IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL No. 202 OF 2009

1. Shri Shabbar Haidar Khan,
   alias Xabar Can,
   Son of late Haidar Khan,
   major of age, married,
   Businessman, and his wife;

2. Smt. Tayyaba Shabbar Khan,
   major of age, married,
   Housewife;

3. Shri Abdul Rehman Haidar Khan
   alias Abdul Reiman Can,
   Son of late Haidar Khan
   major of age, married,
   Businessman, and his wife,

4. Smt. Mehtab Abdul Rehman Khan
   alias Metabb or Mhetab Bi,
   major of age, married,
   Housewife;

5. Shri Mejuboddin Haidar Khan
   alias Mujiboddin Khan or
   Muji Botdin Can,
   Son of late Haidar Khan
   major of age, married,
   Businessman, and his wife;

6. Smt. Hanifa Bi Mujiboddin Khan
   alias Hanifabai, major of age,
   Married, housewife

all Indian Nationals
all residing at H. No. 368,
Government Hospital Road,
Cacora-Curchorem-Goa. **…. Appellants.**

Versus

1. Smt. Musarat Jehan Begum,
   Wife of Late Adam Haidar Khan,
   Major in age, occupation household work,
   Resident of Flat No. E-8,
   Pratibha Housing Co-op. Society,
   Aquem-Alto, Margao-Goa.

2. Mr. Adam Haidar Khan,
   alias Adam Can, 59 years of age,
   Married, resident of Flat No.E-8,
   Pratibha Housing Co-op. Society,
   Aquem-Alto, Margao-Goa,
   Since deceased by his heirs:

2(a) Shri Ershad Hussain Khan,
Major of age, son;

2(b) Miss Hafiza Khan
Major of age, daughter;

both residing at
Pratibha Housing Co-op. Society,
Building 'E', Flat No. 8,
Aquem-Alto, Margao-Goa;

2(c) Mrs. Shabana alias Erica
Eugena Vaz, daughter, major,
Married and her husband;

2(d) Shri Eugena Benny Vaz,
Major;

both residing at Chaitanya
Residency, AS-7, 2nd Floor,
Above HDFC Bank,
St. Cruz, Ilhas-Goa. **…. Respondents.**

Mr. D. J. Pangam, Advocate with Ms. Ketki Naik, Advocate for the Appellants.
Mr. S. G. Desai, Senior Counsel with Mr. Pavithran A. V., Advocate for Respondent nos. 1 and 2(a) and 2(b).
Mr. Ryan Menezes, Advocate for Respondent nos. 2(c) and 2(d).

CORAM:- F.M. REIS, &
C. V. BHADANG, JJ.

RESERVED FOR JUDGMENT ON: 10.06.2016
JUDGMENT PRONOUNCED ON: 23.12.2016

JUDGMENT: (Per F. M. REIS, J.)

Heard Shri D. J. Pangam, learned Counsel appearing for the Appellants, Shri S. G. Desai, learned Senior Counsel alongwith Shri Pavithran A. C., learned Counsel appearing for the Respondents no. 1 and 2(a) and 2(b) Shri Ryan Menezes, learned Counsel appearing for Respondent no. 2(c) and 2(d).

2. The above appeal challenges the Judgment and Decree dated 27.07.2009 passed by the learned Civil Judge, Senior Division at Quepem in Special Civil Suit No. 1/1998/A whereby the suit was decreed and it was declared that the Partition Deed dated 12.01.1995 registered on 31.01.1995 with the Sub Registrar at Quepem is null and void and as such directed the cancellation of such registered Deed. The parties shall be referred to in the manner they shall appear in the cause title of the Impugned Judgment.

3. Briefly, it is the case of the Plaintiffs that the Plaintiff no. 1 and Defendant no. 1, 3 and 5 are brothers. The parents of the Plaintiff no. 1, namely, Hyder Kassim Khan and Smt. Hazira Khan alias Haziram Bi, Agirambi and Hajira Bi, died on 20.09.1989 and 05.10.1986 respectively

