) of Village Assagao.

The western portion of the larger property is originally surveyed under the Old Cadastral No. 2563 of Village Assagao as is evident from the Corresponding Certificate bearing No. 9(02)-49/DSLR-19/1758 dated 7/06/2019 issued by the Superintendent of Survey and Land Records, Directorate of Settlement and Land Records, Panaji-Goa.

4. The larger property is said to belong to Pedro D'Souza alias Pedrinho D'Souza alias Pedro de Souza (hereinafter referred to as said Pedrinho), who thereafter, sold the western portion of the larger property (presently surveyed under No. 97/3) to Manuel Joao Faria alias Manoel Joao Faria (hereinafter referred to as said Manuel) vide a Deed of Sale dated 26/07/1910 and retained the remaining half part comprising of the eastern portion of the larger property (i.e. the said property), to himself.

The same is evident from the Affidavit of Pedro Agostinho D'Souza (hereinafter referred to as said Pedro), son of Sebastiao Santana D'Souza alias Santana Sebastiao de Souza (hereinafter referred to as said Santana) and grandson of late Pedrinho, executed on 16/09/1991 before Adv. Caetano

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Revasco Costa e Moniz, Notary, Mapusa-Goa, bearing Registration No. 2660 dated 17/09/1991.

5. We have not been furnished with any title documents of said Pedrinho with respect to the larger property nor the aforesaid Deed of Sale dated 26/07/1910 to ascertain the title of said Pedrinho to the larger property or the eastern portion of the larger property (i.e. the said property). However, one can strongly rely upon the Old Cadastral records pertaining to the said property and the adjoining property bearing Survey No. 97/4 to establish ownership as well as possession of its owners.

6. From the aforesaid Old Cadastral records particularly the Registo do Agrimensur/Register of Old Survey maintained during the Portuguese Regime in the State of Goa, it appears that the said property originally admeasured an area of 2,139 sq.mts., out of which an area of 2,130 sq.mts. comprised of cashew grove and the remaining area of 9 sq.mts. comprised of a well. The said property has been described therein to be bounded by the properties bearing Old Cadastral Nos. 247, 2564 and 2563 (property bearing Survey No. 97/3 of Village Assagao). The said property is described therein to be demarcated by four marking stones and border of loose stones.

One can find the name of said Santana (son of late Pedrinho and his wife, Luis Maria Fernandes [hereinafter referred to as said Luisa]) recorded as the land owner of the said property in the aforesaid Registo do Agrimensur.

7. Upon perusal of the Registo de Agrimensur pertaining to the adjoining property bearing Survey No. 97/3, it appears that the adjoining property bearing Survey No. 97/3 originally admeasured an area of 2,346 sq.mts. and

the name of Ana Maria Miranda (hereinafter referred to as said Ana), widow of said late Manuel is found recorded therein as the landowner of the said adjoining property.

The total area of the said adjoining property as per the Survey Form I & XIV appears to be 2,275 sq.mts..

8. There is a noting on the aforesaid Old Cadastral records that the same were not finalised as per the law then existing in force. Irrespective of the same, the said records can be relied upon to establish the entries of the said properties maintained during the Portuguese regime in the State of Goa in the matter of ownership and possession.

9. However, from the aforesaid records, it appears that the said two properties belonged to the Comunidade of Assagao and that said Manuel and said Santana paid an annual quit rent of Rs. 4/- (Rupees Four Only) respectively to the said Comunidade with respect to the said properties. Neither such entries are found in the subsequent survey records prepared under the Goa Land Revenue Code, 1968 nor have we been furnished with any documents pertaining to the claim put forth by the said Comunidade.

10. It is settled position of law that in the case of variance/conflict/difference between the boundary and the area, the land actually comprised within the boundary will be treated to have been conveyed i.e. the boundaries will always prevail over the area of the property, as held by the Privy Council in the case of *The Palestine Kupat Am Bank Cooperative Society Ltd. v/s Government of Palestine & Other.* (AIR 1948 PC 207).

