

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 680 OF 2016

JOAN LUCY PULQUERIA SANTIMANO,
REP. BY HER DULY CONST. MR. DIMAS
FERNANDES.

... Petitioner

Versus

MR. MANUEL JOSE SANTIMANO (DEC)
AND 3 ORS.

... Respondents

Mr. Rohit Bras De Sa, Advocate for the Petitioner.
Mr. Cleofato A. Coutinho, Advocate with Mr. S. Redkar,
Advocate for the Respondent no. 4.

Coram:- F. M. REIS, J.

Date:- 6th December, 2016

P.C:

Heard Shri Rohit Bras De Sa, learned Counsel appearing for the Petitioner and Shri C. A. Coutinho, learned Counsel appearing for the Respondent no. 4.

2. The challenge in the above petition is to the order passed by the Courts below whereby the application filed by the Petitioner to direct the Respondent no.4 to give a fresh statement on oath on being appointed as Cabeça de Casal after the removal of the Petitioner came to be rejected.

3. Mr. Rohit Bras De Sa, learned Counsel appearing for the Petitioner submits that the Petitioner was originally appointed as Cabeça de Casal and during her term in the office the Petitioner

had given a statement on oath and proceeded with the Inventory Proceedings by furnishing a list of assets and proceeded to the stage of describing the assets in such Proceedings. It is further pointed out that the Respondent no.4 raised an objection to the appointment of the Petitioner on the ground that the Respondent was entitled to be appointed as the Cabeça de Casal being the male heir. Learned Counsel further submits that Respondent no. 4 was accordingly appointed as Cabeça de Casal and thereafter, filed additional statements on oath. Learned Counsel further submits that this exercise on the part of Respondent no. 4 is erroneous as, according to him, as the appointment of the Petitioner was held to be illegal, it was incumbent upon the Respondent no. 4 to give de novo statement on oath and proceed with the inventory proceedings. Learned Counsel further submits that as the proceedings were conducted when the Petitioner was a Cabeça de Casal, steps taken in the proceedings stand vitiated and as such the Respondent no. 4 ought to have been directed to give a fresh statement on oath and proceed with the proceedings. Learned Counsel has taken me through Article 2072 of the Portuguese Civil Code to point out that it is mandatory for the Cabeça de Casal to give a declaration on oath and as the Petitioner was not qualified to be appointed as a Cabeça de Casal, the statement given by the Petitioner would be non-est in law. Learned Counsel also pointed out that when the law recognizes a set procedure to be followed and anything

contrary stands vitiated. In support thereof learned Counsel has relied on the Judgment of the Apex Court reported in 2015 0 AIR(SC) 1373 in the case of Mackinnon Mackenzie & Company Ltd., V/s. Mackinnon Employees Union and on the Judgment reported in 2011(3)SCC 436 in the case of State of Orissa & Anr., v/s. Mamata Mohanty. Learned Counsel has, thereafter, taken me through the Impugned Order passed by the Courts below to point out that the Courts have erroneously construed the relevant provisions of law to dismiss the application filed by the Petitioner.

4. On the other hand, Shri C. A. Coutinho, learned Counsel appearing for the Respondent no. 4 submits that once a new Cabeça de Casal has been appointed he has to proceed from the stage he has been appointed. Learned Counsel further submits that upon his appointment, the Respondent no. 4 has given his additional statement on oath and the description of the assets has already concluded. Learned Counsel further pointed out that the question of giving a fresh declaration and proceeding with the Inventory Proceedings as contended by the Petitioner is not at all justified in the fact of the present case, nor the law recognizes such a procedure. Learned Counsel, as such, prays that the Petition be rejected.

5. I have considered the submissions of the learned Counsel and

I have gone through the records.

6. The undisputed facts are that the Petitioner was appointed as Cabeça de Casal. During her term in the office she has given a statement on oath and the list of properties and even proceeded to the extent of describing the assets in the Proceedings and all these steps were taken after the interested parties were duly notified. In such circumstances, when the order came to be passed appointing the Respondent no. 4 as the new Cabeça de Casal in place of the Petitioner, the Respondent no. 4 would have to proceed with the Proceedings from the stage the Petitioner has ceased to hold such office of the Cabeça de Casal. It is not disputed that the Petitioner herself is one of the interested parties in the Inventory Proceedings. In such circumstances, the question of new Cabeça de Casal, the Respondent no. 4 herein, giving any fresh declaration and proceeding with the Inventory Proceedings would not at all arise. The Petitioner has been removed essentially on the ground of an irregularity in the appointment of the Petitioner as the Cabeça de Casal which does not in any way vitiate the proceedings which have taken place during the tenure of the Petitioner as Cabeça de Casal. The Respondent no. 4 is entitled to file a additional statement and state justifiable facts in the proceedings which have already taken place. This does not mean that the Respondent no. 4 would have to give a fresh declaration and proceed with the

Inventory Proceedings de novo as sought to be contended by the Petitioner. Both the Courts below have rightly appreciated the material on record to come to the conclusion that the Petitioner cannot be granted the relief sought in the application. There is no prejudice to the Petitioner as admittedly the Petitioner who is also one of the interested parties has given a declaration on oath during the period when she was holding the office of the Cabeça de Casal.

6. In such circumstances, the question of interfering in the Impugned Order in exercise of the jurisdiction of this Court under Article 227 of the Constitution of India does not arise. The Petition stands, accordingly, rejected.

F. M. REIS, J.

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