

*Vinita Palyekar*  
Advocate

28/06/2019

To,  
M/s. Isprava Vesta Private Limited,  
having registered Office at First Floor,  
Impression House, 42A,  
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 2,275 sq.mts., situated in the ward Madungo, Village Assagao, Taluka and Registration Sub-District of Bardez, District of North Goa, State of Goa, surveyed under No. 97/3 of Village Assagao, within the limits of the Village Panchayat of Assagao.

VINITA PALYEKAR

*M. S. Usgaonkar*

Senior Advocate

28/06/2019

To,  
Adv. Vinita Palyekar

**TITLE OPINION**

This opinion relates to the title of M/s. Isprava Vesta Private Limited to an immovable property known as "MATTO PEQUENO" alias "MATA PAQUENO" also known by the names, "MADUNGO" alias "MADUNGA", totally admeasuring an area of 2,275 sq.mts., situated in the ward Madungo, Village Assagao, Taluka and Registration Sub-District of Bardez, District of North Goa, State of Goa, surveyed under No. 97/3 of Village Assagao, within the limits of the Village Panchayat of Assagao, and bounded as follows :-

East:	by the property bearing Survey No. 97/4 and the property which is a reserved access surveyed under Survey No. 97/2 belonging to the Comunidade;
West:	By the properties bearing Survey Nos.97/1 and 97/5 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. 97/6 of the same Village;

Hereinafter the property bearing Survey No. 97/3 of Village Assagao is referred to as the said property.



**THE FOLLOWING DOCUMENTS HAVE BEEN FURNISHED FOR SCRUTINY:**

- a. Old Cadastral Survey Plan and the Registo de Agrimensur (Register of Old Cadastral Survey) pertaining to the property bearing Old Cadastral No. 2563 of Village Assagao (i.e. the said property) and the property bearing Old Cadastral No. 2562 of Village Assagao (corresponding to the property bearing Survey No. 97/4 of Village Assagao) and "Auto de demarcacao" (Record/proceedings of Demarcation) carried out by the Technical Office of the Directorate of Public Works and Land Survey, Department of Survey along with the English Translation;
- b. 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;
- c. Form III (Index of Lands), Form IX and Manuel (handwritten) Survey Form I & XIV pertaining to the said property;
- d. Documents pertaining to the Inventory Proceedings bearing No. 87 of 1990 instituted by Domingos Francisco Faria in the Court of the Civil Judge Senior Division of Mapusa-Goa for the distribution of the assets of his deceased parents, Manuel Joao Faria and said Ana Maria Miranda;
- e. Deed of Sale dated 4/12/1992 duly registered with the Sub-Registrar of Bardez, Goa, under No. 1992, recorded in Book No. I, Volume No. 187 dated 18/12/1992;

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- f. Deed of Sale dated 28/11/2005 duly registered with the Sub-Registrar of Bardez, Goa, under No. 4967, recorded at pages 201 to 224 of Book No. I, Volume No. 1462 dated 30/11/2005 and
- g. Survey Form I & XIV bearing No. 506/55529 dated 2/11/2006 along with the Survey Plan pertaining to the said property and
- h. Land Zoning Information bearing Ref No. TPBZ/ZON/5462/ASSG/TCP-19/412 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;
- i. Computerized Survey Form I & XIV bearing No. 100007439247 dated 12/06/2018 with respect to the said property;
- j. Deed of Sale dated 14/01/2019 duly registered with the Sub-Registrar of Bardez, Goa, under No. BRZ-1-70-2019, recorded in Book -I Document dated 16/01/2019 and
- k. Nil Encumbrance Certificate bearing No. 1363 of 2019 dated 20/06/2019 with respect to the said property.

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

1. The said property is said to be neither found 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. 2563 of Village Assagao. The same is evident from the Corresponding Certificate bearing 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, 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 corresponds to the property bearing Old Cadastral No. 2563 of Village Assagao.

3. It is said that the said property originally formed part of the 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 (i.e. the said property) and the eastern portion bearing Survey No. 97/4 of Village Assagao.

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 surveyed under No. 97/3 i.e. the said property to Manuel Joao Faria alias Manoel Joao Faria (hereinafter referred to as said Manuel) vide Deed of Sale dated 26/07/1910 and retained the remaining half part comprising of the eastern portion of the larger property, to himself. The said half part comprising of the eastern portion of the larger property is said to be presently surveyed under No. 97/4 of the same Village.

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

It is stated therein that after the aforementioned sale, said Manuel became the exclusive owner in possession of the said property and that the grandfather of said Pedro i.e. said Pedrinho and his descendants had no right to the same.

It has been further stated therein that the name of said Pedrino has been wrongly recorded in the survey records pertaining to the said property as "Pedrina D'Souza".

