

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.744 of 2015**

1. Mr. Inacio Lobo,
son of Late Mr. Thomas Lobo
unemployed, Indian National,
Major in age, resident of
H.No.609, Gallio, Pazentar,
Cortalim, Mormugao, Goa
2. Mrs. Santan Maria Monteiro,
w/o Mr. Inacio Lobo,
Housewife, Indian National,
Major in age, resident of
H.No.609, Gallio, Pazentar,
Cortalim, Mormugao, Goa.
3. Mr. Santan Francisco Lobo,
son of Late Mr. Thomas Lobo
Indian National, Major in age,
residing opposite Toyota
Showroom, Kesarval, Cortalim,
Mormugao, Goa.
4. Mrs. Regina Vaz,
w/o Mr. Santan Francisco Lobo,
Indian National, Major in age,
residing opposite Toyota
Showroom, Kesarval, Cortalim,
Mormugao, Goa. .. Petitioners

V/s.

1. Mrs. Marina Lobo,
w/o Mr. Francis Dias,
Indian National, major in
age, resident of H.No.608/3,
Pazentar, Cortalim,
Mormugao, Goa.
2. Mr. Francis Dias,
Indian National, major in age,
resident of H.No.608/3,
Pazentar, Cortalim,
Mormugao, Goa

(Deleted as per order
dated 24-11-15 r/w order
dated 15-1-15) .. Respondents

Mr. Bhargav Khandeparkar, Advocate for the petitioners.

Mr. J. Godinho, Advocate for the respondent no.1.

CORAM :- C. V. BHADANG, J.

DATE :- 8th August, 2016

ORAL JUDGMENT :

By this petition, the petitioners, who are interested party nos.3(a), 3(b), 4(a) and 4(b) are challenging the order dated 14/08/2015 passed by the Inventory Court, in Regular Inventory Proceedings No.6/2015/C. These Inventory Proceedings have been initiated by the first respondent herein, upon the death of Mr. Thomas Filipe Conceicao Lobo alias Filipe Conceicao Lobo alias Tomas Filipe Conceicao Lobo.

2. The petitioners filed their reply-cum-objection (Exh.8). It was denied that Isabela Lobo and her husband, Mr. Manuel Pereira and their daughter 1(a)(i) Marina Lobo and her husband 1(a)(ii) Francis Dias, are

the legal heirs of the deceased Estate Leaver. It was also denied that the first respondent is the daughter of Isabela Lobo. It was next contended that Thomas Lobo died on 02/10/1996 leaving behind only his wife and the interested party nos.2(a) and 2(b), 3(a) and 3(b) and 4(a) and 4(b) as sole and universal heirs. It was contended that on the death of the Estate Leaver, a Notarised Deed was executed to that effect under Article 179 of Law No.2049 dated 06/08/1951 and it was subsequently published in the official gazette on 12/04/2001. It was contended that no objections were received by the Registrar, during the period as prescribed under the Law, which is revealed in the Deed of Succession. In such circumstances, it was contended that the first respondent has no locus standi to initiate the Inventory Proceedings as regards the estate of the deceased Estate Leaver and the Inventory Proceedings deserve to be dismissed at the threshold.

The petitioners alternatively claimed that if the Court decides to proceed with the Inventory, the interested party no.3(a) being the eldest legal heir, be appointed as the Cabeça de Casal.

3. The first respondent filed a rejoinder, opposing the objection, as raised on behalf of the petitioners.

4. The Inventory Court has found that an enquiry is required to be held as to whether the deceased Isabela Lobo @ Isabel Lobo @ Izabel Lobo is/ was the daughter of the deceased Estate Leaver. It was found that the documents produced by the first respondent cannot be accepted at this stage as an opportunity has to be given to the petitioners / objectors to cross-examine the first respondent on the same. In short, the Inventory Court found that the objections raised cannot be decided without such enquiry. In the result, the objection has been negatived, directing the first respondent to open up the enquiry on the aforesaid point. It is this order passed on 14/08/2015, which is subject matter of challenge in this petition.

5. I have heard the learned Counsel for the

petitioners and the learned Counsel appearing for the first respondent at length. With the assistance of the learned Counsel for the parties, I have perused the impugned order and have gone through the relevant provisions.

6. On behalf of the petitioners, strong reliance is placed on Article 2087, in order to submit that the provisions of the said Article are mandatory and in a case where the Court is unable to decide the issue by simple perusal of the authentic or authenticated documents, the parties will have to be relegated to the ordinary remedy. The learned Counsel has submitted that thus, the Inventory Court could not have directed enquiry, which was not asked by any of the parties. Reliance is also placed on Article 2018, which provides for Forms of Acceptance in Inheritance and Article 2027, which provides for the nature of acceptance, which can be either express or tacit. Reliance is placed on paragraph 1 of Article 2027, which provides that such acceptance is express when heir adopts such title or qualification in any public or private act. The learned Counsel points out that

in the present case, the heirs have adopted such qualification by virtue of the public deed.

