

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 26 OF 2015

1. Anil Narayan Kerkar,
son of Narayan Kerkar, and his wife
2. Smt. Shoba Anil Kerkar,
both residents of H. No. 128, Deulwaddo of full age,
Kerim, Pernem, Goa, Appellants

V e r s u s

1. Laxmibai Yeshwant Kerkar
 - (a) Shri Manoj Yeswant Kerkar
 - (b) Smt. Nita Kerkar
all residents of H. No. 406/208
PDA Colony,
Porvorim, Bardez, Goa.
 - (c) Smt. Deepar Mangirish Dubashi & husband
 - (d) Manguirishi Ramrai Dubashi both
r/o. Vithalpur, Sanquelim, Bicholim, Goa.
2.
 - (a) Narayam Anand Kerkar and his wife
 - (b) Smt. Smita Narayan Kerkar
both r/o Deulwaddo of full age, Kerim, Pernem, Goa.
 - (c) Shri Rohan Anand Kerkar and wife
 - (d) Smt. Reshma Rohan Kerkar
 - (e) Shri Vrajesh Anand Kerkar & wife
 - (f) Smt. Namita Vrajesh Kerkar all four (b) to (e)
r/o. Deulwaddo of full age, Kerim
Pernem, Goa.
3. Shri Vilas Narayan Kerkar & wife
4. Smt. Dhanashri Vilas Kerkar
both r/o. Dhactem Bhag, Kerim, Pernem, Goa.
5.
 - (a) Shri Hiren Subash Kerkar & wife

- (b) Smt. Vanita Hiren Kerkar
both residents of H. No. 128,
Deulwaddo, Kerim,
Pernem, Goa.
 - (c) Shri Sameer Subash Kerkar & wife
 - (d) Smt. Pritam Sameer Kerkar
both r/o Dhactem Bhag, Kerim,
Pernem, Goa.
 - (e) Smt. Minal Durgesh T Ambe
and husband
 - (f) Durgesh T Ambe,
both r/o Pratibha Hsg. Society
Vidhynagar, Aquem, Margao, Goa.
6. Smt. Bharyashri Arun Kerkar
7. Shobanabai Narayan Kerkar
Respondent nos. 6 & 8 residents of
H. No. 128, Deulwaddo, Kerim,
Pernem, Goa.

All the above parties are major in age. Respondents

Mr. M. B. D' Costa, Senior Advocate with Ms. Soniya Chodankar, Advocate for the Appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondent nos. 1, 3 to 7.

Coram :- F. M. REIS, J

Date : 10th June, 2015.

ORAL JUDGMENT

Heard Shri M. B. D' Costa, learned Senior Advocate appearing for the Appellants and Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondent nos. 1, 3 to 7.

2. Admit. Learned Counsel appearing for the Respondent nos. 1, 3 to 7, waives service.

3. Shri M. B. D' Costa, learned Senior Counsel appearing for the Appellants, has filed an affidavit, inter alia, disclosing that all the Respondents including the Respondent no. 2 have been duly served.

4. I have heard the learned Senior Counsel appearing for the respective parties and with their assistance, have also gone through the records.

5. The short grievance raised by Shri M. B. D' Costa, learned Senior Advocate appearing for the Appellants is that on 29.04.2015, when the auction was conducted by the learned Inventory Court, the Appellant had filed an application for adjournment on the ground that he was sick which was refused.

6. On the other hand, Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondent nos. 1, 3 to 7, has pointed out that the whole exercise on the part of the Appellant was only to delay the proceedings and indulge in an illegal expedient to get an adjournment of the auction.

7. Without going into the merits of the rival contentions and in the interest of justice and in the peculiar facts of the present case as it is not disputed that the Appellant was in fact sick on the date fixed for auction, I find it appropriate to direct the learned Judge to hold the auction afresh in respect of the assets of the

estate leaver in accordance with law. Consequently, the auction held on 29.04.2015 shall stand quashed and set aside. Needless to say, that the auction shall be fixed a date after hearing the concerned as per the convenience of the Court and it is made clear that no adjournment shall be granted to any of the parties on such dates fixed by the learned Judge. The learned Judge shall try and hold the auction and dispose of the Inventory Proceedings as expeditiously as possible preferably within three months from the date of the receipt of this Order.

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

ORDER

- (I) The impugned Order dated 29.04.2015 passed by the learned Judge is quashed and set aside and consequently, the auction held on the said date shall stand quashed and set aside.
- (II) The learned Judge is directed to hold a fresh auction in the light of the observations made herein above and dispose of the same preferably within three months from the date of receipt of this Order.
- (III) Appeal stands disposed of accordingly.

F .M. REIS, J.

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