

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 518 OF 2015

1. Shri Ratnakar Bhaskar Shetkar,
aged 73 years, Landowner,
resident of house no. 10/A,
Colleamordi, Cotto-Amona,
Quepem, Goa.
2. Smt. Suman Ratnakar Shetkar,
Aged 65 years, housewife,
Resident of house no.,. 10/A,
Colleamordi, Cotto-Amona,
Quepem, Goa.
3. Shri Ashok Bhaskar Shetkar,
Aged 60 years of House no. 2,
Colleamordi, Cotto-Amona,
Quepem, Goa.
4. Smt. Ashwini Ashok Shetkar,
Aged 58 years, Housewife,
Resident of House no. 2
Colleamordi, Cotto-Amona,
Quepem, Goa.

..... Petitioners

V e r s u s

Shri Anil Sucdo Shetkar,
Aged 40 years, service,
Resident of Cotto, Amona,
Quepem, Goa.

..... Respondents

Mr. J. P. Mulgaonkar, Advocate for the Petitioners.
Ms. Ketqi Naik, Advocate for the Respondent.

Coram :- **F. M. REIS, J**

Date : **24th November, 2016**

ORAL JUDGMENT

Heard Mr. J. P. Mulgaonkar, learned Counsel appearing for the
Petitioners and Ms. Ketki Naik, learned Counsel appearing for the Respondent.

2. The above Petition challenges the Order passed by the Courts below whereby the objections raised by the Petitioners to the maintainability of the Inventory Proceedings initiated by the mother of the Respondent no. 1 upon the death of her father in law Popi Shetkar and his wife Bhagirati.

3. Mr. J. P. Mulgaonkar, learned Counsel appearing for the Petitioners, has pointed out that the mother of the Respondent Loxmi Shetkar initiated Inventory Proceedings upon the death of said Popi Shetkar and his wife Bhagirati Shetkar on the assumption that her husband Sucdo Shetkar was the son of the Estate Leaver. Learned Counsel further pointed out that in such proceedings, the mother of the Respondent no. 1 was appointed as Cabeça-de-casal and the proceedings were in progress. It is further submitted that thereafter the Petitioners raised objections to the status of the mother of the Respondent to initiate Inventory Proceedings as, according to him, her husband Sucdo Shetkar was not the son of the Estate Leaver. The learned Counsel further pointed out that to substantiate their contention, that the deceased mother of the Respondent no. 1 herself had produced the birth certificate of said Sucdo Shetkar which clearly shows that his name is shown as Sucdo Shetkar and the names of the father of the parents and the grandparents are not those of the Estate Leaver. Learned Counsel further pointed out that this itself would show that the objections raised by the Petitioners were bound to be accepted. Learned Counsel further pointed out that as far as the appointment of Cabeça-de-Casal is concerned, the learned Judge has appointed the Petitioner no. 1 as Cabeça-de-Casal in such proceedings and, as such, to such extent, the grievances of the Petitioners no longer survives. Learned Counsel has thereafter pointed out that in view of the disputed questions of fact, it was

incumbent upon the learned Judge to hold an inquiry before proceeding to decide the objections of the Petitioners. Learned Counsel further pointed out that the Courts below have erroneously relied upon the alleged admission in Regular Civil Suit no. 2/1982 to draw an inference that said Sucdo Shetkar was the son of the Estate Leaver. The learned Counsel further pointed out that it is well settled that even an admission can be explained and as the Petitioners were not given an opportunity to explain such admission and, as such, there is a jurisdictional error committed by the Courts below whilst passing the impugned order which would call for interference in the impugned Order.

In support of his submission, the learned Counsel has relied upon the Judgment of the Apex Court reported in **(1974) 2 SCC 319** in the case of ***M/s. Prem Ex-servicemen Co-op. Tenant Farming Society Ltd. & Ors. vs. State of Haryana & Ors.*** and **(2010) 1 SCC 562** in the case of ***Geo-Group Communications Inc. vs. IOL Broadband Limited.***

4. On the other hand, Ms. Naik, learned Counsel appearing for the Respondent, has supported the impugned Judgments. Learned Counsel further pointed out that on the basis of the material on record, the Courts below have concurrently come to the conclusion that the objections raised by the Petitioners to the effect that Sucdo was not the son of the Estate Leaver have been rightly rejected. Learned Counsel further pointed out that the question of seeking an inquiry at this stage would not at all be justified as, according to the learned Counsel, in case the Petitioners so desire, they ought to have sought for inquiry at an appropriate stage.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records. On perusal of the impugned Order passed by the learned Trial Judge, the Court has proceeded to examine the averments in said Regular Civil Suit no. 2 of 1982 wherein the deceased Loximi, mother of the Respondent no.1 besides the Respondent no. 1 and other legal heirs of the deceased Sucdo were parties along with the Petitioners and the other legal heirs of said Bhaskar who, admittedly, is the son of Kopi Shetkar as Plaintiffs. The plaint was verified by the Petitioners. The Lower Appellate Court has examined the averment in the plaint in the said suit wherein it was inter alia contended that the subject property therein was orally partitioned between the heirs of the Estate Leaver namely his two sons being Bhaskar Shetkar and Sucdo Shetkar. There were also averments in the plaint to the effect that the said Sucdo had expired leaving behind the mother of the Respondent and other sons as his legal heirs. The suit was ultimately settled wherein the rights to a property were recognised in favour of the Petitioner no. 1 and his children as well as the widow of said Sucdo and his children on the basis that they were heirs of the Estate Leaver in the above Inventory Proceedings. Mr. J. P. Mulgaonkar, learned Counsel appearing for the Petitioners, however pointed out that this admission cannot deprive the Petitioners to explain such admission. There can be no quarrel with the proposition that an admission can be explained. But, in the present case, I find no material produced nor any affidavit filed by the Petitioner no. 1 explaining such admission in the plaint. Reading the averments in the plaint and the ultimate Judgment passed therein, would clearly infer that the subject property referred to therein are those which belonged to the Estate Leaver which was accepted to be belonging to the Petitioner no. 1 and said Sucdo Shetkar who were the sons of the Estate Leaver in the

present Inventory Proceedings. Another aspect to be noted is that the objections itself were filed long after the Inventory Proceedings were initiated. This shows that the contention sought to be raised by the Petitioners apparently is an afterthought only to delay the Inventory Proceedings initiated upon the death of the Estate Leaver.

6. In such circumstances, the Petitioners cannot be permitted to take advantage of an apparent error in the birth certificate of the names recorded therein to advance their contention and proceed to the extent of contending that Sucdo Shetkar is not even the son of the Estate Leaver. In such circumstances, looking into the findings of the Courts below based on the material produced on record and the inferences in law, I find that there is no jurisdictional error committed by the Courts below whilst disposing of the objections raised by the Petitioner. With regard to the contentions of Mr. Mulgaonkar, learned Counsel appearing for the Petitioner, that an inquiry had to be held, I find that in case the Petitioners desire that any such inquiry had to be conducted, it was incumbent upon the Petitioner to seek such relief before the learned Trial Judge. Having failed to do so, it is not open to the Petitioners to now contend that an inquiry had to be held in the present proceedings under Article 227 of the Constitution of India.

7. In view of the above, I find no substance in the above Petition, which stands accordingly rejected.

F . M. REIS, J.

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