

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 71 OF 2016

MR. SAMIRO PEREIRA. ... Appellant
Versus
MR. ROQUE MORGAN JUDAS VAS PEREIRA
AND 2 ORS. ... Respondents

Mr. Richard Almeida, Advocate for the Appellant.

Coram:- F. M. REIS, J.

Date:- 30th June, 2016

ORAL ORDER

Heard Shri Almeida, learned Counsel appearing for the Appellant.

2. The above Appeal challenges the Judgment passed by the Courts below whereby the suit filed by the Respondents was decreed and consequently the Judgment and the Consent Decree dated 12.04.1999, passed in the Inventory Proceedings No. 121 of 1997 are declared null and void and the Inventory Proceedings were directed to be reopened and permanent injunction was also granted, inter alia, restraining the Appellant from selling, transferring, mortgaging, etc., the subject property.

3. Briefly, it is the case of the Appellant that the Respondents filed the Suit on the ground that the Appellant and the

Respondent no. 1 are brothers whereas the Respondent nos. 2 and 3 are their mother and sister respectively and that their father expired on 30.06.1997 leaving behind him his widow, the respondent no.2 and the Appellant and Respondent nos. 1 and 3 being his children as his legal successors. It is further their case that the deceased father owned different properties and amongst them, a property known as "Nomovantor" or "Movantor" or "Dessonaik" or "Udel" situated at Orlim described in the Land Registration Office under no. 34309 and surveyed in the Record of Rights under no. 71/14 and 72/2 erroneously recorded in the survey records in the name of Mr. Miguelito Pereira, who is the brother of the said deceased father. It is further contended by the Respondent no. 1 that upon the death of the said father, the Defendant no.1, initiated Inventory Proceedings in the Comarca Court of Salcete. A Suit was also filed by the Appellant for a declaration that the Will executed by the said deceased father in favor of the Respondent no. 2 is null and void. It is further their case that the Respondent no.1 in connection with his occupation was out of India from 1.02.1999 to 01.05.1995 and returned from abroad and was in Delhi for over two months and on his return to Goa, the Respondent learnt from the Judgment and Decree that consent terms were filed behind his back without his consent or assent on 12.04.1999 and that a consent decree was drawn in the Inventory Proceedings wherein disproportionate shares were allotted to the Appellant herein. It is further the case of the

Appellant that he had no hope of succeeding in the Suit and called upon the Respondent no. 2 to withdraw the said Suit so as to induce the Respondent no. 2 to agree to his design. It is further contended that the Appellant had forcefully taken the consent of Respondent nos. 2 and 3 on the Consent Terms. It is further contended that the Appellant fraudulently came before the Court of Comarca keeping in dark as regards the facts that the Consent Terms were neither executed by the Respondent no. 1 or by anyone on his behalf claiming that such Consent Terms were not binding on the Respondent no. 1 and, as the Appellant learnt that some transfer transactions were in the making, the suit was filed to declare the said Consent Terms as null and void and further consequential reliefs.

4. The Appellant filed the written statement raising preliminary objections. It is further pointed out that as the Respondent no. 2 had sold the property without his consent, the suit was filed with that regard against the Respondent no. 2. The Appellant also disputed that he was given a disproportionately larger share in the inheritance of his father. The claim that there was fraud has also been disputed.

5. The learned Judge framed issues and found that the Consent Terms were filed behind the back of the Appellant or its consent in the Inventory Proceedings. The learned Judge also framed

additional issues and came to the conclusion that the Appellant along with the Respondent nos. 2 and 3 committed fraud on the Respondent no. 1 depriving the Respondent no. 1 of his rightful share in the assets of his deceased father. While discussing issue no. 1, the learned Judge noted that the Consent Terms filed in Inventory Proceeding no. 121/1997 were not signed by the Respondent no. 1 herein though he is one of the co-heirs and interested party in such proceedings though it bears the signatures of the Appellant and the Respondent nos. 2 and 3. Though it was claimed by the Appellants that the Consent Terms were signed with the consent of the Respondent no. 1, nevertheless, in the cross examination, the learned Judge noted that Dw.1 had admitted that the Respondent no. 1 had not signed the Consent Terms. On perusal of the Consent Terms and the passport produced by the Respondent no. 1, the learned Judge concluded that the Consent Terms were not signed by the Respondent no. 1 and they are not binding on the Respondent no. 1.