Notwithstanding the discrepancy in the areas of the said two properties, one can be sure from aforementioned records that the adjoining property bearing Survey No. 97/3 belonged to said Manuel and the said property belonged to said Pedrinho whose son's name, said Santana is found recorded as a landowner in the Old Cadastral records pertaining to the property bearing Survey No. 97/4.

11. Said Pedrino being married to said Luisa, under the regime of the Communion of Assets prevailing in the State of Goa, each of the said spouse held half undivided right in the estate jointly belonging to them or held by them individually, as co-sharers.

12. Said Pedrino expired on 26/12/1924 and said Luisa expired on 23/10/1925, leaving behind their only son, said Santana married to Maria Victoria Faria alias Maria Victoria D'Souza (hereinafter referred to as said Victoria), as his sole and universal heir.

13. Said Santana expired on 22/12/1983 leaving behind his widow/half sharer, said Victoria and their following children as his universal heirs:

- a. Said Pedro (son) married to Flaviana Sebastiana D'Souza (hereinafter referred to as said Flaviana) and
- b. Luiza Emelia D'Souza (daughter) married to Teofilo D'Souza.

14. On 18th of June, 1990, said Victoria instituted Inventory Proceedings bearing No. 88/1990 in the Court of the Civil Judge Senior Division of Mapusa, Goa, for the distribution of the assets of her deceased parents-in-law wherein the said property came to be listed at Item No. 1 as one of the assets

left behind by the deceased estate leavers, in the list of the assets dated 9/11/1990 filed therein.

The said property is described therein to be bounded as follows:

“One half being the eastern half of the property known as “MATTO PEQUENO” situated in the ward Madungo, of the Village Assagao, within the limits of the Village Panchayat of Assagao, Bardez Taluka, Sub-District of Bardez and State of Goa, neither described in the Land Registry of Bardez nor enrolled in the Taluka Land Revenue Office but surveyed under Survey Number 97 Sub- Division Number 4 (S.No.97/4) of Village Survey of Assagao – Bardez and bounded:-

On the East:- by the Public Road;

On the West:- by the other half of this property belonging to the heirs of Manual Joao Faria bearing Survey no.97/3.

On the North:- by the Comunidade land now by Laxman B. Kandolkar bearing Survey No. 97/1.

On the South:- by the property of Ana Francisca Fernandes now Pandurang K. Gad and others bearing Survey No. 97/6.”

15. During the pendency of the aforementioned Inventory Proceedings, said Victoria expired on 12/11/1990, without any Will or any other disposition, leaving her aforementioned children as her universal heirs.

16. By virtue of the Chart of Allotment dated 3/08/1991, the said property came to be allotted to said Pedro and said Flaviana having bided the same in auction with an obligation to pay the owelty money to the other interested party. The said Chart of Allotment was made absolute vide Final Order dated 13/08/1991.

17. However, if one peruses Form III (Index of Lands) pertaining to the said property, the name of one Alatis Faria or Alatis Fareya or Alatis Foreya or Aratish Forea or Aratis Faria is found recorded as an "Occupant" of the said property.

In Form IX pertaining to the said property, the name of said Aratis Faria continues to figure as an "Occupant since before survey" as per the Entry dated 10/11/1971.

The said entry continues in the column of "Occupant" of the manual (handwritten) Survey Form I & XIV pertaining to the said property.

18. If one peruses the entries in the aforementioned Form III, Form IX and the manual (handwritten) Survey Form I & XIV pertaining to the said property, it appears that the said property was earlier surveyed under Survey No. 172/4 of Village Assagao and the same was subsequently, surveyed under the present Survey No. i.e. 97/4 of Village Assagao.

As evident from the Survey Forms, there are no tenancy and other rights (Mundkar, Caretaker and Watchman) existing with respect to the said property.

19. Subsequent to the aforesaid Inventory Proceedings, said Pedro instituted proceedings under Section 103 of the Goa Land Revenue Code, 1968, bearing Case No. 18/44/92-LRC/Misc., in the Court of the Deputy Collector & Sub-Divisional Officer, Mapusa Sub-Division, Mapusa-Goa, seeking correction of the survey records by recording his name as an

“Occupant” in respect of the said property by deleting the erroneous entry of said Alatis Faria appearing therein.

Vide Order dated 23/06/1992 passed by the Deputy Collector & S.D.O, Mapusa Sub-Division, Mapusa-Goa, the Mamlatdar of Bardez, Goa was directed to correct the survey records pertaining to the said property by recording the name of said Pedro in the column of “Occupant” of Survey Form I & XIV pertaining to the said property instead of Alatis Faria.

Accordingly, the name of said Pedro came to be mutated in the column of “Occupant” of the Survey Form I & XIV pertaining to the said property.

20. If one peruses the aforesaid Order dated 23/06/1992, it has been mentioned therein that the aforesaid application under Section 103 of the Goa Land Revenue Code, 1968 is supported by an Affidavit of one Hortencia Faria.

Since we have not been furnished with the said Affidavit, it is difficult to ascertain the significance to said Affidavit in the aforesaid proceedings under Section 103 of the Goa Land Revenue Code.

However, it appears that the said Alatis Faria was duly represented by an Advocate who has made a statement to the effect that the said property belongs to said Pedro.

21. We have been furnished with the Inventory Proceedings bearing No. 87 of 1990 instituted in the Court of the Civil Judge Senior Division of Mapusa-Goa upon the demise of said Manuel and said Ana. From the aforesaid

documents, it appears that said Hortencia Faria was one of the children of late Manuel and late Ana.

22. Likewise, the wrong entry of said Alatis Faria with respect to the said property in the survey records, the name of late Pedrinho (wrongly recorded as "Pedrina D'Souza") was also erroneously recorded as an "Occupant" with respect to the survey records of the adjoining property bearing Survey No. 97/3 of Village Assagao, which was later rectified by the deleting the name of said Pedrinho and inserting the name of said Manuel and his son, Domingos Francisco Faria, as Occupants of the said adjoining property.

The said entry of said Manuel appears to have been mutated in the year, 1991 based upon the admission of his ownership to the said adjoining property by said Pedro (successor of the original owner of the larger property, said Pedrinho), as evident from the aforementioned Affidavit dated 16/09/1991.

23. If one relies upon the aforesaid Affidavit dated 16/09/1991 of said Pedro (as mentioned in para (4) of this Opinion) and the aforesaid documents, it appears that this is a clear case of wrong entries in the survey records pertaining to the said property and its adjoining property bearing Survey No. 97/3 which was later rectified by its rightful owners by following the aforesaid procedure under the Goa Land Revenue Code, 1968.

24. Thereafter, by virtue of a Deed of Sale dated 12/06/2006 duly registered with the Sub-Registrar of Bardez, Goa, under No. 3152, recorded at pages 115 to 133 of Book No. 1, Volume No. 1691 dated 14/06/2006, said Pedro and said Flaviana sold the said property to Mr. Siddhrajsinhji Jhala (hereinafter referred to as said Siddhrajsinhji).

Accordingly, the name of said Siddhrajsinhji came to mutated as an Occupant in the manual(handwritten) as well as computerized Survey Form I & XIV bearing No. 506/55528 dated 2/11/2006 pertaining to the said property which continued to appear as an "Occupant" in the recent computerized Survey Form I & XIV bearing No. 100007439250 dated 12/06/2018 with respect to the said property.

25. Thereafter, said Siddhrajsinhji sold the said property to the present owner vide a Deed of Sale dated 14/01/2019 duly registered with the Sub-Registrar of Bardez, Goa, under No. BRZ-1-67-2019, recorded in Book -I Document dated 16/01/2019.

There is an averment made in the said Deed of Sale that said Siddhrajsinhji is a non-Goan and hence, his marriage would not be governed under the Regime of Communion of Assets. Hence, his spouse would not have any right in the said property.

The name of the present owner, thereafter, came to mutated in the recent computerized Survey Form I & XIV bearing No. 100009000480 dated 24/07/2019 pertaining to the said property.

26. As evident from the Land Zoning Information bearing Ref No. TPBZ/ZON/5462/ASSG/TCP-19/413 dated 18/01/2019 issued by the Deputy Town Planner, Office of the Senior Town Planner, Town & Country Planning Department, North Goa District, Mapusa-Goa, the said property is said to be earmarked as "Settlement Zone" as per the Regional Plan for Goa, 2021.

