

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO.11 OF 2015**

1. Mr. Vito Joao Lobo e Souza Ticlo
Son of late Mr. Joao Antonio e
Souza Ticlo, 81 years old,
resident of H. No.372, Carrem,
Socorro, Bardez, Goa.
 2. Mrs. Helena Elsa Beatrice e Souza
Ticlo, Wife of Mr. Vito Joao Lobo e
Souza Ticlo, 77 years,
resident of H.No.372, Carrem,
Socorro, Bardez, Goa.
- .. Appellants

Versus

1. Mr. Nuno Xavier Lobo de Souza Ticlo
Son of late Mr. Joao Antonio e Souza
Ticlo, 89 years old, resident of H.No.
372, Carrem, Socorro, Bardez, Goa
 2. Mrs. Maria Ida Lobo e Souza Ticlo
Wife of Mr. Nuno Xavier Lobo de
Souza Ticlo, 78 years old, resident
of H.No. 372, Carrem, Socorro,
Bardez, Goa
- ... Respondents

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Ghanekar,
Advocate for the appellants.

Mr. Ryan Menezes, Advocate for the respondents.

Coram :- F. M. REIS, J.

Date : - 12th June, 2015

ORAL JUDGMENT :

Heard Shri Sudin Usgaonkar, the learned Senior
Counsel appearing for the appellants and Shri Ryan Menezes, the

learned Counsel appearing for the respondents.

2. Admit. Heard forthwith by consent.

3. Shri Ryan Menezes, the learned Counsel waives service on behalf of the respondents.

4. The above appeal takes exception to an order dated 01/12/2014, passed by the Inventory Court whereby an application filed by the appellants to drop prayers (a) and (c) to the application at exhibit 46, came to be dismissed.

5. Upon hearing the learned Counsel, what transpires is that in an inventory proceedings initiated by the respondent no.1, who is the eldest son of the Estate Leaver, the said respondent was appointed as the Cabeça de Casal. The appellants filed an objection to such an appointment, *inter alia*, on the ground that though the respondent no.1 was the elder son, nevertheless he was not living along with the deceased and as such, the appellant, who was living with the deceased, was entitled to be appointed as the Cabeça de Casal. The matter proceeded for enquiry and in the course of such proceedings, the appellants filed an application at exhibit 46 to withdraw his claim to be appointed as Cabeça de Casal and as such allow the respondent no.1 to continue to

function as such. The application was opposed by the respondent no.1, essentially, on the ground that evidence has already commenced and that the respondent no.1 was in exclusive possession of the ancestral house and as such, the appellant was not entitled to such appointment as Cabeça de Casal. It was also pointed out that in the meanwhile, an application for Temporary Injunction was filed by the respondent no.1 and further enquiry would assist the Court to decide this application. The learned Judge, by the impugned order, dismissed the application filed by the appellants on the ground that the aspect of exclusive possession would be material for the purpose of deciding the inventory proceedings.

6. Upon hearing the learned Counsel for the respective parties, I find that the reasoning of the learned Judge to refuse leave to the appellants to withdraw their claim to be appointed as Cabeça de Casal, is not at all well founded. Articles 2011 and 2015 of the Portuguese Civil Code read as under :

“ARTICLE 2011

(Transmission of ownership and possession of inheritance)

The transmission of the ownership and possession of the inheritance to the heirs whether instituted or legal, takes place from the moment of

the death of the estate-leaver.

ARTICLE 2015

(Indivisibility of the inheritance prior to partition)

Where many persons are entitled simultaneously to the same inheritance, their right shall be indivisible both in respect of possession as well as ownership, as long as the partition has not been effected."

After reading of the said provisions, it appears that the law recognises that the ownership and possession of the inheritance transmits on the legal heirs the moment of the death of the estate-leaver. It further provides that when many persons are entitled simultaneously to the same inheritance, their rights shall be indivisible both in respect of possession as well as ownership as long as partition has not been effected. Admittedly, partition in the present proceedings has not been effected and process is pending before the Inventory Court. Consequently, the observation of the learned Judge that the enquiry has to proceed to examine the claim of the respondent no.1 that he is in exclusive possession of the disputed property, is not at all material for deciding the Inventory Proceedings. Besides, it is nobody's case in the present proceedings that any of the co-heirs have claimed the right on prescription and/or adverse possession in respect of the assets left behind by the estate-leaver.

7. The contention of Mr. Menezes, the learned Counsel appearing for the respondents that this enquiry would help the decision in an application for Temporary Injunction filed by the appellants cannot be accepted. The application for Temporary Injunction will have to be decided on its own merits, based on affidavit and other documents, if any, produced on record. This does not preclude any party to rely upon any material, which is already on record, based on the enquiry, which was initiated in accordance with law.

8. But however, directing the appellants to proceed with an enquiry on a matter, which the appellants do not want to press, cannot at all be accepted nor sustained in law.

9. With regard to the contention of Mr. Menezes that the enquiry would proceed in connection with the other reliefs, I find that the objections have been raised based on Gift Deed and passive debts to the list of assets, which is a matter, which the learned Judge would have to deal with on merits, in accordance with law.

10. Subject to above, I find that the impugned order passed by the learned Judge cannot be sustained. Hence, I pass the

following order :

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 01/12/2014 is quashed and set aside.
- (iii) Needless to say that the Inventory Court shall proceed to examine other reliefs claimed by the appellants in exhibit 46, after hearing the parties in accordance with law. The application for Temporary Injunction filed by the respondent no.1 shall be considered by the learned Judge on its own merits, after hearing the parties in accordance with law.
- (iv) The appeal stands disposed of accordingly.

F. M. REIS, J.

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