leaving behind their heirs and estate. It is further contended that besides Plaintiff no. 1, the Defendant no. 1, 3, 5 and said Haidar Kassam Khan and his wife Smt. Hajira Khan left one daughter Smt. Farida Begum alias Farida Shaikh Fouzi Kadar married to Shaikh Fouzi, both residing at Panaji. It is further contended that by Notarial Deed of Relinquishment dated 24.10.1989 executed before the Ex-Officio Notary of Notarial Office of Ilhas, at Panaji said Farida Begum and her husband relinquished their right of inheritance of the parents of Smt. Farida Begum gratuitously in favour of all other co-heirs under Article 2029 of the Portuguese Civil Code and the Plaintiffs and the Defendants are thus entitled for equal shares of the estate left behind by the parents. It is further contended that the estate left by the parents is jointly held and enjoyed by the Plaintiffs and Defendants and there is no partition of the estate left behind by the parents and the residential house at Cacora bearing no. 369 is occupied by the Plaintiffs and Defendants. It is further contended that the Plaintiff no. 1 is employed at Kuwait since the year 1974 and used to come down to Goa atleast once in a year and whenever he used to come to Goa, he used to live in his parents' house at Cacora. However, due to the inconvenience and as the Plaintiff no. 1 had purchased a flat at Aquem, Margao in the year 1988, the Plaintiff no. 2 used to occupy the said flat in the absence of her husband, the Plaintiff no. 1. It is further contended that as the estate left behind by the parents included the mining concession and due to service in Kuwait, it was not possible for the Plaintiff no. 1 to look after the affairs personally and, as such, the Defendant no. 1 obtained Power of Attorneys from the Plaintiffs. It is further contended that the Power of Attorneys were drafted and brought ready by the Defendant no. 1 and the Plaintiffs were made to sign on such Power of Attorney. It is further the case of the Plaintiffs that the Defendant no. 1 executed the Deed of Partition dated 12.01.1995 whereby they sought to partition the properties left behind by the parents and the Defendant no. 1 pretended to be the attorney of the Plaintiff to execute the said Deed of Partition and the said Deed has been executed without the knowledge or consent of the Plaintiffs and that the Defendant never consulted about the partition of the properties and the Plaintiffs never authorised the Defendant no. 1 to partition the properties or the estate by the said Deed. It is further contended that the Power of Attorney dated 23.12.1989 does not authorise the Defendant no. 1 to sign or execute the said Deed on behalf of the Plaintiffs and the said Deed is fraudulent and is null and void. It is further contented that the Defendants have played forgery against the Plaintiffs by executing the said Deed with sole malafide intention to deprive the Plaintiffs their legitimate share in the estate left behind by the deceased parents. It is further contended that they came to know about the alleged Deed only on 16.06.1995 when the Plaintiff no. 2 as usual went to the house at Cacoda and she was prevented from entering the house as it was contended that she has no right to the house. It is further alleged that the Plaintiff no. 2 lodged a complaint before the Curchorem Police Station and it was brought to light that the Plaintiff no. 1 had surrendered the right to the house as per Agreement dated 10.08.1992 though no such Agreement was executed by the Plaintiff no. 1 or by the Plaintiffs. It is further contended that as the attitude of the Defendant no. 1 was suspicious the Plaintiffs started making inquiries about any such Agreement and on 16.06.1995 the Plaintiff no. 2 found the said Deed in the office of the Sub-Registrar at Quepem which was not disclosed by the Defendant no. 1 even before the police station. It was further contended that no notice of such Deed or allotment of properties was given to the Plaintiffs and immediately thereafter, obtained a certified copy of such documents and addressed a notice dated 29.06.1995 to the Defendants calling upon them to cancel the said Deed being a fraud. It was also contended that the Defendant replied to the said notice by reply dated 02.08.1995 allegedly signed by Defendants no. 1, 3 to 6 denying that the said Deed is a fraud. It was also contended that the said Deed cannot effect the properties left behind by the deceased parents as it is not legal. The Plaintiffs filed Inventory Proceedings in the Court of the Civil Judge, Senior Division at Quepem to ascertain the shares and assets left behind by deceased parents and for allotment as per their shares being Inventory Proceedings

No. 50/1995 and in the said proceedings the Defendant no. 1 was appointed as the Administrator being the eldest son. It was contended that the Defendant no. 1 filed an application to drop the proceedings as the property was already partitioned and by order dated 15.04.1997 the Court disposed of the said application of the Defendant no. 1 being premature and fixed the date for the statement of the Administrator. It is further contented that on 06.11.1997 without hearing the Plaintiff and their Advocate, the Court passed an order dropping the Inventory proceedings and against the said order, a review petition was filed which is pending.