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27. From the record of Form IX pertaining to the said property, it appears that the survey under the Goa Land Revenue Code, 1968 commenced in the year 1971 in Village Assagao.

28. From the above analysis, it appears that the possession of said Pedrinho and his descendants to the said property is traceable right from the Old Cadastral records. Though no title documents have been furnished for scrutiny to establish the ownership of said Pedrinho to the larger property or the said property, the Affidavit dated 16/09/1991 of said Pedro, grandson of late Pedrino can be looked into to establish the possession of said Pedrinho since the year, 1910 when he had sold a western portion of the larger property (presently surveyed under Survey No. 97/3) to said Manuel in the year, 1910.

Irrespective of the possession of said Santana (son of said Pedrinho) established from the Old Cadastral records, if the wrong entry of "said Alatis Faria" and the year of commencement of survey under the Goa Land Revenue Code, 1968, in Village Assagao i.e. 1971 is taken into consideration, said Pedrinho and his descendants possession over the said property can be traced from the year, 1971 and they had been in possession of the same till 2006 i.e. till his descendant, said Pedro along with his spouse, said Flaviana sold the same to Siddhrajsinhji vide a duly registered Deed of Sale dated 12/06/2006. Thus, said Pedrinho and his descendants had been in physical, continuous, peaceful and uninterrupted possession of the said property for thirty four (34) years from 1971 to 2006.

And then said Siddhrajsinhji had been in lawful, physical, continuous, peaceful and uninterrupted possession of the said property from 12/06/2006

till 14/01/2019 i.e. for more than twelve (12) years and since the execution and registration of the aforesaid Deed of Sale dated 14/01/2019, the present owner is in lawful, physical, continuous, peaceful and uninterrupted possession of the said property.

In view of **Section 105 of the Goa Land Revenue Code, 1968**, the entry of said Pedro in the Column of "Occupant" of the survey records pertaining to the said property will be presumed to be true unless proved to the contrary.

The term "Occupant" has been defined under Section 2(24) of the Goa Land Revenue Code, 1968 as "***a holder in actual possession of land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the landowner shall be deemed to be the occupant.***"

And the term "holder" has been defined under Section 2(16) of the said Code, as "***a person lawfully in possession of land, whether such possession is actual or not.***"

29. Thus, in the absence of any legal document of title of late Pedrinho to the said property, it can be concluded that the present owner has acquired title to the said property by law of prescription for being in long, continuous, peaceful and uninterrupted possession of the said property for more than forty six (46) years, counted right from the possession of its erstwhile owners as discussed above, in terms of the following provisions of law which are quoted below for easy reference:

"Article 526: *Corporeal immovable and incorporeal immovable properties may be acquired by prescription:*

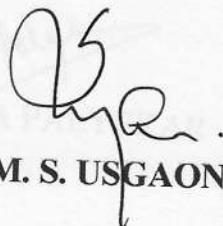
1. *In case of registration of simple possession, by a lapse of 5 years;*
2. *In case of registration of title of acquisition, by lapse of 10 years, counted in both the cases from the date of the registration.*

Article 527: *In each of the two cases specified in the preceding article, if the possession has lasted for ten years or more, besides the periods established in the same article, the prescription shall operate, regardless of bad faith, or lack of title, save what is provided in article 510.*

Article 529: *When, however the possession of immovable or incorporeal immovables mentioned in the preceding Article (Article 528), has lasted for 30 years, prescription shall operate, regardless of bad faith or lack of title, except what is provided in Article 510."*

30. We have been furnished with a Nil Encumbrance Certificate bearing No. 1442 of 2019 dated 5/07/2019 issued by the Civil Registrar cum Sub-Registrar of Bardez, Goa, certifying that as per the searches made in Book I relating to encumbrances, for one year commencing from 14/01/2019 to 20/06/2019, there are no encumbrances affecting the said property.

CONCLUSION: From the aforesaid observations, it can be concluded that the present owner has a clear, legal, and marketable title to the said property.


SUDIN M. S. USGAONKAR.