

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 450 OF 2011

Shri Jacinto Da Silva,
aged 63 years, businessman,
r/o. H. No. 304, 4th ward, Colva, Salcete, Goa.

..... Petitioner

V e r s u s

1. Maria Filomena Da Silva,
aged 65 years, wife of Joao
Minguel Cardoz, H.No. 66, 1st
Ward, Colva, Salcete, goa.
2. Mrs. Maria Julieta da Silva,
Major of age,
r/o. H. No. 58, near the Church
Cuncolim, Salcete, Goa.
3. Gthe Plotin Fernandes and his wife;
major of age,
4. Mrs. Miradolina Fernandes,
major of age,
both r/o. H. No. 58, Near the
Church Cuncolim,
Salcete, Goa.
5. Mrs. Shakuntala Fernandes,
and her husband
major in age,
6. Mr. Jose Manuel Fernandes,
M ajor of age,
both resident of H. No. 58,
Cuncolim, Salcete, Goa.
7. Mr. Shubert Fernandes, and
his wife:
Major of age,
8. Mrs. Gita Fernandes,
Major of age,
Both resident of
H. No. 58, Cuncolim, Salcete, Goa.

9. Mr. Allan Fernandes,
Major of age,
R/o. Cuncolim, Salcete, Goa.
10. Mr. Antonio Jose Gomes,
Major of Age,
r/o. H. No. 328, Volly II,
Cavorim, Chandor, Salcete,
Goa.
11. Mr. Flora Francisco J. gomes,
and her husband,
Major of age,
12. Mr. Remedios Fernandes,
Major of age,
r/o. 1st ward Colva, Salcete, Goa.
13. Mr. Nelson P. dos M. Gomes,
Major of age,
r/o. Near St. Anthony Chapel,
Cavorim, Chandor, Salcete, Goa.
14. Mr. Jesus Edwin Rex Gomes,
Major of age,
r/o. 9-3-1, Chapel View,
St. Joaquim Chapel, Borda,
Margao, Goa;
15. Mrs. Maria Livia Gomes and
her husband
Major of age,
16. Mr. Milton D' Cruz,
Major of age,
both resident of Baga, Velim,
Salcete, Goa.
17. Fr. Eusharisto Gomes,
Major of age,
r/o. Navelim Church, Salcete, Goa.
18. Maria Nataliana da Silva,
Major of age,
r/o. 113/A, Nagwaddo,
Betalbatim, Salcete, Goa.
19. Mrs. Ruth Aduzinha Baretto e

Pereira, and her minor children,

20. Rochelle Pereira,
9 years of age,
Through his guardian Mrs. Ruth A. Barretto e Pereira.
21. Jousua Pereira,
6 years of age,
Through his guardian Mrs. Ruth A. Barretto Pereira,
All the resident of H. No. 133/A,
Nagwaddo, Betalbatim, Salcete, Goa.
22. Mr. Cruz Sebastiao Cardozo,
s/o. Mr. Joao Minguel Cardozo,
major of age,
r/o. H. No. 66,
1st ward, Colva, Salcete, Goa. Respondents

Mr. M. B. D' Costa, Senior Advocate with Mr. Vivek Rodrigues, Advocate for the Petitioner.

Ms. Asha Desai, Advocate for the Respondent nos. 1, 14 and 19.
inequidated

Coram :- F. M. REIS, J

Date : 21st August, 2015.

ORAL JUDGMENT

Heard Shri M. B. D'Costa, learned Senior Counsel appearing for the Petitioner and Ms. Asha Desai, learned Counsel appearing for the Respondent nos. 1, 14 and 19.

2. The above Writ Petition takes exception to the Judgments dated 30.04.2008 passed by the learned Civil Judge, Senior Division at Margao and the Judgment dated 27.07.2010 passed by the learned Adhoc District Judge, South Goa, at Margao, in Regular Civil appeal no. 74/2008.

3. Briefly, the facts of the case are that Inventory Proceedings were initiated upon the death of Joao Batista de Silva and his wife Maria Augusta Oliveira. The said estate leavers had four daughters namely Maria Juliata Melda Da Silva, Maria Clara Da Silva, Filomena Da Silva and Maria Natalina Da Silva, three Sale Deeds dated 14.05.1975, 15.07.1977 and 23.02.1979 the said three daughters except Filomena sold their respective illiquid asset/right of inheritance in the estate of their parents Joao Batista da Silva and Maria Augusta Oliveira in favour of the Petitioners herein. On the basis of such Sale Deed, the Petitioners filed an application to be impleaded in the Inventory Proceedings but, however, the Petitioner was allowed only to intervene in the proceedings without making him an interested party therein. Thereafter, the proceedings were finally homologated by Judgment dated 30.04.2008, whereby one fourth of the estate leaver was allotted to the Petitioner and three-fourths were allotted to the Respondents. It may be pertinent to note that the Respondents herein are the only heirs and successors of the said daughter Filomena.