6. The learned Judge whilst discussing issue no. 6 also came to the conclusion that the Consent Terms were signed without the approval of the Respondent no. 1 and, as such, decided the issue in favour of the Respondent no. 1.

7. Whilst examining the Appeal preferred by the Appellant,

the Lower Appellate Court has framed two points for determination. Whilst examining the first point for determination, the learned Judge noted that the Decree passed in the Inventory Proceedings is null and void as the Respondent no. 1 who is admittedly an interested party in the Inventory Proceeding, had not signed the Consent Terms. The learned Lower Appellate Court noted that the Respondent no. 1 was not a party to the Consent Term nor anybody represented him in such proceedings. The learned Judge also noted that the Appellant was very well aware that the Respondent no. 1 had right to the properties and had not signed the Consent Terms. The learned Judge also noted that the Appellant is interfering with the suit property on the basis of such Decree though it is to his personal knowledge that the Respondent no. 1 has not signed the Consent Terms.

8. The learned Counsel appearing for the Appellant has assailed the impugned Judgment on the ground that the suit filed by the Respondent no. 1 is undervalued and further that the Respondent no. 1 was duly represented in the Inventory Proceedings and that the Advocate had signed the Consent Terms. Learned Counsel further pointed out that the suit itself is not properly verified and, as such, the Judgment passed by the Courts below stands vitiated. Learned Counsel as such submits that there are substantial questions of law for consideration in the present

Appeal.

9. I have considered the submissions of the learned Counsel and with his assistance, I have also gone through the records. The Judgment passed by the Lower Appellate Court clearly holds that the Respondent was not present nor represented at the time of the disposal of the Inventory Proceedings. It is further not disputed that the properties which were allotted based on such Consent Terms, have not been disposed of on the basis of the shares of the respective parties. The law recognises that any of the interested party can pray for an auction between them. Clearly, the procedure laid down under the Portuguese Civil Procedure Code which governs the Inventory Proceedings have not been followed in the present case. The fact finding Courts have concurrently found that the Respondent was not represented by an Advocate nor was present when the Consent Terms were filed. The contention of the learned Counsel appearing for the Appellant as such that the Respondents were represented at the time of Consent Terms is devoid of any merit taking note of the concurrent findings of facts arrived at by the Courts below. The contention of the learned Counsel appearing for the Appellant that the suit itself was not properly valued or that the verification is not proper are in any event curable defects and by itself does not vitiate the findings in the proceedings. In the present case, it is not disputed that the Respondent had entered the witness box

and an affidavit in evidence was also filed in support of his case. In such circumstances, there are no substantial questions of law which arise on that count for consideration in the present Appeal.

10. It is well settled that in a Second Appeal under Section 100 of the Civil Procedure Code, this Court cannot interfere in the concurrent findings arrived at by the Courts below which are based on the material on record. Both the Courts concurrently found that the Appellant has committed a fraud in getting the Inventory Proceedings disposed of without the Respondent no. 1 being represented in such proceedings whereby the parties have obtained a disposal in the Inventory Proceedings by excluding the co-heir of his legitimate right in the estate of his deceased father. It is always open to such party who has been excluded to file a Suit for such declaration . The fact finding Courts have found that the parties have acted in bad faith in excluding the Respondent no. 1 and entering in the Consent Terms. There is no perversity in the concurrent findings of facts.

11. As such, I find that no substantial question of law arises in the present Appeal. Hence, the Appeal stands accordingly rejected.

F. M. REIS, J.

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