

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 558 OF 2014

Mrs. Sajeeta Uday Singh Rane

Sardesai and anr.

Both resident of S-3, Rajvihar,

Near Power House, Aquem,

Alto, Margao Goa.

..... Petitioners

V e r s u s

Mr. Rajan Ragunathnan Dessai,

Ground floor, Building No3,

Damodar Housing Society,

Aquem, Margao, Goa.

..... Respondents

Mr. Rohit Bras De Sa, Advocate for the Petitioners.

Mr. Sudesh Usgaonkar, Advocate for the Respondents.

CORAM: N. M. JAMDAR, J.

DATE: 25TH FEBRUARY, 2015.

ORAL ORDER:

By this petition, the petitioners challenge the order dated 16 July 2014 passed by the District Judge, South Goa, Margao allowing the Miscellaneous Civil Appeal filed by the respondent and setting aside the order passed by the Civil Judge, Senior Division dated 7 September, 2013 permitting the petitioners to reopen their evidence in the inventory

proceeding.

2. The inventory proceeding are pending since the year 1988. Initially, the matter came before this Court by way of Appeal From Order no.41 of 1999. By order dated 11 July 2003, the proceedings were remanded back to the trial Court for reconsideration as to the issue regarding relinquishment deed in respect of the estate of Vijamala. The learned Single Judge found that the trial Court had not addressed itself to the issue of agreement dated 20 May, 1987, which was prior to the deed of Renouncement dated 1 June, 1987. Contention was raised on behalf of the respondent that the agreement is fabricated and bogus. The learned Single Judge found that this issue was not answered by the Court below.

3. After the proceeding was remanded, a pursis Exhibit D8-3 was filed by the petitioner, questioning the validity of the Will dated 19 May 1982, on the ground that it has been executed outside the State of Goa, for which no probate was produced and therefore, it was not valid. Another pursis which was filed also re reiterated this contention, proceeding on the basis that there was no probate. The learned Civil Judge framed certain points for determination, which included whether the will is valid or not and whether the relinquishment deeds are valid and also the agreements.

4. Thereafter, a petition came to be filed in this Court bearing no. 217 of 2006, which was disposed of by order dated 16 June, 2006. The learned single Judge disposed of the

petition by holding that it was not necessary to interfere with the impugned order, which inter alia directed that the inquiry into the validity of the will is to be considered. The order of the learned Single Judge did not make any reference to the probate dated 31 January 1994.

5. Thereafter, there were certain other steps taken in the inventory proceedings, details of which are not necessary for the disposal of this petition. The writ petition arises from an application made by the petitioners for reopening the evidence of AW.1 of the plaintiff and to file additional affidavit of evidence. In the application it was stated that when the affidavit of evidence of AW.1 was tendered, it dealt with only the issue of deed of relinquishment and there was no whisper about the nullity of the will and other aspects, which due to oversight was not taken and therefore, the petitioner prayed that they may be permitted to reopen the evidence and tender the evidence regarding validity of the will.

6. The learned Civil Judge considered the application and the objection of the respondents. The learned Civil Judge held that when the order was passed by this Court in Writ Petition no.217 of 2006, confirming the order of 3rd October, 2005, the fact that the probate was granted was before the High Court and therefore, the objection that the validity of the will cannot be gone into now, does not arise. The learned Judge held that the question whether the probate granted by the Court in Baramati operates as a res judicata or not is a mixed question of fact and law and therefore, granted the

application of the petitioner to reopen the evidence.

7. The respondent filed a miscellaneous civil appeal against this order to the District Court, South Goa, Margao. The District Court held that the probate has not been set aside nor any steps have been taken to set aside the probate. Therefore, no question arose to lead any evidence as regards validity of the will. The District Court came to the conclusion that the learned civil Judge misinterpreted the order passed by this Court on 16 June, 2006. The learned District Judge observed that the subject of the matter of the writ petition was totally different. Accordingly, the learned District Judge allowed the appeal by the impugned order dated 16 July, 2014.

8. The learned counsel for the appellants submitted that when the orders were passed framing the issue of validity of the will on 3 October, 2005 by the learned Civil Judge and order dated 16 June 2006 passed by this Court, the probate was very much in existence, inspite of the same, issue as to the validity of the will was framed and burden cast on the petitioner. He submitted that the District Court has exceeded its jurisdiction and in fact has passed orders contrary to the directions of this court. He submitted that even assuming that there is a valid probate in favour of the respondents, the property having being situated in Goa, will has to be as per law applicable in Goa. The learned counsel submitted that the issue was properly framed and what was before the learned District Judge only a question whether to allow the petitioner

to reopen the evidence. He submitted that inspite of this being the limited area of adjudication, the learned District Judge could not have directed deletion of the issue already framed.

9. As regards the validity of the will is concerned, there are two independent aspects. One is whether the will in fact executed by the deceased and secondly what is the effect of the probate which is granted by the Court outside Goa, as regards the property situated in Goa. As far as the first aspect is concerned, no steps are taken to set side the probate. It continues to declare the validity of the will. The learned Civil Judge in fact accepted this position while passing the order.

10. When the orders dated 3 October 2005 passed by the learned Civil Judge and the order dated 16 June, 2006 by this Court were passed directing framing of the issue regarding validity of the will, no doubt the probate was in existence. However a perusal of the said orders show that no reference is made to the probate. It is not as if this Court considered the fact that the probate is in existence, yet directed that validity of the will should again be proved. The pursis which was filed by the petitioner seeking to frame the issue regarding validity of the will proceeded on the basis that there was no probate. What the learned civil judge has observed and which is also contended by the learned counsel for the petitioner is that because the probate was in existence when the order of the High Court was passed, it must be presumed that the validity of the will was still kept open even after the probate. No such, conclusion can be drawn by implication. The position of law

is that the probate remains valid till it is set aside. All that the learned District Judge has done is that to give effect of this position of law and has corrected the misreading by the learned civil Judge. The application to reopen the evidence is not as innocuous as it is made out to be. What the petitioner is trying to do is to reopen the factum of the validity of the will which stands concluded by the order granting probate. This is rightly not permitted by the learned District Judge. The order is not in contravention of the directions of this Court.

11. What is the legal effect of the probate vis-a-vis the laws as applicable in Goa is a legal question that can be always urged by the petitioner during the inquiry. The learned District Judge has not shut this inquiry. The petitioners can always argue that the probate has no legal effect if the property is situated in Goa, which contention will be obviously considered on its own merits.

12. The learned counsel for the petitioners relied on decisions of this Court, in the case of ***“Maria Luiza Vs. Jose Paulo”*** reported in (2009) MH.L.J and Second Appeal No.65 of 2002 ***“Shri Shirish Pandurang Vs. Jawahar H. Champs”***. Based on the decisions the learned counsel for the petitioner the legal proposition regarding the law of wills in Goa. The impugned do not preclude the petitioner from advancing this aspect. It is not necessary to go into these issue at this stage.

13. As regards the other issues which were framed regarding relinquishment deed and as regards the list of assets are

concerned, the learned counsel or the petitioner states that those also stands deleted by the impugned order. The learned counsel for the respondent submitted that these issues have not been deleted and as the issue regarding the will has been deleted. He submitted that in any case, he has no objection if these issues are retained.

14. I do not find any perversity in the order passed by the learned District Judge. The learned District Judge was exercising appellate powers in inventory proceedings, which need to be expeditiously disposed off. The present inventory proceedings are pending since the year 1988 and they need to be disposed of at an early date. The learned District Judge considering this position has rightly exercised his jurisdiction by not to permitting the petitioner to reopen settled issues. Considering the facts and circumstances, the petition is disposed of as under:

- (i) The order passed by the District Court, rejecting the application filed by the petitioners for reopening evidence, is confirmed.
- (ii) Order directing deletion of issue no.1 as framed, is confirmed.
- (iii) All contentions of both the parties regarding legal effect of the probate are kept open.
- (iv) The inquiry will proceed on the basis of issues no.2, 2(a), 3, as they are not deleted.

- (v) The interim order operating in this petition stands vacated.
- (vi) The parties to appear before the concerned Court on 4 March, 2015 at 10.30 a.m.

N. M. JAMDAR, J.

AP/-