5. We have not been furnished with the aforementioned Deed of Sale dated 26/07/1910, the same being untraceable. However, one can strongly rely upon the Old Cadastral Survey 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 which is supported by "Auto de demarcacao" (Record/proceedings of Demarcation) carried out by the Technical Office of the Directorate of Public Works and Land Survey, Department of Survey, functioning during the Portuguese Regime in the State of Goa, as part of the Old Cadastral Survey process.

6. It appears that after the execution of the aforementioned Deed of Sale, said Manuel expired and the name of his widow, Ana Maria Miranda (hereinafter referred to as said Ana) came to be recorded as a landowner in the Registo de Agrimensur (Register of Old Cadastral Survey) maintained during the Portuguese regime in the State of Goa. From the said records, it appears that the said property originally admeasured an area of 2,346 sqmts. comprising of cashew grove and was bounded by the properties bearing Old Cadastral Nos. 247, 2562 (property bearing Survey No. 97/4 of Village Assagao), 2564, 2565 and 2561 of Village Assagao. The said



property is described therein to be demarcated by six marking stones and border of loose stones.

7. Upon perusal of the said records of the Registo de Agrimensur, it appears that the adjoining property bearing Survey No. 97/4 corresponded to the property bearing Old Cadastral No. 2562, originally admeasured an area of 2,139 sq.mts. wherein the name of said Santana is recorded as the landowner of the property bearing Old Cadastral No. 2562.

8. Although, the Old Cadastral Survey record pertaining to the said property does not show that it has been promulgated/finalized, however, there being an "Auto de demarcacao" in support thereof, shows that the said property was demarcated by the concerned authorities, in the presence of its owner and the owners of the adjoining properties. Thus, demarcation of the said property having been carried out in the presence of the respective parties including the adjoining owners who have agreed to the boundaries of the said property, the same can be relied upon as an essential document to establish the correct boundaries of the said property so demarcated upon the cadastral plan, in support of the physical possession of the said property.

9. In cases wherein no evidentiary value can be attached to the Old Cadastral record which have not been promulgated/finalized, the Hon'ble High Court has held in the cases of *Harichandra Narayan v. State of Goa (1995 (3) BomCR 407, Fabrica da Igreja de N. S. de Milagres versus Union of India and others (1995(1) Bom. C. R. 588 and Shri Narcinva Shivram Sinai Nadkarni & Ors. V/s Government of Goa [First Appeal No.177/2005 decided on 18/12/2011]* that where there is "Auto de demarcacao" drawn by the concerned authorities with the active

participation of the owner of the property and that of the adjoining owners, the said document can be relied upon to establish the physical of the party to the concerned property.

10. Further, Article 274 of the Portuguese Decree 3602 dated 24/11/1917 (Law relating to Cadastral Survey) provides as follows:

“In order that the cadastral survey be conveniently carried out, all the landowners shall be bound not only to present to the staff of the land survey, entrusted with such work, their title-deeds of property and boundaries of this, but also to define these boundaries, when they may not be so, by steady landmarks.”

Thus, from the aforesaid Cadastral Survey records (Registo do Agrimensur and “Auto de demarcacao”, it is clear that the said property as shown in the cadastral survey, is identified therein after verifying the title of said Manuel to the said property and that of the adjoining owners to the properties surrounding the said property.

It has been held by the Hon'ble High Court of Bombay at Goa in the case of *Varsha K. Sawant & Ors. versus The Chief Secretary of Goa and Ors. (Second Appeal No. 138/2004 decided on 18/03/2016)* that “*in terms of Article 274 of the Decree 3602, the cadastral survey are conducted after minute observation of the title document of the all the adjoining owners. In such circumstances the entries in the cadastral survey cannot be easily quashed and set aside unless there is cogent evidence to establish that the entries therein are not correct.*”

11. From the aforesaid observation, it is clear that the entry of said Ana, widow of late Manuel, was apparent in the Registo de Agrimensur and accordingly, the “Auto de demarcacao” was conducted after verifying the title of said Ana to the said property.

Hence, though the aforesaid Deed of Sale dated 26/10/07 is not traceable, from the aforesaid records of Registo de Agrimensur and "Auto de demarcacao" and following the aforesaid verdicts, one can safely conclude that said Manuel and said Ana had clear, legal and marketable title to the said property.

12. In view of the 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 upon comparing the Old Cadastral Survey records and the New Survey records prepared under the Goa Land Revenue Code, 1968, one can be sure that the said property belonged to said Manuel and the adjoining property bearing Survey No. 97/4 belonged to his predecessor in title, said Pedrinho, whose son's name, said Santana is found recorded as a landowner in the Old Cadastral Survey records pertaining to the property bearing Survey No. 97/4.

13. However, from the said records, it appears that the said two properties originally belonged to the Comunidade of Assagao and that said Manuel and said Santana paid foro (annual quit rent of Rs. 4/-) (Rupees Four Only) to the said Comunidade with respect to the said property and the adjoining property bearing Survey No. 97/4 respectively. 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.

14. If one peruses Form III (Index of Lands) pertaining to the said property, the name of said Pedrino (wrongly recorded as "Pedrina D'Souza") is found recorded as an "Occupant" of the said property. The said entry continues in Form IX and the manual (handwritten) Survey Form I & XIV pertaining to the said property. The same could be due to his previous ownership over the said property followed later by said Manuel.

However, the same was deleted and the name of said Manuel came to be inserted therein as an Occupant of the said 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 property by the successor of his predecessor in title, as evident from the aforementioned Affidavit dated 16/09/1991.

It appears from the records of Form IX pertaining to Village Assagao that the survey under the Goa Land Revenue Code, 1968 commenced in the year 1971 in Village Assagao.

15. Said Manuel expired on 9/08/1940 and his wife, said Ana expired on 13/10/1949, both having died without any will or any other disposition of their last wish, leaving behind their following children as their universal heirs:

- (a) Nicolau Matias Faria (son) alias Julio Faria married to Julia Amelia Fernandes. Said Nicolau Matias Faria expired on 10/07/1984 and said Julia Amelia Fernandes predeceased him. Both of them expired without any Will or any other disposition of their last wish, leaving behind their only son as mentioned below, as his sole and universal heir, Crispin Luis

Faria (son) married to Rolina Faria. Said Crispin Luis Faria died in the year 1971 leaving behind said Rolina Faria as his widow/half sharer and their two children as their universal heirs:

- a) Robert Luis Faria, bachelor and
  - b) Lourdes Faria, spinster
- (b) Cipriano Faria alias Cipriano Miguel Maria Faria married to Sebastiana Alves Faria. Said Cipriano Faria expired on 29/06/1983, leaving behind said Sebastiana Alves Faria as his widow/half sharer and their only daughter, Joanita Faria, spinster, as his sole and universal heir.
- (c) Caitano Faria (son) died as a bachelor on 20/01/1989.
- (d) Domingos Francisco Faria (son- hereinafter referred to as "said Domingos" (son) married to Preciosa Milagrina Faria (hereinafter referred to as "said Preciosa").
- (e) Hortencia Faria (daughter) who was married by first nuptial to a person by name Miguel and by second nuptial to Diogo Maria Faria. Both of her said spouses are known to have expired.

16. Upon the demise of said Manuel and said Ana, on 13/05/1990, said Domingos instituted Inventory Proceedings bearing No. 87 of 1990 in the Court of the Civil Judge Senior Division of Mapusa-Goa wherein the said property came to be listed at Item No. 1 as one of the assets, in the list of assets dated 15/04/1991 filed therein.

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

*"One half being the western 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 3 (S.No.97/3) of Village Survey of Assagao – Bardez and bounded:-*

*On the East:- by the other half belonging to the heirs of Pedro-de-Souza bearing Survey no,97/4.*

*On the West:- by the property of Francisco Xavier de Souza and Comunidade, now of Laxman Baburao Kandolkar, bearing Survey Nos. 97/1 and 97/5.*

*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.”*

By virtue of the Chart of Allotment dated 19/06/1991, the said property came to be allotted to said Domingos and said Preciosa having bidden the same in the auction with an obligation to pay the owelty money to the other interested parties/heirs. The said Chart of Allotment was made absolute vide Final Order dated 21/06/1991.

**Note:** In the Preliminary Statement of the Head of the Household (said Domingos) dated 13<sup>th</sup> of May, 1990, it has been stated therein that both the spouses of said Hortencia Faria died without leaving any issues or even collaterals and leaving behind said Hortencia Faria as their surviving spouse.

In the said case, the legal succession of late spouses of said Hortencia Faria shall devolve in accordance Article 1969 of the Portuguese Civil Code, 1867 (now stands repealed by the corresponding provision i.e. Section 52 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 (Goa Act 23 of 2016)) which reads as follows:

*“The legal succession shall devolve in the following manner:*

- i. To the descendants (children);*
- ii. To the ascendants (parents);*

- iii. *To the brothers and their descendants (includes the sisters and their descendants);*
- iv. *To the surviving spouse;*
- v. *To the collaterals not included in Clause (iii) upto the sixth degree (paternal and maternal cousins) and*
- vi. *To the State save what is provided in article 1663."*

Thus, considering the case of late spouses of said Hortencia Faria, even in case the said deceased spouses had expired without any issues or collaterals, one has to consider whether at the time of their death, their parents were alive. And in case the answer is in the affirmative, then they would have inherited the half undivided right in the one fifth (1/5<sup>th</sup> undivided right) belonging to said Hortencia, which after their death could have passed onto to their successors in terms of the aforesaid provision of law.