4. The records reveal the original suit was filed against 6 Defendants and during the pendency of the proceedings the Plaintiff no. 1 was transposed as Defendant no. 7. The original plaintiff no. 1 (D-7) expired and his legal representatives were brought on record as Defendant no. 7(a) to (d).

5. Defendants no. 1 to 5 opposed the suit and filed their written statement, inter alia, stating that the Plaintiffs are estopped from challenging in any manner the Deed of Partition dated 12.01.1995 as a Power of Attorney was executed by the Plaintiffs and the Defendants no. 2 to 6 in favour of the Defendant no. 1 dated 23.12.1989 for partitioning the estate of the late couple Haidar Kassim Khan and Smt. Hajira Khan

thereby making the Defendant no. 1 to believe that he is competent to partition the said estate. Defendants also denied that the whole estate left behind by the said parents is jointly held or enjoyed by the Plaintiffs and Defendants or that there is no partition of the said estate. It is further contended that the valuation of all the immovable properties of the deceased Haidar Kassim Khan were done by Shri Paraz, a Government Registered Valuer before arriving at the total value of the estate as Rs.37,42,411.75. It was also denied that Deed of Partition dated 12.01.1995 is required to be cancelled as the said partition was most equitable and fair to the Plaintiffs and Defendants.

6. The Defendant no. 7(c) and 7(d) filed their written statement stating that the father of Defendant no. 7(c) informed the Defendant in his sound sense that he has withdrawn the present suit without any influence or coercion of whatsoever nature from whomsoever and that he has no interest in the firm operated by his father and his three brothers nor to the firm reconstituted and operated by the 3 brothers.

7. The learned Judge based on the pleadings framed two issues and upon appreciating the material on record, by Judgment and Decree dated 27.07.2009 decreed the suit and, inter alia, held that the Deed of Partition dated 12.01.1995 registered before the Sub-Registrar of Quepem is illegal, null and void and stands cancelled and consequently directed the

cancellation of the said Deed. Being aggrieved by the said Judgment the Appellants have preferred the above appeal.

8. On going through the Judgment of the learned Trial Judge, the learned Judge noted that the main aspect to be examined is whether the Power of Attorney allegedly executed by the Plaintiff dated 23.12.1989 authorised the Defendant no. 1 to partition the properties or to execute the said Deed and found that it only authorised initiation of Inventory Proceedings. The learned Judge noted the evidence of PW-1, Smt. Musarat Jehan Begum who stated that all the Power of Attorneys were drafted and brought ready-made by the Defendant no. 1 and the Plaintiffs were made to sign them and that the Plaintiffs had faith on the Defendant no. 1 being the eldest brother of the Plaintiff no. 1 and, accordingly, signed the said Power of Attorney in good faith. PW-1 has also stated that the Plaintiff never authorised the Defendant no. 1 to partition the properties or to execute the said Deed and that the Power of Attorney dated 23.12.1989 does not authorise the Defendant no. 1 to sign or execute the said Deed on behalf of the Plaintiff and that the said Deed is a fraud. Learned Judge has also taken note of the statement of DW-1 who deposed that soon after the death of Haidar Kassam Khan it was decided among the Plaintiffs and Defendants that the shares left behind by the deceased couple should be partitioned and therefore, for the said

