

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 425 OF 2015

1. Shri Antonio Melicio Sao Francisco Dias
r/o H. No.197/1, Morod, Majorda,
Utorda, Salcete Goa.
(since deceased through his legal representatives)
 - a. Mr. Savio Dias,
(son) aged 43 years,
and his wife,
 - b. Mrs. Aruna Dias,
aged 40 years,
both residents of H.No.197/1,
Mollar, Majorda, Utorda,
Salcete Goa.
 2. Smt. Aura Dias
major in age,
r/o H.No.197/a, Mollar,
Majorda Utorda,
Salcete Goa.
(Registered Addresses)
- ... Petitioners

Versus

1. Mrs. Maria Alvita Veneziana Dias
E Menezes @ Alvita Menezes
Since deceased through her legal
representative
Smt. Maria Lisa Massueta Ludonina
Dias e Caldeira,
Near the Church Ribandar, Ilhas Goa.
(since deceased through her legal representatives)
 - a. Mrs. Ruth Maria Caldeira,
married to

b. Mr. Wallance Rebello,
The said Wallace Rebello having
expired leaving behind his son
b(i) Mr. Ceasar Rebello
both r/o H.No.235,
near the Church, Ribandar,
Ilhas Goa.

c. Miss Vilma Caldeira,
r/o H.No.235, near the Church
Ribandar, Ilhas Goa.

d. Miss. Nina Caldeira,
r/o H.No.235, naer the Church
Ribandar, Ilhas Goa.

e. Mr. Anthony Caldeira(Erwin)
married to

f. Mrs. Pinkyann Caldeira,
r/o H.No.235, near the Church
Ribandar, Ilhas Goa.

2. Mrs. Ramona Barretto,
w/o Mr. Floriano Barreto,
H.No.187/1, Francisco Pereira ward,
Mollar, Majorda, Uttorda,
Salcete Goa.
3. Mr. Floriano Barretto,
H.No.187/1, Francisco Pereira ward
Molar, Majorda, Uttorda, Salcete Goa.
4. Mrs. Edna D'Mello and her husband
H.No. (not known) resident of
Delito Pradisio, Highway linking road,
Amabjim, Margao, Salcete Goa.

Respondent Nos.
2 to 7 are
deleted as per
Order dated
18.07.2016

- | | | |
|--|---|---|
| 5. Mr. Leo D'Mello,
H.No.(not known) resident of
Delito Pradisio Highway linking road
Amabjim, Margao, Salcete Goa. | } | Deleted as per
Order dated
18.07.2016 |
| 6. Mrs. Seduilha Pereira,
H.No.197/A, Francisco Pereira ward,
Molar Majorda, Utoorda,
Salcete Goa, and her husband | | |
| 7. Mr. Gervasio Pereira,
r/o H.No.197/1
Francisco Pereira ward,
Mollar, Majorda, Uttorda,
Salcete Goa. | | |
| | | ... Respondents |

Mr. C. A. Coutinho, Advocate for the petitioners.

Mr. R. G. Ramani, Advocate for the respondent nos. 1(a) to 1(f).

Coram:- F. M. REIS, J.

Date:- 17th November, 2016

ORAL JUDGMENT

Heard Mr. C. A. Coutinho, learned counsel appearing for the petitioners and Mr. R. G. Ramani, learned counsel appearing for the respondent nos. 1(a) to 1(f).

2. The above petition takes exception to an order passed by the learned Civil Judge Junior Division, Margao, dated 05.10.2012 whereby after inquiry under Section 47 of the Civil Procedure Code, the directions were issued to the Collector to partition the property surveyed under No.32/1 into two halves in terms of the consent decree dated 29.10.2003.

3. Mr. C. A. Coutinho, learned counsel appearing for the petitioners has vehemently argued that the respondents are claiming right to the subject property on the basis of a Will dated 20.09.2002. It is further pointed out that the Will itself discloses that what was bequeathed was 1000 square metres from the property surveyed under No.32/5. It is further submitted that as the subject property is surveyed under No.32/1, the question of contending that the petitioners are entitled to execute the decree in favour of the original defendant/decreed holder who has now expired is totally erroneous. It is further submitted that as the Will itself discloses the property bequeathed in favour of the respondent nos. 1(a) and 1(e), there is no reason to go for any external aid to interpret the disposition in such Will. The learned counsel further pointed out that the learned Judge

has misconstrued the material on record to erroneously come to the conclusion that the survey number of the property which has been bequeathed is surveyed under no.32/1 and not 32/5. The learned counsel has thereafter taken me through the impugned order as well as the survey records produced on record to submit that as the respondents have no right to the subject property, the question of directing the partition of the property at the instance of the respondents is totally farfetched and deserves to be quashed and set aside. The learned counsel has thereafter extensively taken me through the evidence on record to point out that the learned Judge has erroneously found that the subject matter of the property has to be partitioned in terms of the consent decree.

4. On the other hand, Mr. Ramani, learned counsel appearing for the respondent nos. 1(a) to 1(f) has supported the impugned order. The learned counsel pointed out that on the basis of the evidence on record and appreciating all the documents produced, the learned Executing Court has rightly come to the conclusion that the property which has been bequeathed is surveyed under no.32/1. The learned counsel further pointed out that what was bequeathed in

terms of the Will was in fact the subject matter of the property in Regular Civil Suit No.43/2001. The learned counsel further pointed out that the consent decree which is being executed is the one passed in the said suit which would clearly show that the property which was the subject matter of the disposition in the Will is the property surveyed under no.32/1. The learned counsel further submits that even on perusal of the recitals in the consent decree, it clearly show that the subject matter of the property therein is the one which was gifted by the grandmother in favour of the testator which was in fact the property which otherwise is undisputed to be the property which is surveyed under No.32/1. The learned counsel as such points out that on the basis of such clinching evidence on record, the learned Judge was justified to come to the conclusion that the consent decree has to be executed in terms thereof.

5. I have considered the submissions of the learned counsel and I have also gone through the records. It is now well settled that while examining a challenge in a Writ Petition under Article 227 of the Constitution of India, the Court cannot reappreciate the evidence to come to any contrary conclusion unless there is a serious error of

jurisdiction or perversity in the findings arrived at by the learned Trial Court. In the present case, the learned Judge upon appreciating the evidence on record while passing the impugned order dated 05.10.2012 has taken note of the fact that the Will itself discloses that the subject matter of the property which has been bequeathed was in fact the property which was the suit property in RCS No.43/2001. Apart from that, on perusal of the consent decree, it clearly shows that the suit property therein was the one which was gifted in favour of the testator. It is not disputed by the learned counsel appearing for the petitioners that the property surveyed under no.32/5 was gifted in favour of the testator. All these circumstances noted by the learned Judge, which can be clearly culled out from the oral and documentary evidence on record, would conclusively establish that the findings arrived at by the learned Trial Judge in the impugned order dated 05.10.2012 are based on the correct interpretation and inferences which can be drawn based on the material on record. In such circumstances, there is no jurisdictional error or any perversity in the findings of the learned Judge in the impugned order while coming to such conclusion while disposing of the inquiry under Section 47 of the Civil Procedure Code.

6. With the assistance of the learned counsel, I have also gone through the subject Will and on perusal thereof, the detailed recitals therein would clearly show that the property which has been bequeathed was in fact the suit property in RCS No.43/2001. Apart from that, as pointed out herein above, the fact that the property which was the subject matter of the Will is the one which was gifted to the testator is also not in dispute. In such circumstances, the learned Judge upon appreciating the oral as well as the documentary evidence on record has rightly come to the conclusion that the property which has been bequeathed was in fact the property surveyed under no.32/1 which is the subject matter of the consent decree. As such, I find no infirmity in the impugned order passed by the learned Judge which would call for any interference of this Court in exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India. In such circumstances, I find no merit in the above Writ Petition. The petition stands accordingly dismissed.

F. M. REIS, J.

at*