

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 44 OF 2007**

Mrs. Sunanda alias Anuradha
Satyanarayan Chari,
wife of Satyanarayan Chari,
of full age, residing at Vaddem,
near Goa Gas Godown,
Vasco-da-Gama, Goa.

....Appellant

Versus

1. Shri Satyanarayan Janardhan Chari,
son of Janardhan Chari,
56 years old, residing at Janaki Apartments,
Flat No.SF-2, Vasco-da-Gama, Goa.

2. Mrs. Satyanarayan Janardhan Chari,
about 39 years old,
Residing at New Vaddem, Vaso-da-Gama, Goa. ...Respondents

Mr. L. Raghunandan, Advocate under legal aid scheme for the
Appellant.

Mr. R.G. Ramani, Advocate for the Respondents.

Coram:- F. M. REIS, J.

Date:- 4th September, 2015

ORAL JUDGMENT :

Heard Mr. L. Raghunandan, learned Counsel appearing for the
appellant and Mr. R.G. Ramani, learned Counsel appearing for the
respondents.

2. The above appeal was admitted by this Court by an order

dated 16/07/2008 on the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the plaintiff was entitled for exclusion of time taken for availing the remedy of setting aside the ex-parte decree and time for obtaining the certified copy of judgment and decree in Civil Suit No. 77/1994 filed by the respondent no. 1 against the said plaintiff.

(ii) Whether the finding of the first appellate Court that there was no fraud is perverse.

(iii) Whether the finding of the learned first appellate Court that Civil Judge Junior Division could not set aside the decree passed by Civil Judge Senior Division, is perverse.

3. I have extensively heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents.

4. During the course of the hearing it transpired that immediately after the decree for divorce was granted in favour of the respondent, he had remarried and in fact he had issues from the second marriage. It was also pointed out that from the first marriage to the appellant there were children, who are now major and even one daughter has already married.

5. Mr. L. Raghunandan, learned Counsel appearing for the

appellant has pointed out that the main reason why the appellant is proceeding with the above appeal is to ensure that the appellant would not loose her right over the property belonging to the couple in terms of the provisions of the Civil Code. The learned Counsel further submits that, upon instructions, the appellant is not interested to challenge the decree for divorce provided her rights to claim the moiety share in the property belonging to the couple up to the date when the moiety got dissolved i.e. the date of the divorce decree. The learned Counsel further apprehends that the appellant may defeat her rights to that effect on the ground that the appellant was the cause of the divorce and, consequently, would not be entitled to the right in the properties which belong to the couple during the subsistence of the marriage.

6. Mr. R.G. Ramani, learned Counsel appearing for the respondents, upon instructions, fairly accepts the position that merely because a decree for divorce is passed would not be a ground for the appellant to loose or forgo any rights to the properties which form part of the properties of the couple during the subsistence of the marriage. Mr. R.G. Ramani, learned counsel

further points out that the right of the moiety cannot be defeated merely because she was allegedly the cause of the divorce.

7. Considering the said fair concession of Mr. R.G. Ramani, learned Counsel appearing for the respondents, based on the relevant provisions of law, I find that the apprehension of the appellant that she would loose her right to the moiety over the properties which form part of the properties of the couple during the subsistence of the marriage would not at all survive. Hence, the appellant, if so advised, is at liberty to file necessary inventory proceedings to get the properties partitioned in terms of the relevant provisions of law and get her moiety share separated. The appellant seeks liberty to file inventory proceedings to get her moiety share separated in accordance with law. Liberty granted. Appeal stands disposed of accordingly as not pressed.

F. M. REIS, J.

NH/-