purpose a Power of Attorney dated 30.09.1989 was executed by the Plaintiff alongwith the Defendants no. 2, 4 and 5 in favour of DW-1. The learned Judge after examining the evidence of DW-1 has noted that the Plaintiff no. 2 was very much in Goa at the time of the execution of the said Deed though it is mentioned in the said Deed that she was in Kuwait. Learned Judge also noted that though it is contended by DW-1 that there were meetings with the Plaintiffs to decide as to how the shares were to be divided, there are no pleadings to that effect in the written statements filed by the Defendants. The learned Judge also noted that DW-1 was relying upon the notes at Exhibit 42 which were records of the meetings between the brothers but, however, noted that the note only discloses about the house and no deed of surrender was executed based on such note nor does such writing discloses that the parties had agreed how the share of the deceased parents was intended to be partitioned. Learned Judge also noted that the Plaintiff no. 2 was not a party to such writing. Learned Judge also noted that such notings are dated 10.02.1991 and the Deed of Partition was registered only on 12.01.1995 and that the delay has not been explained. The learned Judge also took note of the Power of Attorney dated 23.12.1989 at Exhibit 63 executed by the Plaintiff alongwith other brothers in favour of Defendant no. 1 and found that there was no power to execute the Deed of Partition. The Power of Attorney only gave power to initiate Inventory Proceedings and not to execute the Deed of Partition. Learned Judge also noted that the words "*Smt. Hazirabai Haider Khan*" has been erased and the words "*to register partition with the Sub-Registrar*" has been added. Learned Judge took such view based on the copy of the Power of Attorney at clause 6 in the cross examination at Exhibit 63. Learned Judge, upon appreciating the material and examining the Judgment relied by the parties came to the conclusion that there is no power to partition the estate left by the deceased parents extra-judicially or by way of private Deed of Partition and, as such, there is no question of registering any such Deed or have any power of registration of such Deed. Learned Judge also found that the question of examining such agreement at Exhibit-41 cannot be looked into as it was not a registered document nor stamped to assume that there was any partition based therefrom. Learned Judge also noted that the Plaintiff no. 2 had filed a suit alongwith her deceased husband Azam Khan as Plaintiff no. 1 in the capacity as the constituted attorney of her husband. Learned Judge also noted that by application dated 02.06.2008 the said Plaintiff no. 1, inter alia, stated that he does not intend to continue with the present suit and prayed for withdrawal of the suit but, however, he was transposed as Defendant no. 7 to the present suit. Upon his death on 03.09.2008 his legal heirs were brought on record. Learned Judge noted that the withdrawal by the Plaintiff no. 1 was after the closing of the evidence by either of the parties. Learned Judge also noted that prior to such exercise, the Plaintiff no. 1 revoked the Power of Attorney to his wife, the Plaintiff no. 2. Learned Judge also noticed that though Defendant no. 7(c) and 7(d) filed their written statements chose not to lead any evidence. Learned Judge found the said contention cannot be considered as they are not Plaintiffs who have challenged the Deed of Partition and relinquishment of any estate has to be effected in accordance with law. In such circumstances, the learned Judge decreed the suit filed by the Plaintiffs.

9. Shri Pangam, learned Counsel appearing for the Defendants has contended that the learned Trial Judge has erroneously decreed the suit filed by the Plaintiffs. It is further pointed out that as the Plaintiff no. 1 has withdrawn his claim, the question of proceeding with the suit at the instance of the Plaintiff no. 2 is totally misconceived. Learned Counsel has thereafter taken us through the findings of the learned Judge with regard to the disputed Power of Attorney to point out that the findings of manipulations arrived at by the learned Judge is beyond the pleadings of the Plaintiff. Learned Counsel points out that nowhere in the pleadings it was contended that there was any overwriting or manipulations in the Power of Attorney. Learned Counsel further submits that there was no evidence adduced by the PW-1 that there was any manipulations of such

documents. Learned Counsel as such submits that such findings are in breach of the principles of natural justice and deserve to be quashed and set aside. Learned Counsel has thereafter pointed out that notwithstanding the contention of PW-1 that she was in Goa, nevertheless she had authorised DW-1 to carry out the partition based on the Power of Attorney. Learned Counsel, as such, submits that the grounds on which the learned Judge has decreed the suit are totally misconstrued. Learned Counsel has thereafter taken us through the Power of Attorney to point out that there are specific powers therein disclosing consent to partition and allotment of shares of the deceased parents and to register the partition with the Sub-Registrar which clearly shows that the Defendant no. 1 was duly authorised to execute the Deed of Partition. Learned Counsel further submits that the most important feature of interpreting the Power of Attorney is the purpose for which it has been executed and in support thereof he has relied upon the Judgment reported in ***(1977) 3 Supreme Court Cases 474*** in the case of ***Timblo Irmaos Ltd., Margao*** V/s. ***Jorge Anibal Matos Sequeira And Another.*** Learned Counsel, as such, contended that the word “partition” in clause-6 of the said Power of Attorney means division of the joint properties held as co-proprietors so that each becomes the sole owner of their part. Learned Counsel has thereafter taken us through the Judgment of the learned Trial Court to point out that the learned Judge has erroneously failed to rely upon the Judgment of the Full Bench of the Nagpur High Court reported in the ***AIR 1947 Nagpur, Page 17(FB)*** in the case of ***Jiwibai W/o Karsondas Bhatia*** V/s. ***Ramkuwar Shriniwas Murarka Agarwala.*** Learned Counsel further pointed out that the learned Judge failed to note that the purpose for which the Power of Attorney was executed was to divide the property by metes and bounds and, as such, the findings by the learned Judge that the Deed of Partition stands vitiated as DW-1 has no powers to execute such documents are erroneous and deserve to be quashed and set aside. Learned Counsel further submits that the learned Judge has misconstrued Section 188 of the Indian Contract Act, and failed not to consider that the Power of Attorney is a document of agency and, as such, the relationship of DW-1 and her deceased husband has an effect of principal and agent. Learned Counsel further pointed out that as Defendant no. 1 was an agent and Administrator and in view of the agency between the plaintiffs and Defendant no. 1, the documents executed by the agent would mean that the Plaintiffs has personally executed such documents. Learned Counsel further submits that Defendant no. 1 also produced a receipt at Exhibit – 46 which clearly shows the relinquishment to the rights of the house by the Plaintiff no. 1. Learned Counsel further submits that as the Plaintiff no. 1 has abandoned the suit, the learned Judge was not justified to pass the Impugned Judgment at the instance of the Plaintiff no. 2.

