

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 64 OF 2015

SMT. MARIA BRIGIDA FERNANDES AND 2
ORS.,

... Appellants

Versus

SHRI JOSE GABRIAL FERNANDES
(EXPIRED) BY PLAINTIFFS AND 39
ORS.,

... Respondents

Appellant in person.
Mr. F. E. Noronha, Amicus Curiae.

Coram:- F. M. REIS, J.

Date:- 23rd September, 2016

P.C.

The appellant was heard in person on the earlier dates of hearing and as the appellants had no assistance of an Advocate an Amicus Curiae was appointed to assist the Court to examine the contentions sought to be raised by the appellants in the above appeal.

2. Mr. F. E. Noronha, learned Amicus Curiae has pointed out that the suit filed by the appellants was to declare two gift deeds and one sale deed in favour of the respondents to be null and void as according to him such transactions were part of the property which was undivided wherein the appellants also had a right. It is further pointed out that the Courts below have erroneously noted that the Inventory Proceedings which were initiated in the year 1921, after the property was already divided but on the contrary, the records reveal

that the partition was executed only in the year 1940. It is further found that the appellants had failed to identify the subject property claimed by the appellants to be undivided. The learned Amicus Curiae as such points out that the Courts below have erroneously proceeded to reject the title of the appellants over the subject property based on an erroneous consideration that the Inventory Proceedings were initiated only after the partition and as such the findings therein should not affect the claim of the appellants over the subject property.

3. I have considered the submissions advanced by the appellant in person. The learned Amicus Curiae has fairly accepted that both the Courts below upon appreciating the evidence on record have concurrently come to the conclusion that the appellants have failed to identify the subject property. When the subject property itself is not identified, the question of examining the legality or otherwise of the disputed three transactions would not at all arise. It is also not disputed that the appellants have not examined any expert to substantiate the claim that the property which was the subject matter of the said three transactions was undivided as claimed by the appellants. In such circumstances, I find that there is no perversity in the finding arrived at by the Courts below on that count. As rightly pointed out by the learned Amicus Curiae the partition of the subject property was executed only in the year 1940 whereas the Inventory Proceedings were initiated in the year 1921. As such, the findings of

the learned Lower Appellate Court that the property was divided prior to the Inventory Proceedings are not correct. As such, the findings of the learned Lower Appellate Court on that count would not affect the rights of the appellants if at all to claim their rights in subsequent proceedings in accordance with law.

4. Subject to the above, I find that no substantial questions of law arise in the present appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

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