

IN THE HIGH COURT OF BOMBAY AT GOA.

**APPEAL FROM ORDER NO. 31 OF 2016.**

**AND**

**APPEAL FROM ORDER NO. 32 of 2016.**

- 1 Manguesh Uttam Sinai Ambo,  
B-1, Shantakunj, Comba, Salcete Goa  
(expired rep. By Lrs.)
- 1(i) Smt. Sulochana Manguesh Sinai Ambo  
Wife of late Manguesh Uttam Sinai  
Ambo,  
Major of age, housewife r/o  
B-1, Shantakunj, Comba, Salcete, Goa
- 1(ii) Shri. Satish Kumar Shamba S.  
Pilgaonkar,  
s/o late Shamba S. Pilgaonkar, r/o  
Datta Laxmi Niwa, Tisk, Ponda, Goa
- 2 Smt. Kamlabai Gopal S. Ambo  
H. No. 557, Dandevaddo, Chinchinim,  
Taluka, Salcete, Goa (expired rep.by  
LR.'s)
- 2(a) Smt. Anandibai Gurudas Poi Angle,  
H. No. 557,Dandevaddo, Chinchinim,  
Taluka, Salcete, Goa (expired rep.by  
LR.'s)
- 3 Valente Fernandes,  
Quepem, Goa
- 4 Comunidade of Balli,  
Balli, Quepem, Goa
- 5 Rohidas Datta Fal Dessai,  
Balli, Quepem, Goa
- 6 Vithoba Mahadev Desai,  
Agonda, Canacona, Goa.
- 7 Sitabai Sripad S. Ambo,  
c/o V.K. Naik, P.O. Box 12,  
Margo, Goa (Expired, rep. By L.R.s)
- a) Shri Pandarinath N. Shirwaikar
- b) Mrs. Sulbha U. Naik,
- c) Shri. Shantaram N. Shirwaikar,

- d) Mrs. Sunita J. Bhobe,  
e) Mr. Anil S. Shiwaikar, all r/o Comba,  
Margo  
C/o Mr. Upendra K. Naik,  
Margao, Goa  
8 Comunidade of Balli, Balli,  
Quepem, Goa.  
9 Vithoba Mahadev Fal Dessai ... Appellants.  
Careymol, Ballimath, Quepem, Goa.  
Versus  
Shri Satish Kumar Shamba S.  
Pigaonkar,  
s/o late Shri Shamba S. Pilgaonkar, ... Respondent.  
r/o Datta Laxmi Niwas, Tisk, Ponda,  
Goa.

Shri Jawahar Dias, Advocate for the Appellants.

Shri N. N. Sardessai, Senior Advocate with Ms. Neha Shirodkar,  
Advocate for the respondent.

**CORAM : NUTAN D.SARDESSAI, J.**

**RESERVED ON : 16/06/2016.**

**PRONOUNCED ON : 30/06/2016.**

**JUDGMENT:**

Heard Shri Jawahar Dias, learned Advocate for the appellants  
and Shri N. N. Sardessai, learned Senior Advocate for the  
respondent.

2. Admit.

3. Ms. Neha Shirodkar, learned Advocate waives service on  
behalf of the respondent.

4. By the present common judgment i am disposing off the two appeals at the instance of the appellants arising from the order passed by the learned District Judge-3, Margao in the Land Acquisition Case No.279/1994 and Land Acquisition Case No.474/1995 in which the learned District Judge had allowed the application of the respondent for the release of the compensation.

5. Heard Shri J. Dias, learned Advocate for the appellant in both the appeals who contended that the appellant was the sole and universal heir of late Manguesh Sinai Ambo upon his demise and that the Will purportedly executed by him in favour of the respondent was a nullity and which could not form the foundation of any right to the property or his claim thereunder. The Will in question was a nullity in terms of Articles 1199, 1120 and 2177 of the Portuguese Civil Code and therefore no right could be claimed by the respondent to the compensation in the reference cases and therefore the learned District Judge was in error to release the compensation in his favour.

6. Shri N.N. Sardessai, learned Senior Counsel on behalf of the respondent submitted that on the basis of the very same Will which is sought to be questioned as being a nullity, the appellant had initiated Inventory Proceedings in which she was appointed as the

Cabeca de Casal. There was no reference by her to the Will being fraudulent and thereupon the properties were distributed between her and the respondent pursuant to the Consent Terms drawn in the civil proceedings by the learned Senior Civil Judge dated 10/03/2005. The alleged purported fraud was within the knowledge of the appellant who had not even sworn an affidavit forming the contents of her objection before the Trial Judge. There was no basis in the appeals and which had therefore to be dismissed. I have considered the records and proceedings including the paper book produced on record on behalf of the appellant in both the appeals, considered the judgment in **S. P. Chengalvaraya Naidu v/s. Jagannath [AIR 1994 SC 853]** and that in **A. V. Papayya Sastry and others v/s. Government of A.P. and others [AIR 2007 1546]** apart from the relevant provisions of the Portuguese Civil Code.

