

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO.40 of 2014**

1. Cidalia Rosa Paulina De Lourdes
Almeida Bodade
d/o late Marilia Paulacina,
major of age, married and her
husband
2. Mr. Navin Bodade,
Major in age,
Nos.1 and 2 are resident of
Mitrayu House No.154,
Raghavi Estate, Bogmalo Road,
Dabolim- 403 801.
3. Mario Salazar Jorge
Son of late Maria Eugenia,
Major of age, bachelor,
4. Janio Cristovao Jorge
Son of late Maria Eugenia,
Major of age, bachelor,
(No.3 & 4 are represented by
the Power of Attorney Mr.
Antonio J. Gracias)
5. Aluizio Alexandre de Oliveira
Barreto Xavier, Son of late
Shri Caetano Custodio Minguel
Jacinto Das Dores Barreto Xavier,
bachelor, r/o Antonio Alexio Road,
30 31, Barxarena Oeiras Portugal.
6. Mr. Sergio Jacinto de Oliveira Barreto
Zavier, Son of late Shri Cetano
Custodio Minguel Jacinto Das
dores Barreto Xavier, Major of age,
married and his wife
7. Mrs. Sonia Alexandra Lopes Paulo
Xavier, Major of age,
8. Mr. Vitor Raimundo de Oliveira

Barreto Xavier, Son of late
Shri Catano Custodio Minguel
Jacinto Das dores Barreto Xavier,
Bachelor, Nos.6 to 8 are resident
of allotment no.10, Ground Floor,
right, Evora Portugal, (6 to 8
are presented by their attorney Mr.
Ceasar Cabral vide Power of Attorney
dt.16/7/2007)

9. Maria Alexandrina dos Bom Successo
Barreto Xavier alias Alexandrina
Xavier Aiyar, Resident of 32, Sea
Shell, N. Dutta Marg, Four Bungalows,
Adheri (W) Mumbai. .. Appellants.

V/s

1. Jose Antonio Manuel Francisco
Jacinto Barreto Xavier alias
Manuel Barreto Xavier
Aged 78 years, retired Govt. Servant
(since deceased) through LRS
- 1(a) Maria de Fatima Barreto Xavier Kapolkar,
major, daughter,
1(b) Krishna Kapolkar, major son-in-law,
r/o Kridha Bungalow, Plot C-11, Khare
Hill View, Gogol, Fatorda, Margao,
Goa 403 602
1(c) Savio Barreto Xavier, major, son
1(d) Carol Barreto Xavier, major,
daughter-in-law, Mabaxa, Pajifond,
Margao, Goa 403 601
1(e) Marinela Barreto Xavier Menezes,
major, daughter
1(f) Paulito Menezes, major, son-in-law,
c/o Paulito Menezes, Maina, Curtorim, Goa
1(g) Celia Barreto Xavier Fernandes, major,
daughter
1(h) Jesmon Fernandes, major, son-in-law
C/o Jesmon Fernandes, Cajie Bar and
Restaurant Sirlim, Chinchinim, Goa
And his wife

2. Maria Leonildes Terezinha do
Menino Jesus Olga Rodrigues
alias Terezinha Barreto Xavier
Aged 68 years, housewife,
Both residing at House No.65,
Rua de Saudades, Pajifond,
Margao, Salcete, Goa. .. Respondents

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

Mr. Jagannath Jayant Mulgaonkar, Advocate for the respondent
nos. 1(a),(b),(c),(d),(e),(f),(g),(h) and respondent no.2.

CORAM :- C. V. BHADANG, J.

Date : 26th August, 2015.

ORAL JUDGMENT :

Heard. Admit. Shri Mulgaonkar, the learned Counsel
waives service on behalf of the respondent nos.1(a),(b),(c),(d),(e),
(f),(g),(h) and respondent no.2. Heard finally, by consent.

2. By this appeal, the appellants are challenging the
order dated 19/04/2014 passed by the learned Adhoc Civil Judge,
Senior Division at Margao in Port Civil Miscellaneous Application
No.14/2013/II in Inventory Proceeding No.96/1986/A. By the said
order, the application under Article 1425 of the Portuguese Civil
Code (Portuguese Code, for short) filed by the appellants, who are
interested persons, for correction of an error, is dismissed.

3. The brief facts are that Inventory Proceedings being Inventory Case No.96/1986 were initiated on the file of the Special(Comarca) Judge at South Goa at Margao in respect of the properties of estate leavers Shri Aluizio Caetano Jacinto Lourenco Roque Barretto Xavier and his wife Clara Aurelia Quiteria de Piedade Azaredo. These inventory proceedings were concluded by a consent decree dated 24/02/2006. The present appellants have been allotted property at Item No.37, which is described as under :

'Item No.37.

A rustic property known as "MUNDDE CASANACHAM MORODA" (second Parcel) situated in the village Guirdolim of Salcete talulka, registered in Land Registration Office of Salcete under No.42930 at Page 105 of Book B No.111 of new series and enrolled in the old Portuguese revenue registered (Matriz Predial) under Nos.609 and 610. This property is bounded on the east by a Comunidade paddy field, on the west by the crest of the hill, on the north by the property of heirs of Milagres Piedade Diniz and on the south by the property of heirs of Jose Antonio Barreto Xavier. This property is now surveyed under Survey No.288/1 and 299/4 of revenue Village Guirdolim, admeasuring 3975 sq. metres and 6150 sq. metres respectively.

