

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 52 OF 2015

PRAKASH RAMNATH SHIRODKAR. ... Appellant
Versus
SHRI. RAMESH B. BORKAR AND ANR., ... Respondents

Mr. R. G. Ramani, Advocate for the appellant.
Mr. Sandesh D. Padiyar, Advocate for respondent nos.1 and 2.

Coram:- C. V. BHADANG, J.

Date:- 2nd December, 2016

P.C.

The challenge in this appeal is to the order dated 24/11/2014, passed by the Inventory Court, by which the application filed by the appellant herein for order of allotment in terms of para 3 of the application, has been rejected.

2. The Inventory proceedings are instituted by the respondent Ramesh Borkar and his wife in respect of the property belonging to deceased Mukund and his wife Tulsi. The property consists of 10150 square metres of land. Mukund and Tulsi had 3 sons and 4 daughters out of which, two sons have expired. It appears that all the interested parties had executed an Agreement of Sale dated 16/10/2005, which is a notarised document in favour M/s. Prabhu Dessai Realtors. The said document envisages the sale of 5759 square metres of land to M/s. Prabhu Dessai Realtors, after deducting an area of 500 square metres, which is said to be a nullah. The remaining land admeasures 3891 square metres, which was allotted by virtue of the Agreement

dated 16/10/2005 amongst some of the heirs. It appears that the said property was sought to be divided into plot Nos.A to plot no.F and was allotted as under :

- "1. Pandu Mukund Shirodker 2000 sq.mtrs - Plot A
 2. Smt Laxmi Pandurang Kandeparkar 400 sq. mtrs Plot B
 3. Shri Prakash Ramnath Shirodker 350 sq. mtrs Plot C
 4. Shri Jayendra Ramnath Shirodker 350 sq. mtrs Plot D
 5. Shri Kiran Ramnath Shirodker 350 sq. mtrs Plot E
 6. Smt Sudha Murali Shirodker 441 sq. mtrs Plot F."
3. After initiation of the Inventory Proceedings, the appellant filed an application, contending that the respective heirs, as aforesaid, are in peaceful enjoyment and possession of the plots and the Agreement dated 16/10/2005 has not been challenged by any of the parties. In short, it was contended that the partition of balance area of 3891 square metres has already been agreed to by and between the parties and, therefore, the appellant had sought an order of allotment in favour of the heirs as aforesaid (which are set out in para 3 of the application).
4. The application was opposed by the respondent.
5. The Inventory Court, by the impugned order, has found that an undivided ancestral estate has to be divided by public deed of partition or by way of inventory proceedings. The Inventory Court also found that the land agreed to be sold, cannot be excluded from the estate as the proceedings are for partition of the estate, including the property agreed to be sold. The Inventory Court has further

found that the agreement is consensus reached as to how the properties to be dealt with. In that view of the matter, it was found that unless the assets are enlisted, the shares cannot be determined. The Cabeça de Casal is, accordingly, directed to enlist all the assets and liabilities of the deceased.

6. I have heard Shri Ramani, the learned Counsel for the appellant and Shri Padiyar, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

7. It is submitted on behalf of the appellant that once the parties having entered into an agreement dated 16/10/2005, thereby agreeing to sell 5759 square metres of land to M/s. Prabhu Dessai Realtors and partition of the land amongst some of the heirs, the Inventory Court could have passed necessary orders, confirming the said allotment. The learned Counsel points out that the agreement has not been challenged by any of the parties.

8. On the contrary, it is submitted on behalf of the respondent that as of now, there is only an agreement of sale in favour of builder and thus, in the absence of a sale deed, the agreement cannot transfer any ownership rights. It is submitted that as per the provisions applicable for partitioning of the assets of the deceased, except public deed of partition or partition through Inventory Court, there is no third mode provided, which can be resorted to.

9. I have carefully considered the rival circumstances and the submissions made and I do not find that any exception can be taken

to the impugned order. It is not disputed that an undivided ancestral estate has to be partitioned either by way of public deed or by way of inventory proceedings. Thus, the determination of the shares will have to be independently done in the Inventory Proceedings, which are initiated. In that view of the matter, the Inventory Court was justified in finding that the said property is required to be enlisted. Thus, I do not find any infirmity in the impugned order, so as to warrant interference.

10. At this stage, the learned Counsel for the parties state that they are exploring the possibility of settlement. Needless to mention that if the parties eventually reach a settlement, appropriate orders can be sought from the Inventory Court. With this, the appeal is dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA