

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION 334 OF 2014**

1. Shri. Rohit Raghuvir Paingankar,
Major of age, Resident of H. No. 442,
Opp. Peerless Office, Cine Vishant Road,
Aquem-Alto, Margao, Goa.

2. Shri. Rajendra alias Rajesh
Raghuvir Paingankar,
Major of age, Resident of Damodar
Housing Society, Aquem Alto,
Margao, Goa.

.... Petitioners

Versus

1(a) Smt. Radha Nandalal Karlo,
Major of age and her husband;

1(b) Shri. Nandalal Karlo,
Major of age,
Both residing at 3rd floor,
Govardhan Apartments,
Aquem, Alto, Margao, Goa.

1(c) Smt. Sujata Sharad Korgaonkar,
Major of age and her husband,

1(d) Shri. Sharad T. Korgaonkar,

Major of age,
Both residing at Damodar Bhawan,
Chittaranjan Road, Lile Parle (East),
Mumbai.

1(e) Smt. Savita B. Gianani,
Major of age and her husband

1(f) Shri Bhisham Gianani,
Major of age,
Both residing at Damodar Housing
Society, Aquem-Alto, Margao, Goa.Respondents

Shri Sudesh Usgaonkar, Advocate for the Petitioners.

Shri J.P. Mulgaonkar, Advocate for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 5 FEBRUARY 2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Taken up for final disposal. Shri J.P. Mulgaonkar, learned Counsel for the respondents waives service.

2. By this petition, the petitioners challenge the order passed by the District Judge, South Goa, Margao allowing the Miscellaneous Civil Appeal filed by the respondents challenging the order passed by the Civil Judge, Senior

Division, Margao dated 5 December 2011.

3. The respondents are legal heirs of one late Raghuir and late Shakuntala Paingankar. The original applicant Shakuntala was appointed as cabeça de casal on the death of Raghuvir. The petitioner no.1 had made an application for intervention as a interested party, which was allowed and a order was passed by the Civil Court to remove the said Shakuntala and appoint petitioner no.1. An Appeal From Order was filed and by order dated 24 July 2009, the matter was remanded back for disposal. In the meanwhile, Shakuntala expired on 11 October 2007. The proceedings were adjourned from time to time. On 24 September 2010 arguments on the point as to who will be the lead the inquiry, as per directions of this Court in the Appeal From Order, were heard. Matter was then adjourned for parties to explore possibility of settlement. The application for adjournment was made on behalf of the respondents. On 1 July 2011, the Civil Judge noted that various adjournments were sought by the respondents and it being an old matter the inquiry needs to be closed and accordingly application for adjournment made by respondents was dismissed and the inquiry of the respondents stood closed. The respondents thereafter filed an application to recall the order of 1 July 2011. According to the respondents there was no order deciding the question regarding commencement of inquiry and they were under mistaken impression. The learned Civil Judge rejected the application for recalling the order dated 1 July 2011 by order dated 5 December 2011. The learned Judge noted that in the roznama of 22 October

2010 and 4 December 2010 notings in the roaznama would show that clear directions were issued to the respondents to commence inquiry, inspite of that they did not do so, therefore order dated 1 July 2011 was rightly passed.

4. An appeal was filed by the respondents before the District Court. The District Court came to the conclusion that there was no order passed directing the respondents to commence the inquiry and having liberally granted adjournments earlier, the learned Civil Judge could not have suddenly dismissed the application for adjournment of the respondents on the ground that the matter is old. Accordingly, the learned District Judge quashed and set aside the order dated 5 December 2011.

5. I have heard Mr. Sudesh Usgaonkar, the learned Counsel for the appellants and Mr. J.P. Mulgaonkar, the learned Counsel for the respondents. Various arguments are raised by the learned Counsel. First argument is that the appeal rejecting an application for review is not maintainable. Secondly, it is argued that the noting on the roznama was against the respondents and there was no challenge to the same. Mr. Usgaonkar submitted that in the order passed while disposing of the Appeal From Order, clear directions were issued by this Court which would indicate that it was the responsibility of respondents to commence the inquiry. He submitted that conduct of the respondents showed that it was their understanding that they have to commence the inquiry. He also submitted that the ground given in the application for

review that they were unaware that there was any order passed is incorrect, but there is an order passed which is stated in the roznama.

6. Mr. Mulgaonkar, relied upon the decision in the case of ***Arun Devi N. Gaekwad & Ors. V/s. Sanjita Udaisingh Rane Sardessai & Anr.*** reported in ***2000 (2) Goa L.T. 479*** to contend that an order passed in inventory proceedings is appealable. He also submitted that relying upon the decision of the learned Single Judge of this Court in ***Margao Municipal Council through its Chief Officer & Anr. V/s. Shri Pandurang Kusta Alve & Ors.*** reported in ***AIR 2000 Bom.78*** that the noting in the roznama cannot be termed as a order. He submitted that when the application was pending the learned Judge could not have dismissed the matter and that was brought to the notice of the Court and the Court reviewed its own order. He submitted that correct order in the interest of justice has been passed by the District Court.

7. The petition arises from inventory proceedings. Inventory proceedings are in respect of property of the deceased. The parties are related. Considering the nature of the proceedings it is necessary that the proceedings are disposed of at an early stage. Keeping this angle in mind, the writ jurisdiction needs to be exercised.

8. As regard the maintainability of the appeal, I do not propose to enter into that issue, as even assuming the appeal would not be maintainable, in writ jurisdiction the Court is

concerned with the effect of the revival of the order if an order under challenge is set aside. If the order passed by the District Court is set aside on the ground that it does not have jurisdiction, it will revive the order passed by the Civil Court refusing an opportunity to the respondents. Considering the nature of the proceedings, which is a dispute between the family members in respect of distribution of the assets of the deceased, and that the proceedings are not akin to a civil suit, I am not inclined to disturb the position which will enable one branch of the family to put forth their case.

9. Next question that would arise, which was vehemently argued by Mr. Usgaonkar, is that there was no doubt whatsoever as to who should begin the inquiry. There is a contest on this issue between the parties. According to the respondents, the burden which lies on the petitioners to initiate the inquiry, while it is the case of the petitioners that burden lies on the respondents to initiate the proceedings. Even assuming it is accepted that the order is passed by the learned Civil Judge on 22 October 2010 and 4 December 2010 as reflected in roznama, there is no discussion at all as to the issue of burden. According to Mr. Usgaonkar this issue will not arise as the respondents have accepted that they have to start the inquiry. However, in this petition the position has been contested. This question will have to be decided for the first time in the writ petition, as there is no discussion at all on this issue in the Court below. Therefore even if it is assumed that there was an order, the issue as to the burden still needs to be considered.

10. In my opinion, the appropriate course of action would be to give directions to the Civil Judge to decide the issue keeping arguments of both sides open. Such direction would curtail the time taken in the further litigation, which would be in the interest of both the parties. It will not be in the interest of the parties to litigate further on this issue on the various technical points raised by the Counsel.

11. The learned Civil Judge will decide the issue as to on whom the burden lies to initiate the inquiry, and pass a reasoned order on the said issue within a period of 8 weeks from the date of receipt of this order. All contentions of both the parties on this issue are kept open. The Writ petition is accordingly disposed of. No costs.

N.M. JAMDAR, J.

NH/-