Valued at Rs.40,000/-'

4. According to the appellants, when some time in the month of July, 2011, the appellants obtained Form No.I and XIV of the property surveyed under No.288/1 and 299/4 of Guirdolim village, for the purpose of carrying on mutation, it was noticed that in the Survey records of Survey No.299/4, the name of Clara Azavedo Barreto Xavier was not appearing. On enquiry, it transpired that the Survey Number of the property under Item No.37 was wrongly mentioned as 299/4, when it ought to have been 294/4. This led the appellants to file an application under Article 1425 of the Portuguese Code read with Section 153 of C.P.C., for correction of the error, which according to the appellants, was a typographical mistake.

5. The respondents opposed the prayer only on the ground that Article 1425 envisages such a correction being made on agreement of all the parties. Thus, it was contended that unless and until all the parties in Inventory Proceedings consent for such correction, the same cannot be allowed.

6. The learned Civil Judge, Senior Division, accepting the said contention, based on Article 1425 of the Portuguese Code, has dismissed the application. That is how, the appellants are before this Court.

7. I have heard Shri Ramani, the learned Counsel for the appellants and Shri Mulgaonkar, the learned Counsel for the respondents.

8. It is submitted by Shri Ramani, the learned Counsel for the appellants that the property surveyed under Survey No.299/4 was not belonging to the estate leavers and as such, was not the subject matter of the Inventory Proceedings. It is next submitted that in so far as the property surveyed under Survey No.294/4 is concerned, it is not allotted to any other party to the proceedings, except the appellants. It is submitted that thus, no prejudice would be caused to the respondents. The learned Counsel would submit that once the property surveyed under No.299/4 is found to be not subject matter of the Inventory Proceedings and that the same is appearing in Item No.37 clearly by way of a typographical error and/ or an error arising out of accidental slip or omission, it has to be corrected. It is submitted that the learned Trial Court has not considered the sole paragraph annexed to Article 1425 of the Portuguese Code, which says that nothing in Article 1425 shall apply to Article 667. It is submitted that Article 667 does not contemplate any such consent and the Court may on its own motion, correct such an error. He submitted that for such an

error, which is purely of a typographical nature and/ or arising out of accidental slip or omission, the appellants cannot be relegated to file a suit.

9. On the contrary, it is submitted by Shri Mulgaonkar, the learned Counsel for the respondents that Article 1425 of the Portuguese Code contemplates consent of all the parties and, therefore, the Trial Court was right in dismissing the application. It is submitted that once the appellants had approached the Trial Court under Article 1425 of the Portuguese Code, now they cannot claim that the correction can be carried out even in the absence of consent by all the parties to Inventory Proceedings.

10. Article 1425 and Article 667 of the Portuguese Code, which are relevant for the purpose, read as under :

“ARTICLE 1425

(Amendment to the partition by agreement)

The partition may be amended, even after it has become final for want of appeal, in the same inventory, by agreement of all the parties or their representatives, in case there exists error of fact in the description or qualification of the properties or any other error susceptible of vitiating the will of the parties.

Sole Paragraph : What is provided in this Article

does not prevent the application of Article 667.”

“ARTICLE 667

If there is any error of writing or calculation or any material mistake due to omission or manifest lapse, they can be corrected by a simple order by application of any of the parties or by initiative of the Judge.

In case any appeal is filed, the rectification can be done before the file is remitted and the parties can allege before the appellate Court, what they meant regarding their right in respect of the rectification.

If none of the parties filed any appeal the rectification can be made at any time which is subject to appeal if any.

Para(1)- There is no appeal in case the application is rejected in respect of rectification.”

A bare perusal of the impugned order would show that the learned Trial Court has not considered the sole paragraph appended to Article 1425 of the Portuguese Code. In the present case, as is evident from the record, it is not in dispute that the property surveyed under Survey No.299/4 was not subject matter of the Inventory Proceedings as the said property was not belonging to the deceased. It is also not in dispute that the property surveyed under No.294/4, which is now sought to be substituted, is not allotted to any other parties to the Inventory

Proceedings, except the appellants. If that be so, it is difficult to accept that the appellants would be required to file a suit for the correction of such an error, which clearly appears to be of typographical nature. Article 667 of the Portuguese Code would make it clear that such an error of writing or calculation or any material mistake due to omission and/or manifest lapse can be corrected by a simple order or even by the initiative of the Judge. In either case, having regard to the nature of the correction sought and the fact that the property surveyed under No.299/4 was not belonging to the deceased and as such, was not subject matter of the Inventory Proceedings and further having regard to the fact that the property surveyed under Survey No.294/4 is not allotted to any other party, except the appellants, the application filed by the appellants, deserves to be allowed.

11. In the result, the appeal is allowed.

The impugned order dated 19/04/2014 is hereby set aside. Port. Civil Miscellaneous Application No.14/2013/II is hereby allowed as prayed. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA