

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.110 OF 2017

Laximibai Narayan Prabhu (Dec.)

through her legal heirs

.... Appellants.

Versus

Ramnath Damodar Prabhu & Ors.

... Respondents

Mr. M. B. Da Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for the Appellants.

Mr. A. D. Bhobe, Advocate for Respondent Nos.1 to 3.

Mr. J. P. Mulgaonkar, Advocate for Respondent Nos. 9,10, 13 & 14.

Mr. V. P. Thali, Advocate for Respondent Nos. 11 and 12.

Ms. Y. Mandrekar, Advocate for Respondent Nos. 15 & 16.

Coram : N.M. Jamdar, J.

Date : 21 December 2017.

ORAL ORDER :

Heard the learned counsel for the parties.

2. The Second Appeal arises from the order dated 6 June 2013 passed by the learned District Judge in Regular Civil Appeal

No.203/2012 arising from the Judgment and decree passed by the learned Civil Judge Junior Division, Canacona in the Inventory Proceedings No.8/1999.

3. In these Inventory Proceedings, an issue had arisen regarding a gift executed by Damodar Prabhu and his wife Satiabama in favour of his two sons Narayan and Ramnath. The Appellants in this Second Appeal are the heirs of Narayan. The question of law that is propounded by Mr. Da Costa, learned Senior Advocate for the Appellant is when the gift is made to two donees, whether one of the donees or his heirs can be stopped from exercising the option conferred by Article 2107 of the Civil Code to choose the asset to be allotted to him on the ground that other donee has not exercised that option. The learned Civil Judge held in favour of the Appellant on this aspect and the learned District Judge, considering the fact that the application was not jointly signed by two donees, did not apply the provisions of Article 2107 of the Civil Code.

4. Mr. Mulgaonkar and Mr. Thali, the learned counsel for Respondent Nos. 4 to 21 submitted that all the District Judge has done is to remand the proceedings to the learned Civil Judge after setting aside the final chart of partition. It was submitted that the learned Civil Judge is directed to decide the Inventory Proceedings as

per law and the Appellant can always urge all contentions including the question of law as proposed. They submitted that in view of this dispute between these two donees, the Inventory Proceedings for distribution of the assets need not be withheld. Considering the fact that the dispute relates to the distribution of the assets wherein the entire family is embroiled litigation. I find merit in the submission made by the learned counsel for Respondent Nos.4 to 21.

5. Mr. Bhobe, the learned counsel for Respondent Nos. 1 to 3, the other donee, submitted that though the learned District Judge has remanded the proceedings to the Trial Court for fresh consideration, the finding of fact reached by the learned District Judge that this issue cannot be set aside and as far as the questions of law are concerned, they can always be addressed before the learned Civil Judge which the learned District Judge has already indicated. Mr. Da Costa submitted that if the question of law raised by the Appellant is kept open when the matter will be reheard by the learned Civil Judge, then the Appellant would be satisfied with the same.

6. I have gone through the judgment and order passed by the learned District Judge. The learned District Judge has recorded a finding of fact that the item no.4 of the list of property was not entirely gifted to Narayan alone and that the application was not

signed by both the donees. Since there is no dispute on this basic position, there is no question of setting aside this finding. Once the learned District Judge has set aside the order and has remanded the proceedings to the learned Trial Judge to be decided as per the law and that there is general consensus that the questions of law arising from the admitted position on record can be advanced by all the parties it is not necessary to consider the Second Appeal as it would be a purely an academic exercise.

7. Therefore, even though I am not inclined to interfere with the impugned judgment and order, it is made clear that when the learned Civil Judge will decide the Inventory Proceedings, as per law, all contentions of the parties as regards the legal position including the one raised by the Appellant in the Second Appeal will be considered by the learned Civil Judge. Since the learned District Judge has found that the matter needs to be reconsidered by the learned Civil Judge as per the law and in view of what is submitted by the learned counsel for the parties, it is obvious that the learned Civil Judge will decide the Inventory Proceedings independently, uninfluenced by what is observed by the learned District Judge in the impugned order.

8. The Second Appeal is accordingly disposed of.

9. It will be open to the parties to make an application to the learned Civil Judge for an early disposal of the proceedings.

10. The Civil Applications taken out in the Second Appeal regarding the appointment of guardian etc., are disposed of with liberty to the Appellant to make necessary applications in the trial Court.

11. The parties will appear before the learned Civil Judge on 8 January 2018 at 10.00 a.m.

N.M. Jamdar, J.