4. Shri M. B. D' Costa, learned Senior Counsel appearing for the Petitioner, has pointed out that both the Courts below have erroneously applied the ratio in a Judgment reported in **1999 (1)Goa L.T. 77** in the case of **Jose Antonio Philip Pascoal da Piedade Cirilo dos Milagres & anr. vs. Joao Luis Laurente dos Milagres Miranda & Ors.**, when in the present case, there was no specific property transferred in favour of the Petitioner. The learned Senior Counsel has thereafter taken me through the said Sale Deed to point out that what was conveyed are the illiquid assets/rights in favour of the Petitioner of their parents.

Learned Senior Counsel further pointed out that as such, the learned Judge was not justified to come to the conclusion that the Sale Deeds are null and void. Learned Senior counsel further pointed out that whilst passing the impugned Judgment, the learned Judge has also noted that the Gift Deed executed by the said sister of Joao Batista and Augusta had to be restricted to her legitime half. Learned Senior Counsel further pointed out that the said sister was a spinster and, as such, was free to dispose of her right in the properties in a manner she so desires. Learned Senior Counsel as such pointed out that the impugned Judgments passed by the Courts below be quashed and set aside and the final Judgment be set aside and the matter be remanded back to the Lower Court to decide the Inventory afresh.

5. On the other hand, Ms. Desai, learned Counsel appearing for the Respondents, pointed out that though a specific portion has not been transferred, nevertheless, according to her, what the Petitioner would ultimately get was a specific right in the property of the deceased. Learned Counsel further pointed out that as such the Courts below have rightly relied upon in the case of **Jose Antonio Philip Pascoal da Piedade Cirilo dos Milagres & anr.** (supra). Learned Counsel further pointed out that in the inheritance of the deceased, the said sister is not an interested party and, as such, the question of examining the validity of the gift claimed by the Petitioner would not arise at all. Learned Counsel further pointed out that the Petitioner has also filed suits against the Respondents challenging the said Sale Deeds as well as the Deed of Gift dated 13.07.1961. Learned Counsel as such submits that there is no reason for any interference in the impugned

Judgments.

6. I have carefully considered the submissions of the learned Counsel appearing for the respective parties. I have also gone through the records. On perusal of the said Sale Deeds dated 14.05.1975, 15.07.1977 and 23.02.1979, I find that what was conveyed in favour of the Petitioner was illiquid asset/right in the inheritance of the deceased parents. In such circumstances, the reliance by the Courts below in the case of **Jose Antonio Philip Pascoal da Piedade Cirilo dos Milagres & anr.** (supra) is totally misplaced. There is no specific portion conveyed or transferred in favour of the Petitioner in any specific property. The illiquid asset/right would be in the totality of the inheritance of the estate leavers. As such, the findings of the learned Judge that the said three Sale Deeds dated 14.05.1975, 15.07.1977 and 23.02.1979 are null and void cannot be sustained and deserves to be quashed and set aside.

7. With regard to the contention of Mr. M. B. D' Costa, learned Senior Counsel appearing for the Petitioner, in connection with the Gift Deed dated 13.07.1961. I find that as the donor of the said Gift is not an interested party in the Inventory Proceedings initiated upon the death of the said Joao Batista and his wife Augusta, the question of examining the legal effect or otherwise of such Gift Deed in such Proceedings is not at all justified. The effect of such Gift Deed would have to be examined on its own merits in an appropriate forum as and when it so arises. As such, any adverse finding with regard to the said Gift Deed in the impugned Orders passed by the Courts below deserves to be quashed and set aside. All

contentions of both the parties with regard to the legal effect or otherwise of such Gift Deed dated 13.07.961 are left open.

8. Another contention raised by Ms. Asha Desai, learned Counsel appearing for the Respondents, is that the Petitioner can only be considered as an intervener in the Inventory Proceedings. Article 1375 of the Portuguese Civil Procedure Code reads thus :

“Article 1375 :

(Application to qualify as party, legatee or creditor)

Where anybody desires to be admitted in the inventory as party, legatee, or creditor, he may file his application at any time, indicating at once the evidence which shall be led.

After the notice is given to the administrator and to the parties to give their say, in the rest what is laid down in the preceding article shall be observed.”

9. The said provisions clearly provide that any person who wants to be made a party can be admitted as an interested party in the proceedings subject to showing their interest to such estate. In the present case, the Petitioner had apparently claimed interest in the estate based on the said Sale Deed and, as such, he could be impleaded in the Inventory Proceedings initiated upon the death of the said Joao Batista and his wife Augusta. It was brought to my notice during the hearing of the above Petition that no Inventory Proceedings have been initiated upon the death of the parents of the Joao Batista. As the rights of Joao Batista in the properties described would depend upon the Inventory Proceedings of his parents, the learned Judge shall proceed to permit the Cabeça de Casal to file an

additional statement and examine whether the proceedings filed should also include the distribution of the estates left by the grandparents namely Custodio and his wife in the light of the observations made herein above in accordance with law.

10. In view of the above, I pass the following :

ORDER

(i) The impugned Judgments dated 30.04.2008 passed by the learned Trial Judge and 27.07.2010 by Lower Appellate Court to the extent it declares the Deeds null and void and the observations made with regard to the Gift Deed dated 13.07.1961 are quashed and set aside.

(ii) The Inventory Court shall now proceed in accordance with law.

(iii) Rule stands disposed of.

F .M. REIS, J.

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