10. On the other hand, Shri Desai, learned Senior Counsel appearing for the Respondent no. 1 and Respondents no. 2(a) and 2(b) has supported the Impugned Judgment. It is pointed out that the learned Judge has rightly noted that the Defendant no. 1 has committed a fraud and manipulated the Power of Attorney to suit his malafide design to deprive the Plaintiffs of their right to the property by executing unlawful, illegal, a null and void Deed of Partition. Learned Senior Counsel further submits that the manipulation on the documents is seen on the documents at Exhibit-41 and 63 which clearly exposes the ambitious conduct of DW-1 in fabricating documents to execute the alleged Deed of Partition by depriving the rights of the Plaintiffs to the subject property. Learned Counsel further submits that the alleged withdrawal by Plaintiff no. 1 of the suit was at the instance of Defendants a few months before he expired and, as such, the learned Judge was justified to decree the suit. Learned Senior Counsel further submits that in any event the Plaintiff no. 1 had independent right to the subject property as the right to inheritance also devolved upon her, being moiety-sharer in the said estate belonging to her husband and, as such, in any event the Plaintiff no. 2 can independently proceed to file a suit on the ground that the alleged Deed of Partition was not binding on her and executed by playing fraud on all the Plaintiffs. Learned Senior Counsel has, thereafter, taken us through the Impugned Judgment to point out that

learned Judge has rightly and correctly found that the alleged Power of Attorney is a fabricated and forged document. Learned Senior Counsel, as such, points out that based on a fraudulent Power of Attorney, the disputed Deed of Partition has no legal effect.

Learned Counsel has thereafter taken us through the disputed Deed of Partition to point out the falsity in the averments therein as it is recorded that the Plaintiff is in Kuwait when, admittedly, the Plaintiff no. 2 was in Goa at the relevant time. There were no meetings prior to the execution of such Deed of Partition when the Plaintiff was present. Learned Counsel has, thereafter, taken us through the evidence of DW-1 to show the evasive replies in the cross-examination. Learned Senior Counsel further submits that though the Power of Attorney was allegedly executed by the brothers it was invoked by DW-1 to execute the alleged Deed only on behalf of the Plaintiffs herein. Learned Counsel further submits that the words "*Smt. Hajirabai Haidar Khan*" has been deleted and the words "*and to register partition with the Sub-Registrar(s)*" has been inserted in the disputed Power of Attorney. It is also pointed out that the initials on such Power of Attorney are not of the Plaintiffs. Learned Senior Counsel further pointed out that the learned Judge has compared the Power of Attorney produced by DW-1 at Exhibit-39 with the Power of Attorney produced at Exhibit-63 in the cross-examination and found that there were illegal erasions and forgery therein whereby the Power of Attorney has been manipulated. Learned Senior Counsel further submits that the Power of Attorney has to be construed strictly in terms of the words used therein. Learned Senior Counsel has, thereafter, taken us through the evidence of DW-1 to point out that the discussions for partition were conducted after the Power of Attorney was executed which itself discloses that there was no power given to DW-1 to partition the said property as alleged. It is further pointed out that the alleged partition is unconscionable and inequitable and cannot be legally sustained. Learned Counsel also relied upon the Judgment of this Court reported in ***AIR 1997 BOM 142*** in the case of ***Devkubai N. Mankar & Others v/s. Rajesh Builders & Others*** to point out the Power of Attorney has to be strictly construed. Learned Counsel further pointed out that a Power of Attorney cannot be a purchaser in terms of Article 1562 of the Portuguese Civil Code. Learned Counsel has also relied upon the Judgment reported in ***2005(12)SCC page** 77* in the case of ***State of Rajasthan And Others** v/s.* ***Basant Naha.*** Learned Counsel as such submits that the Appeal preferred be rejected.

11. Respondent no. 1 and Respondents no. 2(a) and 2(b) have filed additional arguments.

12. We have considered the submissions of the learned Counsel and we have also gone through the records. Upon hearing and on the basis

thereof the following points for determination have arisen:

(a) Whether the findings of the learned Trial Judge that the Power of Attorney at Exhibit-39 dated 23.12.1989 stands vitiated by forgery and manipulation, is to be accepted.

(b) Whether the learned Judge was, as such, justified to set aside the disputed Deed of Partition dated 12.01.1995.

13. The basic contention of the learned Counsel appearing for the Appellants is that the learned Judge was not justified to come to the conclusion that the Power of Attorney produced by the DW-1 at Exhibit-39 is manipulated or forged.

14. On bare perusal of the plaint, we find that at para 12 it is clearly pleaded that the Power of Attorney dated 23.12.1989 does not authorise the Defendant no. 1 to sign or execute the said Deed on behalf of the Plaintiffs. It is further stated that the said Deed is fraudulent and null and void. Whilst furnishing the particulars of fraud at para 14 of the plaint, it has been clearly pleaded that the Power of Attorney dated 23.12.1989 which Defendant no. 1 invoked to execute the said Deed as attorney of the Plaintiffs does not authorise nor authority given by the Plaintiffs to the Defendant no. 1 to sign or execute the said Deed or to partition the estate left behind by the parents by any Deed of partition extra-judicially.

While dealing with para 12 in the written statement, it is denied by the Defendants that the Power of Attorney does not authorise the Defendant no. 1 to sign or execute the said Deed of Partition. Even while dealing with the contentions at para 14(d), the Defendants have only denied the said allegations. In the deposition of the evidence of PW-1, she has also reiterated the said facts that such Power of Attorney did not authorise the Defendant no. 1 to execute the said Deed of Partition. The said Power of Attorney in the cross examination was marked X-1 for identification as xerox copy thereof was produced. In the cross-examination there is a specific suggestion put to PW-1 by the Defendants that by the general Power of Attorney dated 23.12.1989 the Plaintiffs had given powers to partition which was denied.

15. On perusal of the affidavit of DW-1 he has stated that upon the death of Hyder Kasim Khan, it was decided between the Plaintiffs and the Defendants that the assets left behind by the deceased couple should be partitioned. Therefore, for such purpose the Power of Attorney dated 30.09.1989 was executed by the Plaintiffs alongwith Defendant nos. 2, 4 and 6 in favour of Defendant no. 1. Defendants nos. 3 and 5 also authorised the Defendant no. 1 to institute Inventory Proceedings for such partition. It was further contended that thereafter it was decided between the Plaintiffs and the Defendants to partition the properties

amicably instead of instituting Inventory Proceedings and therefore the Plaintiffs no. 1 and 2 and Defendants no. 2,3, 4, 5 and 6 executed a Power of Attorney dated 23.12.1989 in his favour. In the cross examination of DW-1 to a question as to what was the necessity for executing the Power of Attorney dated 23.12.1989 when the earlier Power of Attorney was already executed dated 30.09.1989, the witness has answered that he does not remember. The said witness also denied the suggestion that the Power of Attorney dated 23.12.1989 as was executed does not authorise him to partition the estate left behind by the deceased couple. He also stated that he does not remember any corrections made to the Power of Attorney dated 23.12.1989. However, he stated that the said corrections can be seen on the said Power of Attorney. He denied the suggestion that it is false that all the pages of the Power of Attorney were signed as the Notary had told them to do so as there were corrections. He has also stated that he does not have any record to show that he had supplied the copy of the Deed of Partition to the Plaintiff no. 1. He has further stated in the cross examination that the xerox copy of the Power of Attorney which was used to execute the Deed of Partition was handed over to the Plaintiff at the time of its execution. He has further stated that the xerox copy was also given after its execution. Thereafter, one more copy was given to the Plaintiffs after the corrections of the said Power of Attorney. He has also stated that the first copy was furnished which was not having any initials. The xerox copy was shown to the witness which was at Exhibit X-1 and was marked as Exhibit-63 in the cross. He denied the suggestion that only one copy of the said Power of Attorney was furnished to the Plaintiffs which is at Exhibit -63. He also denied the suggestion that no corrected copy of the Power of Attorney was executed by the Plaintiffs. He also denied the suggestion that to the knowledge of the Plaintiffs no corrections were made to the said Power of Attorney. On perusal of the said Power of Attorney at Exhibit-39 produced by DW-1, it clearly shows that there are some corrections made to clause-6 of the said Power of Attorney which are not found in the xerox copy furnished to the Plaintiffs which is at Exhibit-63 in the cross examination. The answers in the cross examination by DW-1 clearly show that the alleged corrections were made only after the execution of the Power of Attorney. The alleged initials of the Plaintiffs have been apparently forged and in any event such corrections were introduced after the execution of the Power of Attorney without the knowledge and consent of the Plaintiffs. Even on perusal of the disputed Deed of Partition, we find that, the Plaintiffs have not been allotted any share in the mining concession though their right was to the extent of 1/4th in the inheritance of his deceased parents. It is contended by the Defendant no. 1 that a sum of Rs.1,50,000/- was paid to the Plaintiff which the Plaintiff claimed was a loan given to the Defendant no. 1 which has been repaid. Even assuming the alleged amount was received, it cannot be related to any share in the properties or the estate which the Plaintiffs were entitled in view of their right of inheritance in the estate of their deceased parents. The disputed Deed of Partition has been executed based on a Power of Attorney which was forged and manipulated and the powers introduced therein were never intended to be given by the Plaintiffs. Apart from that, the copy of the Power of Attorney at Exhibit-63 does not empower the Defendant no. 1 to execute the Deed of Partition and to admit the execution thereof before the Sub-Registrar on behalf of the Plaintiffs.

16. The Judgment reported in ***(1977) 3 Supreme Court Cases 474*** in the case of ***Timblo Irmaos Ltd., Margao*** V/s. ***Jorge Anibal Matos Sequeira And Another,*** relied upon by the learned Counsel appearing for the Appellant is not applicable in the facts of the present case. In the present case the purpose for executing the Power of Attorney clearly shows that it was meant to initiate Inventory Proceedings in the Court. In such proceedings, the law recognises a specific procedure to be followed and the parties are to be notified of different stages in the Inventory Proceedings. Ultimately, the final decision in the inventory proceedings is based on the shares of the interested parties in the estate of the estate-leavers. Looking into the powers as recorded in the Power

of Attorney at Exhibit-63 would clearly suggest that there was no intention to permit the Defendant no. 1 to execute the Deed of Partition outside the Court. Besides, the records also show that PW-1 was very much in Goa when the disputed Deed of Partition was executed and there is no material on record to show that at such relevant period PW-1 was either informed or consulted on the execution of the disputed Deed of Partition.

17. It is contended by the learned Counsel appearing for the Appellant that like any other documents the Power of Attorney may also require judicial interpretation on the facts and circumstances of its case. But in the present case, it is the contention of the Appellants that the Power of Attorney has been forged to incorporate some powers which were not intended to be given by the Plaintiffs. This stand of the Plaintiffs has been accepted and found favour with the learned Trial Judge. We have also examined the evidence on record and we have found that the purported insertions in the Power of Attorney were not found at the time of its execution in favour of Defendant no. 1. This would itself suggest that such interpolations or corrections which have not been authorised or consented by the Plaintiffs cannot give any powers to the Defendant no. 1 to execute the Deed of Partition on their behalf.

