

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITIONS NO. 241/2013 & 119/2014**

1. Joaquim Pereira,
son of late Custodio Pereira,
aged 60 years, married and his wife,

2. Michaela Piedade Pereira,
major of age,
both residents of H.No.261/26,
Fondkulem, Savordem, Goa.

3. Caetano Pereira,
major of age, and his wife;

4. Rosy Pereira,
major of age,
Both residents of H.No.323,
Vishamber Wadi, Sanvordem, Goa.

..... Petitioners.

Versus.

1. Peter Pereira,
son of late Custodio Pereira,
aged 50 years, married and his wife;

2. Pedrina Pereira,
major of age,
Both residents of House No.261/17,
Vishwambarwadi, Sanvordem,
Sanguem Taluka, Goa.

3. Mrs. Filestina alias Filu Gomes,
major of age and her husband;

4. Luis alias Lulu Gomes,
major of age,
Both resident of Colmorod,

Navelim, Salcete, Goa.

5. Mrs. Associacao Fernandes
major of age, and her husband,

6. Iristo Fernandes,
major of age,
Both resident of Near Ladini Khuris,
Benaullim, Salcete, Goa.

7. Mrs. Dominga alias Dumentina
Fernandes, major of age, and
her husband;

8. Pascoal Fernandes,
major of age,
Both residents of Deao,
Ambaulim, Quepem, Goa.

..... Respondents.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar,
Advocate for the petitioners.

Mr. C. A Coutinho, and Mr. S. Redkar, Advocates for the respondents
No.1 and 2.

CORAM :- F.M. REIS, J.

Date :- 24th July, 2015.

ORAL JUDGMENT :

Heard Mr. Sudin Usgaonkar, learned Senior Counsel
appearing for the petitioners and Mr. C.A. Coutinho, learned Counsel
appearing for the respondents No.1 and 2.

2. Both the above writ petitions are taken up together as they challenge the order passed in the same inventory proceedings. The challenge in Writ Petition No.119/2014 is to an order whereby the learned Lower Appellate Court has excluded a hut bearing House No.330, with an area of 132 sq. metres from the property surveyed under No.36/7 of Sanvordem Village. The order impugned in the writ petitions is a final Judgment passed promulgating the inventory proceedings initiated upon the death of the parents of the petitioners and the respondents.

3. Upon hearing the learned Counsel appearing for the respective parties, the short point which arises for consideration is, whether the disputed hut bearing house No.330 forms part of the estate of the inheritance of the deceased parents. The mundkarial house of the deceased parents came to be allotted in terms of the impugned Judgment promulgating the partition in the inventory proceedings. In such circumstances, the question of any interference in the impugned Judgment disposing of the inventory proceedings does not at all arise.

4. The only aspect to be examined, as such, is the correctness of the Judgment passed by the learned Lower Appellate Court,

excluding the said hut, bearing House No.330. It is not in dispute that the property admeasuring 132 sq. metres wherein the said hut bearing House No.330 is located, was purchased by a Deed of Sale dated 20th March, 2002. But, however, it is the contention of Mr. Usgaonkar, learned Senior Counsel appearing for the petitioners that the said portion of the property forms part of the dwelling house wherein the estate-leavers were residing. This aspect, in any event, is a matter which has to be considered by a competent Authority under the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. It has also not been disputed that the Deed of Sale dated 20th March, 2002 cannot affect the mundkarial area which comes within the dwelling house in terms of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. In such circumstances, unless the entitlement of the area of the dwelling house is duly established by the competent Authority, the question of alleging that the disputed hut bearing House No.330 is part of the dwelling house would not arise.

5. In such circumstances, I find it appropriate to dispose of the above writ petitions by observing that the area covered by the Sale Deed dated 20th March, 2002 would be subject to any orders, if at all passed by the competent Authority fixing the area of the dwelling

house in terms of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975.

6. Subject to the above, no interference is called for in the impugned Judgment. The petitions stand, accordingly, disposed of. Rule stands disposed of in the above terms.

F.M. REIS, J.

ssm.