IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.687 of 2015

Mr. Tomas Shamson De Souza,
Aged 52 years, in service in Kuwait,
son of Late Joaquim Santana D'Souza,
married, Indian National, resident of
House No.655, Columb , Palolem,
Canacona- Goa (Original Respondent
No.2) .... Petitioner
represented by his duly
Constituted Power of Attorney,
Mr. Teofilo Dias, Aged 57 years,
married, in service, son of Late
Bosteo Dias, Indian National,
resident of House No.169, Patnem,
Columb, Canacona, (Goa).

[The said Power of Attorney is
executed before Mr. Anand M.
Redkar, the Notary, at Margao-Goa,
and registered in his Office under
Registration No.3656/2015 on
8/7/2015.] .. Petitioner

Versus

1. Mrs. Nelly D'Souza, daughter of
Elvito Fernandes, aged 57 years,
service, and residing at House No.
199 A/1, St. Jerome Vado, Duler,
Mapusa, Bardez-Goa...
(Original Respondent No.1)
.. Respondent No.1

2. Mrs. Sifara D'Souza e Diniz,
daughter of late Joaquim Santana
D'Souza, aged 49 years, housewife
(original Respondent No.3)
.. Respondent No.2
and her husband,

3. Mr. Simon Diniz, son of Jose
Diniz, aged 61 years, service,

and both residing at House No.200,
Sudhan Bhat, Palolem,
Canacona-Goa. (original Respondent
No.4) .. Respondent No.3

4. Mr. Simon D'Souza, son of late
Joaquim Santana D'Souza, aged 43
years, service and residing at House
No.135, Patnem, Canacona, Goa,
(expired) .. (original Respondent
No.5) .... Respondent No.4.

5. Miss Sira D'Souza, daughter of
late Joaquim Santana D'Souza,
aged 45 years, domestic, and
resident of H.No.135, Patnem,
Canacona-Goa... (original
Respondent No.6).. Respondent No.5

6. Mrs. Seema D'Souza, daughter of
late Joaquim Santana D'Souza,
aged 41 years, housewife, (original
Respondent no.7)
.... Respondent No.6
and her husband

7. Mr. Caetano Xavier Travasso,
son of Jose Travasso, aged 43
years, service, both residents of
H.No.634/C, Molla A, St. Jose de
Areal, Salcete, Goa. (original
Respondent No.8)
... Respondent No.7

8. Mrs. Joaquina Cruzinha Fernandes,
daughter of Minguel Fernandes,
aged 72 years, housewife and
resident of H.No.135, Patnem,
Canacona, Goa, presently residing
at Kuwait.
(original Appellant).....
.. Respondent no.8 .. Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Simoes, Advocate for the petitioner.

Mr. Nitin Sardessai, Senior Advocate with Ms. G. Kakodkar, Advocate for the respondents.

CORAM :- **S. B. SHUKRE, J.**

Reserved on : 21st January, 2016.

Pronounced on : 12th February, 2016

JUDGMENT :

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3. This petition challenges the legality and correctness of the judgment and order dated 04/03/2015 passed by District Judge-3, South Goa at Margao, in Miscellaneous Civil Appeal No.80/2013.

4. The facts relevant for the purpose of the present petition are stated in brief as under :

a) The respondent no.1 is a daughter-in-law of Joaquim Santana D'Souza, who died on 31/10/2008 at Patnem, Collem, Canacona, Goa. As he left behind an estate, the respondent no.1 as well as other legal heirs including husband of respondent no.1, the petitioner herein, were desirous of having the estate left behind by the deceased partitioned amongst the heirs. Respondent no.1, therefore, filed an application before Civil Judge, Junior Division at Canacona for initiation of Inventory Proceedings which came to be registered as Inventory Proceedings No.18/2010. In these proceedings, widow of the deceased Joaquim Santan D'Souza, respondent no.8 herein, was appointed as Cabeca de Casal or Administrator and was administered an oath by the Inventory Court.

b) Respondent no.8 described the assets by giving a statement on oath and filed list of six assets in which first two items were debts and the third item was a gun, a firearm and items nos.4, 5 and 6 consisted of landed properties.

c) On behalf of the respondent no.1, objections were raised to the list of assets filed by the Cabeca de Casal on 09/12/2011. Items at serial nos.1 and 2, in the nature of debts, were disputed and in respect of item no.3, it was pointed out to the Court that the gun already stood transferred in the name of the petitioner. It was further submitted that items nos.4, 5, and 6, the immovable properties, were not properly valued. It was also urged that there were three structures belonging to the deceased, assessed to house tax by the Canacona Municipal Council, Canacona and not listed in the list of properties, which were required to be incorporated in the list. According to petitioner, respondent no. 8 i.e. Cabeca de Casal did not dispute that these three structures were assessed to house tax in the name of deceased Joaquim Santan D'Souza by the Canacona Municipal Council. After an enquiry was conducted by the Inventory Court, the Inventory Court by its order dated 24/07/2013 partly allowed these objections of the respondent no.1 and directed the respondent no.8 to give correct market value of the items nos.4, 5 and 6 and also to include the three structures assessed to Municipal tax in the list of assets. It further directed deletion of items nos.1, 2 and 3 from the list of properties.

d) The order was challenged by filing an appeal which was registered as Miscellaneous Civil Appeal No.80/2013 before the Court of District Judge, South Goa, Margao. After hearing the contesting parties, the First Appellate Court set aside the order of the Inventory Court in respect of item no.3, the Gun, and directed that it be shown in the list of assets. The first Appellate Court also set aside the impugned order to the extent it directed inclusion of three structures assessed to Municipal tax and giving of correct market value of the properties at Items nos.4, 5 and 6 in the list of assets by the order passed on 04/03/2015. Being aggrieved by this order, the present writ petition has been filed by the petitioner, who is husband of respondent no.1, the original objector.

5. Shri S. D. Lotlikar, learned Senior Counsel for the petitioner submits that when a duty has been cast under the Civil Code of the Successions upon Cabeca de Casal to present for description a list of all the properties of the inheritance in a correct and faithful manner under Article 2073, it becomes obligatory for the Cabeca de Casal to correctly and faithfully indicate the value of the properties of inheritance included in the list of the properties of the deceased. He submits that Article 1378 of the Civil Code of the Successions makes it mandatory for the Cabeca de Casal to indicate the value of the properties given in the list of the properties. He also submits that correct valuation of the property is important for proper adjudication of various issues as it is directly related to the pecuniary jurisdiction of the Court. Therefore, he submits that there was nothing wrong in the order of the Inventory Court when it directed the Cabeca de Casal to indicate correct market value of the properties listed at serial nos.4, 5 and 6.

6. Learned Senior Counsel further submits that Cabeca de Casal had not disputed additional properties standing in the

name of the deceased in municipal record and, therefore, the Inventory Court had rightly directed that these properties be included in the list of the properties. He also submits that there were also purchase deeds of the three properties which ought to have been considered appropriately. On these grounds, the learned Senior Counsel submits that there was no reason for the First Appellate Court to interfere with the order of the Inventory Court.

7. Shri Nitin Sardessai, learned Senior Counsel submits that while exercising extra-ordinary writ jurisdiction under Article 227 of the Constitution of India, High Court does not sit in appeal over the order challenged and it is well settled law that even if the order under challenge is found to be wrong, a writ Court would be slow to interfere with the order unless warranted by extraordinary circumstances which show abuse of process of law or flagrant breach of applicable provisions of law or miscarriage of justice.

8. Learned Senior Counsel further submits that the valuation of the properties can be done later by adducing necessary evidence and the requirement of law is that initially only prima facie value has to be given. He further submits that in any case, the law does not require the properties to be valued at

current market rate and the requirement is of valuation of the properties based upon their assessable income. He submits that the declarations of the Cabeca de Casal, initial and subsequent, are deemed to be true until the contrary is proved, except when they are made in his own interest or they relate to a fact for which the law requires certain manner of proof or agreement of all or majority of the parties. In support of this submission, the learned Senior Counsel places reliance upon Articles 1370, 1378 and 1380.

9. Learned Senior Counsel, however, submits that since the inclusion of the properties in the list of the properties belonging to the deceased is a subject matter of inheritance, unless there is sufficient proof to show that the properties proposed to be included were owned by the deceased at the time of his death, the properties cannot be included on the mere asking of the heirs. He submits that even otherwise Article 1380 allows the parties to lead evidence and prove that the properties should be shown in the list of the properties. He also submits that argument relating to pecuniary jurisdiction is of no consequence as the basic nature of powers exercised by a junior or a senior Civil Judge does not change with the case being tried by either of them. Thus, learned Senior Counsel submits that viewed from any angle, there being no prejudice caused to the petitioner by the

order impugned herein, the writ petition deserves to be dismissed.

10. It is seen from the order of the Inventory Court that properties at Items Nos.4, 5 and 6 have been directed to be valued according to their correct market value. The learned District Judge found that such a direction could not have been given as there is no provision requiring valuation of the properties to be done on the basis of their market value. Article 1378 mandates that Cabeca de Casal is under a duty to indicate the value of the properties described. Paragraph 1 of the said Article, which applies to the properties registered in the land revenue records, is relevant in the instant case. It shows that valuation of the properties must be done on the basis of their assessable income. Nowhere does it require that valuation must be done as per their market value. It is true that Article 2073 casts a duty on the Cabeca de Casal to describe the properties of the estate leaver correctly and faithfully. Giving of correct description of the properties is necessary to enable the interested party to seek a direction of the Court for proper distribution of properties amongst the co-heirs. This can be seen from the sole paragraph to Article 2073. But, such description of the property as mandated by Article 2073 would have to be confined only to describing the properties in a manner which will give their such details as are

necessary to identify them and assure the parties of their existence and being owned by the deceased at the time of his death. Such description cannot be extended to evaluating the properties according to their market value. Reason being that their valuation is governed by a separate Article, Article 1378, which makes express rules in that regard. This Article not only makes it mandatory for Cabeca de Casal to indicate the value of the properties described but also lays down the manner in which valuation has to be done. As stated earlier, paragraph 1, the applicable paragraph in the instant case, indicates that the valuation of the properties registered in the land revenue records must be done on the basis of assessable income. In the instant case, the properties at Items nos.4, 5 and 6 had no assessable income and, therefore, as rightly submitted by the learned Senior Counsel for the respondents, the value of the properties as indicated in the sale or purchase deeds was taken as the base for their valuation. If the petitioner can show that this valuation is incorrect, about which an opportunity will certainly come the way of the petitioner, the Court would certainly pass appropriate order in that regard. This is evident from the provisions of Article 1370 which lays down that the declarations of the Cabeca de Casal are deemed to be true until the contrary is proved. But, at this stage, there is no reason to reject the valuation shown by the Cabeca de

Casal. Therefore, I see no merit in the argument of the learned Senior Counsel for the petitioner that valuation of properties ought to have been as per the market value. This being so, the question of change of pecuniary jurisdiction of the Court seized of the Inventory Proceedings would not arise.

11. Dealing with the next argument about inclusion of properties, I find that Cabeca de Casal has indeed admitted that the additional properties assessed to Municipal Taxes were standing in the name of the deceased in the Municipal records of Canacona. But, it is also true that Cabeca de Casal has denied the assertion that these properties were owned by the deceased. In such a case, it was necessary for the petitioner or respondent no.1 to have produced on record some documents showing title of the deceased to these properties, for municipal record could not be used to prove ownership of a tax payer in respect of a house. Admittedly, no such documents were produced on record. Then, there were other circumstances which created doubt about ownership. The details of these properties were not furnished. AW1 Tomas has admitted that he does not have any order that his deceased father was a mundkar of any of the structures. In such a case, therefore, the petitioner would have to lead evidence to show ownership of the deceased over these properties at the time

of his death. Ultimately, the properties are subject to inheritance and no property can be included in the list of properties or described in Inventory Proceedings unless there is a reasonable evidence showing their ownership to be with the deceased. If such evidence is not produced now, it is not the end of the matter. Petitioner can still have the chance of proving the ownership by tendering necessary evidence. Article 1380 shows that in the event the existence of the properties is denied or it is declared that they do not belong to inheritance, the parties are given liberty to lead evidence and convince the Judge that the properties should be described. So, by non-inclusion of additional properties at this stage, no prejudice has been caused to the petitioner.

12. In the circumstances, I see nothing illegal or perverse about the findings recorded by the First Appellate Court in the impugned order. The petition deserves to be dismissed and is dismissed accordingly. No cost. Rule is discharged.

S. B. SHUKRE, J.

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