7. The learned Counsel has, thereafter, placed reliance on the Decree Law No.32033 and in particular, Article 165 thereof. Reliance is then placed on Decree Law No.2049 and clause 2 of Article 179 (Law No.2049). Lastly, reliance is placed on Article 2086, which provides for 'Expenditure incurred by the Administrator on account of inheritance.' The submission is that eventually it is the estate, which would be liable to pay expenditure, which in the present case, is unnecessary as the Inventory is liable to be dismissed at the threshold. It is, therefore, submitted that the impugned order demonstrates a jurisdictional error. Reliance is placed on behalf of the petitioners on the decision in the case of **Zacarias Durate Domingos Pereira Vs. Camilo Inacio Evaristo Pereira**; 1984 0 AIR (Bom) 295, which inter alia holds that the proceedings before the Inventory Court are not suit in the manner in which they are understood and there is no decree, which is passed in the Inventory Proceedings.

8. On the contrary, the learned Counsel for the first respondent has supported the impugned order. On behalf of the first respondent, reliance is placed on the decisions of this Court in the cases of **Mrs. Nirmala Desai Vs. Mrs. Tulsi Desai**; 2016(1) ALL MR 279 and **Dattaram Porob and another Vs. Dr. Sitaram Porob**; 2015(6) ALL MR 136 and the Division Bench judgment of this Court in the case of **M/s. Primella Sanitary Products Pvt. Ltd., Bombay Vs. Gurudas Sinai Gaitonde**; 2011(6) AIR BOM R 440.

9. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

10. At the outset, it is necessary to mention that the objection raised on behalf of the petitioners was mainly on two grounds, one about the status of Isabela Lobo as the daughter of the deceased Estate Leaver Nos.1 and 2 and secondly, on the basis of the existence of the Public Deed of Succession/

qualification of heirs. In so far as the later ground is concerned, strong reliance is placed on Article 2087, which reads thus :

"Article 2087

*(Question which cannot be decided by
inspection of certain documents)*

The disputes which may arise in respect of qualification of the heirs indicated by the administrator, or those who applied to be joined as parties to the inventory, in respect of ownership of the properties of the inheritance or of their non partible nature, which cannot be decided by simple perusal of the authentic or authenticated documents, shall be decided by ordinary remedies without prejudice to the continuation of the inventory and partition."

It can, thus, be seen that in respect of disputes, which may arise in respect of qualification of heirs as may be indicated by the Administrator or those who have applied to be joined as parties to Inventory or in respect of the ownership of the properties of the inheritance or of their non-partible nature and which cannot be decided by simple perusal of the authentic or authenticated documents, will have to be decided by ordinary remedies, "without prejudice to the continuation of the inventory and partition." It is difficult to read into this article a

prohibition for the Inventory Court even to conduct an enquiry into such matter. All that the Inventory Court, at this stage, has held is observing that the issue requires determination, in which the petitioners will have to be given an opportunity to cross-examine the first respondent. In fact the interest of the petitioners cannot be said to be adversely affected nor the impugned order can be said to have resulted into any manifest injustice, so as to require interference in the supervisory jurisdiction of this Court.

11. Although on behalf of the petitioners, reliance was placed on several other Articles, they were not raised or pressed into service before the Inventory Court nor there are grounds raised in this petition based on these Articles. In such circumstances and particularly when the matter is still pending before the Inventory Court, it would be neither necessary nor appropriate to deal with such contentions. As noticed earlier, the primary reliance placed was on Article 2087, which in my considered view, would not come in the way of the Inventory Court, directing an enquiry.

12. In the case of **Zacarias Pereira** (supra), the question was whether the final order passed in the Inventory Proceedings can be executed as a 'decree' under the Civil Procedure Code, 1908. It was, in that context, held that the proceedings before the Inventory Court are not 'suit' proper as they are understood and the final order passed in the Inventory Proceedings does not partake of the nature of a decree. It is difficult to envisage as to how the said decision can come to the aid of the petitioners.

13. In the case of **Dattaram Porob and another** (supra), this Court held that the question whether Gifted properties would come within disposable quota or not, is a matter to be examined only in Inventory Proceedings of the Doners and not the Donees.

14. In the case of **Nirmala Desai** (supra), this Court held that the finding that the Inventory Court has no jurisdiction to examine the validity or otherwise of the Will produced in the proceedings, cannot be accepted. It may not be necessary to go

into all these aspects, because, as noticed earlier, the only order, which is passed at this stage, is directing an enquiry. The petitioners would get an opportunity to cross-examine the first respondent and her witnesses, if any.

15. At this stage, the learned Counsel for the petitioners states that apart from the issue as framed by the Trial Court, one more point needs to be framed, namely "Whether the first respondent / applicant proves that she is the daughter of Isabela Lobo ?" The learned Counsel for the first respondent has no objection for the said point being framed and being enquired into.

16. In the result, the Writ Petition is dismissed. The Inventory Court shall proceed with the enquiry and apart from the issue already framed, the Inventory Court shall also frame an issue namely, "Whether the first respondent/ applicant proves that she is the daughter of Isabela Lobo ?"

17. Rival contentions of the parties are left open.
In the circumstances, there shall be no order as to
costs.

C. V. BHADANG, J.

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