17. In view of the aforesaid Final Order dated 21/06/1991, said Domingos and said Preciosa became the absolute owners of the said property.

Accordingly, the name of said Domingos came to be mutated as an "Occupant" in the manual(handwritten) Survey Form I & XIV pertaining to the said property.

18. Thereafter, by virtue of a Deed of Sale dated 4/12/1992 duly registered with the Sub-Registrar of Bardez, Goa, under No. 1992, recorded in Book No. I, Volume No. 187 dated 18/12/1992, said Domingos and said Preciosa sold the said property to Digambar Govinda Langekar alias Digambar Govind Langekar (hereinafter referred to as the said Digambar).

Accordingly, the name of said Digambar came to mutated as an Occupant in the manual (handwritten) Survey Form I & XIV pertaining to the said property.

19. Said Digambar and his wife, Smita Digambar Langekar (hereinafter referred to as "said Smita") being half sharer by virtue of the Communion of Assets, sold the said property to Mr. Siddhrajsinhji Jhala (hereinafter referred to as said Siddhrajsinhji ) by virtue of a Deed of Sale dated 28/11/2005 duly registered with the Sub-Registrar of Bardez, Goa, under No. 4967, recorded at pages 201 to 224 of Book No. I, Volume No. 1462 dated 30/11/2005.

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. 506/55529 dated 2/11/2006 pertaining to the said property which entry continued in the computerized Survey Form I & XIV bearing No. 100007439247 dated 12/06/2018 with respect to the said property.

20. 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-1-70-2019, 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.

21. As evident from the Land Zoning Information bearing Ref No. TPBZ/ZON/5462/ASSG/TCP-19/412 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.

22. 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. 172/3 of Village Assagao and the same was subsequently, resurveyed under the present Survey No. i.e. 97/3 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.

23. Considering the entries in the Old Cadastral records and the year of commencement of survey under the Goa Land Revenue Code, 1968, in Village Assagao i.e. 1971, the title and physical possession of said Manuel and his descendants over the said property can be traced from the period much prior to, 1971 i.e. approximately could be said to be between 1940 and 1950 as appearing in the "Auto de demarcacao" which continued till 1992 i.e. till his descendant, said Domingos sold the same to said Digambar vide a duly registered Deed of Sale dated 4/12/1992. Thus, said Manuel and his descendants had clear, had been in lawful, physical, continuous, peaceful and uninterrupted possession of the said property for almost more than forty two years and based upon the same, legal and marketable title to the said property.

The name of their predecessor in title, said Pedrino (wrongly recorded as "Pedrina D'Souza") is found recorded in the survey records right from 1971 i.e. the year of commencement of survey under the Goa

Land Revenue Code, 1968, in Village Assagao. The said wrong entry had been seen rectified by entry the name of said Manuel in the manual (handwritten) Survey Form I & XIV pertaining to the said property.

Said Digambar and said Smita, had been in lawful possession of the said property from 1992 till 2005 i.e. the year it was sold by them to said Siddhrajsinhji, vide a duly registered Deed of Sale dated 28/11/2005. Thus said Digambar and said Smita were in lawful, physical, continuous, peaceful and uninterrupted possession of the said property for nearly thirteen (13) years based upon the said duly registered Deed of Sale.

And then said Siddhrajsinhji Jhala had been in lawful, physical, continuous, peaceful and uninterrupted possession of the said property from 28/11/2005 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.

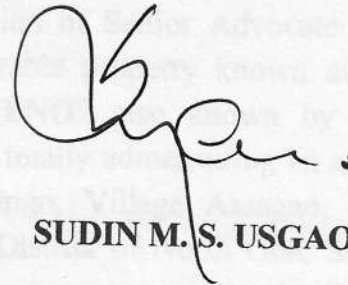
24. In case any claim for recovery of possession of the said property is put forth by the heirs of the late spouses of said Hortencia, if any, as discussed in para (16) of the present Opinion, the same would be barred by Law of Limitation in terms of Section 27 of the Indian Limitation Act, 1963, from the date of execution and registration of the aforesaid Deed of Sale dated 4/12/1992. Section 27 of the Indian Limitation Act, 1963, is quoted below for easy reference:

**“Section 27: Extinguishment of Right to Property:** At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

The period of limitation to file any suit for recovery of possession is twelve years in terms of Article 64 of the Indian Limitation Act, 1963.

25. We have been furnished with a Nil Encumbrance Certificate bearing No. 1363 of 2019 dated 20/06/2019 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.**

VINIA PALLYKAR