

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 929 OF 2015

1. Mr. James Lobo,
46 years of age,
son of late Thomas Lobo,
2. Mr. Savio Lobo,
42 years of age,
son of late Thomas Lobo,
both residing at Unique Apartment,
C-112, Ramesh Nagar, Amboli,
Andheri (W) Mumbai – 58,
3. Mr. Donald Lobo,
48 years of age,
Son of late Thomas Lobo,
Presently residing at 7/3,
Network Co-op. Housing Society,
Ground Floor, Yagnik Nagar,
Amboli,
Andheri (W) Mumbai – 58.

... Petitioners

Versus

Mr. Stephen Lobo,
Major in age,
Son of late Anthony Jerimias Lobo,
Resident of H.No.2/168A,
Naikawaddo, Calangute,
Bardez Goa.
Presently residing at 102,
Kamekshi Goshale Road,
Bahur, Mumbai (W) 400000.

... Respondent

Mr. Valmiki Menezes, Advocate for the petitioners.

Mr. Rama Gajanan Rivankar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 23rd November, 2016

ORAL JUDGMENT

Heard Mr. V. Menezes, learned counsel appearing for the petitioners and Mr. R. Rivankar, learned counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respondent waives service.

4. Upon hearing the learned counsel appearing for the petitioners and the respondent, a short grievance raised by the petitioners is that by the impugned order passed by the learned Lower

Appellate Court the order allowing the objections raised by the petitioners to the inclusion of the assets in the Inventory Proceedings initiated upon the death of the grand uncle of the petitioners Francisco Lobo came to be set aside.

5. Mr. V. Menezes, learned counsel appearing for the petitioners submits that a detailed inquiry was conducted by the Inventory Court while coming to the conclusion that the subject property did not belong to the estate leaver and consequently, allowed the objections raised by the petitioners. It is further contended that the respondent challenged the order passed by the Inventory Court before the Appellate Court wherein during the course of the hearing the respondent also filed an application to produce an additional document in support of his stand. It is further pointed out that the document produced was in the nature of a Certificate issued by the Land Survey Department inter alia to the effect that the subject property surveyed under No.358/2 of Siolim Village corresponds to the property surveyed in the Cadastral Survey No.549. The learned counsel further pointed out that irrespective of the said Certificate the petitioners have also

produced the title document to inter alia establish that the property belong exclusively to the petitioners and not to the estate leaver. The learned counsel further pointed out that without examining such aspect, the learned Lower Appellate Court proceeded to grant leave to produce the document and relied upon such document while passing the impugned order. The learned counsel further submits that such order is in breach of the principles of natural justice and according to him the petitioners were not given an opportunity to lead evidence to dispute the correctness or otherwise of the said Certificate produced by the respondent. The learned counsel as such points out that the learned Lower Appellate Court has acted in material irregularity while passing the impugned order which calls for interference in the present petition.

6. On the other hand, Mr. R. Rivankar, learned counsel appearing for the respondent has supported the impugned order. The learned counsel has taken me through the order passed by the Inventory Court to point out that the objection raised by the petitioners to the list of assets was basically allowed on the assumption that there is discrepancy in the area as shown in the survey records and the Land

Registration Document claimed by the petitioners. The learned counsel further submits that as such the findings of the learned Judge based on the said Certificate, does not call for any interference in the impugned order. The learned counsel further submits that the learned Inventory Court has erroneously allowed the objections raised by the petitioners which have been rightly rectified by the learned Lower Appellate Court. The learned counsel as such points out that the petition be accordingly rejected.

7. I have considered the submissions of the learned counsel and I have also gone through the records. It may not be overemphasized to note that the entries in the survey records based on the Cadastral survey or the Survey Authority under the Land Revenue Code cannot by itself create a title in favour of the person in whose name such entries are recorded. In the present case, it is not disputed that the Certificate produced by the respondent did not disclose in whose name such property is shown in the Cadastral survey. Apart from that, it is contended by Mr. V. Menezes, learned counsel appearing for the petitioners that the petitioners are disputing the correctness of the survey

and in any event, the petitioners had produced the Land Registration Document which clearly shows that the property did not belong to the estate leaver.

8. On perusal of the impugned order passed by the learned Lower Appellate Court though the learned Judge may be justified to grant leave to produce the document but however, the petitioners were entitled to produce material to dispute the correctness or otherwise of such document. Having failed to do so, the learned Lower Appellate Court has misdirected itself in passing the impugned order without giving an opportunity to the petitioners to establish their stand in disputing the correctness of such Certificate. In such circumstances, I find that the learned Lower Appellate Court ought to have remanded the matter to the learned Inventory Court to decide the objections raised by the petitioners afresh after setting aside of the order of the Inventory Court and granting leave to the respondent to produce the Certificate obtained from the Land Survey Department. To that extent, the impugned order passed by the learned Lower Appellate Court stands vitiated. In view of the above, I pass the following :

ORDER

(i) The impugned order dated 01.09.2014 passed by the learned Lower Appellate Court stands modified and the Inventory Court is directed to decide the objections filed by the petitioners dated 03.08.2009 and 09.10.2009 afresh based on the inquiry which has already been conducted and permitting the respondent to produce the Certificate from the Land Registration Office and also allow both the parties to lead further evidence if they so desire in accordance with law.

(ii) The parties are directed to appear before the Inventory Court on 16.01.2017 at 10.00 a.m. and abide by its further directions.

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of accordingly.

F. M. REIS, J.

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