18. It is further contended by the learned Counsel appearing for the

Appellant that the learned Trial Judge failed to understand the purpose for which the Power of Attorney was issued as according to the learned Counsel it was to partition the assets of the estate-leavers. But however, on minutely going through the Power of Attorney, it clearly shows that clause-1 stipulates that powers were given to DW-1 to appear, attend, act and represent the Principals before all the offices or Departments of the Government in connection with the shares in the property that may be allotted to them in the Inventory Proceedings. The powers conferred therein also entitles to engage Advocate for instituting proceedings and sign and verify pleadings. The disputed clause-6 provides that powers have been given to compromise or to give consent for partitioning and allotment of the assets of the deceased Haider Khan and his deceased wife. The document at Exhibit-63 shows the name '*Hajirabai Haider Khan'* but in the disputed copy of the Power of Attorney at Exhibit-39 the words which have been inserted after deleting the name of '*Smt. Hajirabai Haider Khan*' are deleted and '*and to register partition with the Sub-Registrar*' is inserted. There is no power in the said clause-6 to execute any Deed of Partition on behalf of the Plaintiffs nor to admit execution thereof before the Sub-Registrar. The contention that such insertions have been illegally introduced by the Defendant no. 1 as claimed by the Plaintiffs has to be accepted as otherwise there is no co-relation between the alleged corrections read together with the first part of clause-6 of such Power of Attorney. In fact, on reading the Power of Attorney as a whole the only conclusion which can be drawn is that the powers conferred were only to initiate Inventory Proceedings and proceed with such proceedings to its logical conclusion. There was no power to partition the assets by a partition deed as in the Inventory Proceedings the law recognizes a particular procedure as provided by law and allotment as per the shares of the parties. Another aspect to be noted is that though the Power of Attorney dated 23.12.1989 was executed by all the brothers in favour of the Defendant no. 1(brother), it was invoked only on behalf of the Plaintiffs thereby depriving only the Plaintiffs of their legitimate rights in the assets of their deceased parents, contrary to the allotments to the other brothers.

19. On perusal of the Judgment of the learned Trial Judge we find that the learned Judge has compared the different parts of the same Power of Attorney *viz*., clause-6 in Exhibit-39 and Exhibit-63 produced in the cross examination and held that *'and to register partition with Sub-Registrar'* has been illegally inserted after the Power of Attorney was executed before the Notary. These findings of the learned Trial Judge cannot be faulted based on the material on record as pointed out hereinabove. The Apex Court in the judgment reported in ***(2012) 8 SCC 706*** in the case of ***Church of Christ Charitable Trust and Educational***

Charitable Society V/s Ponniamman Educational Trust, has observed at paras 19 and 20 thus :

> "**19**. Next, we have to consider the power of attorney. It is settled that a power of attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the power of attorney, in the present case, shows that it only authorizes certain specified acts but not any act authorizing entering into an agreement of sale or to execute sale deed or admit execution before the Registrar.
>
> **20**. In a recent decision of this Court in Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Another (2012) 1 SCC 656, the scope of power of attorney has been explained in the following words:
>
>> "20. A power of attorney is not an instrument of transfer in regard to any

right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, this Court held: (SCC pp. 90 & 101, paras 13 & 52)

> "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason

of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

* * *

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the

> Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

In the present case, as pointed out herein above, there was no power to execute the Deed of Partition nor any specific powers to present such document for registration and admit the execution before the Registrar. Another aspect to be also noted is that though there were three Defendants who were parties to the said Deed of Partition, none of them have been examined in support of the case put forward by the Defendants. All these aspects clearly suggest that the learned Judge has rightly appreciated the material on record and has come to the conclusion that the Plaintiffs are entitled to the reliefs as prayed for.

20. Once it is found that the learned Judge was justified to come to the conclusion that the Defendant no. 1 did not have powers to execute the disputed Deed of Partition the execution thereof by the DW-1 based on such powers on behalf of the Plaintiffs stand vitiated. The disputed Power of Attorney stated to be executed by the Plaintiffs has no such powers conferred on the Defendant no. 1 and there is no material on record which suggest that the Plaintiffs were consulted or informed about the disputed Deed of Partition prior to its execution. PW-1 obtained a copy of the Deed of Partition only when she visited the office of the Sub-Registrar, DW-1 did not bring any material to show that such copy was furnished by him to PW-1 nor is there any material on record to suggest

that the Deed of Partition as executed was approved by the Plaintiffs though PW-1 was very much in Goa at the relevant time. All these factors clearly point out that the learned Judge was justified to pass the impugned order. The points for determination are answered accordingly.

21. In view of the above, we find that there is no substance in the above Appeal which stands, accordingly, dismissed.

C. V. BHADANG, J. **F. M. REIS, J.**

msr.