

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 715 OF 2016

MR. ALBERT LOURENCO. ... Petitioner
Versus
MARCIA MARIA DE NORONHA AND 8 ORS. ... Respondent

Mr. Prasheen Lotlikar, Advocate for the petitioner.
Mr. L. J. Deva, Advocate for the respondent nos. 1 to 8.

Coram:- F. M. REIS, J.

Date:- 2nd December, 2016

P.C.

Heard Mr. P. S. Lotlikar, learned counsel appearing for the petitioner and Mr. L. J. Deva, learned counsel appearing for the respondent nos. 1 to 8.

2. The challenge in the above petition is to an order passed by the learned District Judge, Panaji dated 30.03.2016 whereby the appeal preferred by the legal heirs of the original tenant was allowed and the order passed by the then learned Mamlatdar for declaration and purchase was quashed and set aside.

3. The main grievance of Mr. Lotlikar, learned counsel appearing for the petitioner is that during the pendency of the appeal filed by the original respondent who was a tenant had expired. The respondent chose to bring one of the nephews to

represent the estate of the deceased but however, the petitioner also filed an application inter alia contending that the petitioner is the legal heir of the deceased based on the Will executed by the original Tenant. The learned Judge without addressing such claim of the respondent no.9 as to whether who should be brought on record in such proceedings proceeded to pass the impugned order thereby setting aside the order passed by the learned Mamlatdar for declaration and purchase on the ground that the original landlords/the respondent no.1 to 8 herein were not duly served. The learned counsel further pointed out that the learned Judge has directed the petitioner to file an intervention application before the Court of Mamlatdar. The learned counsel as such points out that as the procedure followed by the learned Judge is erroneous and as such the impugned order deserves to be quashed and set aside.

4. On the other hand, Mr. L. J. Deva, learned counsel appearing for the respondent nos. 1 to 8 has supported the impugned order. The learned counsel pointed out that the respondent no.9 is entitled to the estate of the deceased being one of the legal successors of the deceased. The learned counsel further pointed out that no prejudice would occasion to the petitioner as according to him the petitioner was given liberty to file an intervention application before the Lower Authority. The learned counsel further submits that the learned Judge on the

basis of appreciation of evidence on record has come to the conclusion that the respondent nos. 1 to 8 were not duly served in the proceedings before the learned Mamlatdar and as such there is no reason for interference in the impugned order. The learned counsel as such submits that the petition be rejected.

5. I have considered the submissions of the learned counsel and I have also gone through the records. When there is a dispute as to who is entitled to represent the estate of the deceased during the pendency of the appeal, it was incumbent upon the Appellate Authority to first decide this aspect before proceeding with the disposal of the appeal on merit.

6. Be that as it may, considering that the impugned order ultimately has advanced the cause of justice by giving liberty to the respondent nos. 1 to 8 to defend the application filed by the deceased tenant, I find that as far as this aspect is concerned, it would not be appropriate for this Court to exercise its jurisdiction under Article 227 of the Constitution of India.

7. But however, in the peculiar facts and circumstances of the case and in the interest of justice, the petitioner has to be made a party to the proceedings before the learned Mamlatdar and the issue as to whether the petitioner or the respondent no.9 are entitled to the estate of the deceased original tenant would have

to be examined by the learned Mamlatdar on its own merits in accordance with law.

8. Hence, the petitioner shall be made one of the parties before the Lower Authority.

9. The petition stands disposed of accordingly.

F. M. REIS, J.

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