

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 895 OF 2016

DR. RAJENDRA TAMBA AND ANR., ... Petitioners
Versus
MRS. SHRIMATI MANOHAR TAMBA (DEC)
THR. HIS LRS., ... Respondent

Shri S. G. Bhobe, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 9th December, 2016

P.C.

Heard Shri S. G. Bhobe, learned Counsel appearing for the petitioners.

2. The challenge in the above petition is to the dismissal of the application for condonation of delay of more than 19 years in filing an appeal before the Lower Appellate Court.

3. Shri S. Bhobe, learned Counsel appearing for the petitioners submits that though there is delay of more than 19 years nevertheless, according to him from the date of the knowledge of the impugned order, there is delay of only 45 days from the date of knowledge of such order. The learned Counsel further submits that the impugned order challenged is patently illegal, as according to him, the learned Judge has not followed the procedure contemplated by law while granting judicial consent to sell the immovable property which belongs to the deceased

parents of the petitioners. The learned Counsel has thereafter taken me through the provisions of Articles 1119 and 1477 of the Portuguese Civil Code to point out that the procedure therein has not been followed, and as such, the impugned order cannot be sustained. The learned Counsel further submits that an opportunity has to be given to the petitioners to challenge the impugned order passed by the learned Trial Judge.

4. I have considered the submissions of the learned Counsel and I have also gone through the records.

5. Admittedly, the father of the petitioners expired in the year 2014. The order impugned was of the year 1995. In such circumstances, the inordinate delay in filing the appeal has not been satisfactorily explained. Apart from that during the lifetime of the father there was no challenge to such consent based on which the transactions have been executed by the deceased father of the petitioners. Besides that the petitioners being descendants of the father cannot take a stand adverse to the father based on which these sale deeds have been executed. Besides, that the undisputed fact suggest that at the most the mother could be considered to be an aggrieved party who ought to have challenged the said order during her lifetime, as she expired only in the year 2016. All these facts clearly suggest that the inordinate delay in filing such appeal by the persons, if at all, aggrieved with the impugned order have chosen not to challenge such order. As such the question of condoning the delay at the

instance of the petitioners would not at all be justified.

6. In such circumstances, I find that no case is made out which would call for interference of this Court in the above petition. The learned Judge has exercised discretion upon examination of the material on record to come to the conclusion that the petitioners have not made out any sufficient cause to condone the inordinate delay. There is no infirmity in the findings of the learned Judge, and as such, the petition stands rejected.

F. M. REIS, J.

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