7. There can be no dispute with the proposition culled out in both these judgments that the judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment or decree by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings. The question which emerges is whether

such a plea is available to the appellant to question the Will and ultimately the order under challenge. Shri J. Dias, learned Advocate for the appellant in both the appeals had also relied in **Smt. Joana Francisco Erric and others v/s. Mr. Albano Vespaniziano Jose Vaz and others [2015(1) Goa L. R. 293 (Bom.)]** where a learned Judge of this Court had held that one co-owner without the consent of the other co-owner cannot dispose off specifically any portion of the common property without the same being allowed or assigned to him in partition.

8. Article 1119 of the Family Law reads that the immoveable properties, whether common or exclusive of either spouse, shall not be alienated or charged in any manner without the consent and agreement of both. *Sole paragraph.* In case of dissent or unfounded opposition, the consent of the dissenting spouse may be made good by an order of the Court. Article 1120 reads that the husband is not allowed to renounce any inheritance without the consent of the wife; but unconditional acceptance without the consent of the wife shall only make his moiety and exclusive properties liable while Article 2177 reads that one co-owner cannot dispose specifically any portion of the common property without the same being assigned or allotted in partition to him. These provisions are self evident and do not require any further

elaboration in that regard considering the peculiar facts of this case.

9. No doubt the predecessor of the appellant had executed a Will which is now sought to be challenged in these proceedings as being a nullity but the fact remains that the appellant had initiated the Inventory Proceedings in which the very same Will was relied upon by her. Moreover, though she was appointed as the Cabeça de Casal, in the said proceedings, she had not made any reference to the Will being fraudulent. The matter does not rest at that but the proceedings were disposed off by a consent decree dated 10/03/2005 pursuant to which the properties of the deceased were apportioned between the appellant on the one hand as the half sharer and the respondent on the other as being entitled to the other half and which had attained finality. This decree too has attained finality and therefore it is not available to the appellant to question the validity of the Will in these proceedings where the Reference Court had released a part of the compensation in her favour which she had graciously accepted being restricted to her half share.

10. The appellant had initially moved an application seeking for the release of the compensation in her favour as per the Award and

which was allowed by the Reference Court. It was only subsequently that she filed an application to withdraw the remaining half share to which the respondent was entitled. The learned Reference Court overlooked the fact that the respondent was entitled to the balance half share on the basis of the Will executed by the deceased and in view of the Consent Decree passed in the Inventory Proceedings no.73 of 2004. It is therefore not available to the appellant to oppose the release of the money in his favour when she had relied on the said Will to declare in her statement on oath in the Inventory Proceedings that the respondent was the legatee of the deceased and which aspect has been duly considered by the Reference Court while deciding the application.

11. Moreover the appellant was a qualified person being the Headmistress of a school and in that context too, the contention on her behalf that she merely signed on the paper at the behest of the Advocate without being aware of the contents cannot be entertained. The learned District Judge-3 concluded on the basis of the material at large before him that the appellant and the respondent were the legal representatives of the deceased and that the appeals filed against the Award by the other parties were dismissed by the Court. The learned District Court-3 for that

matter was equally seized of the fact that the appellant had never raised the contention that the respondent was not the heir of the deceased nor did she challenge the award to the extent claiming to be sole heir of the deceased.

12. The learned District Judge-3 was equally seized of the fact that the appellant had given a statement on oath stating that the deceased estate leaver had left the public Will dated 05/09/1998 whereby he had introduced the respondent as his sole and universal heir and therefore the parties had filed a joint application stating therein that they had amicably divided the estate considering their individual entitlement in the manner stated in the application and accordingly certain properties were allotted to the respondent. The learned Judge had therefore concluded that the allotments had been done in terms of the Will not only with her consent but also at her instance and that the transfer of title pursuant to the Will would come into operation only upon the death of the testator. He had rightly distinguished the judgment in **Smt. Joana Francisco Erric** (Supra) since it pertained to a gift and and that it did not find relevance to the case at large before him. The learned District Judge-3 had therefore rightly allowed the application for the withdrawal of the compensation made by the respondent and dismissed the application made by the appellant

and which orders do not call for any interference in these appeals.

In the result i pass the following:

**ORDER**

1. The Appeals are dismissed with no order as to costs.

**NUTAN D.SARDESSAI, J**

**mv**