

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 700 OF 2014

MISS. VIDHYA KUSHALI @ DATTA PAGI
& 2 ORS.,

... Petitioners

Versus

SMT. GUNAVANTI @ SUKANTI DATTA
PAGI & 5 ORS.,

... Respondents

Mr. I. Agha Iftikhar, Advocate for the Petitioners.
Mr. S. Chopdekar holding for Mr. R. G. Ramani, Advocate for
Respondents No.1 to 4.

Coram:- M. S. SANKLECHA, J.

Date:- 6th April, 2015

ORAL ORDER :

This petition under Article 226 assails the order dated 25/09/2014 passed in appeal by the District Judge upholding the order dated 29/04/2014 passed by the Trial Court. By the order dated 29/04/2014, the petitioners' application for dropping the inventory proceedings filed by interested parties was rejected by the Trial Court and same was upheld in appeal by the impugned order dated 25/09/2014 of the Appeal Court.

2. The grievance of the petitioners is that the inventory proceedings could not have been entertained for the reason that all interested parties in the inventory proceedings were parties to a Regular Civil Suit bearing No.6/2009 which was disposed of in terms of compromise filed by the parties to the above suit. By virtue of the

compromise, it is contended on behalf of the petitioners that the shares of the interested parties being legal heirs of one late Kushali Pagi had been determined to be half share of the suit property and the other half share of the suit property is allotted to the legal heirs of late Vithoba Pagi. In view of the above, it is submitted that the inventory proceedings filed by one of the heirs of late Kushali Pagi are a mere formality and the inventory procedure could be avoided.

3. Both the Courts below have taken a view that the terms of the compromise decree decided the shares of the heirs of late Kushali Pagi and late Vithoba Pagi. It appeared that all the heirs of late Kushali Pagi would be the co-owners of the suit property to the extent of 50%. However, the compromise decree did not decide the interse share between legal heirs of late Kushali Pagi in the suit property. This is evident from clause 6 of the compromise decree as recorded by both the owners.

4. Mr. Agha, learned Counsel appearing for the petitioners laid emphasis on clause 7 of the compromise decree inter alia provides that the house and open space located under Survey no.123/5(part) and 123/4(part) is occupied and possessed by Smt. Anjani Pagi and her children. According to him by virtue of clause 7 of the compromise decree the share of Anjani Pagi has been determined. Be that as it may, it is undisputed that the property of late Kushali Pagi consisted not only of the house referred to in clause 7 of the

compromise decree but also the suit property. There can be no dispute on reading of clause 6 of the compromise decree that the individual shares of each of the interested parties being legal heirs of late Kushali Pagi has not been determined. In the above circumstances, no fault can be found with either of the two orders passed by the trial Court and appeal Court as they have proceeded on the basis that the compromise terms do not mention what would be respective shares of the interested parties in the half share of the property to which late Kushali Pagi was entitled.

5. It is made clear that the effect and consequence of the compromise decree in the respective shares of the interested parties is an issue which could be urged by the petitioner in the inventory proceedings if so advised. However, this would not justify rejecting the inventory proceedings at the very threshold.

6. In view of the above there is no justifiable reason to interfere with the impugned order in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India. Accordingly, the petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.

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