

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO. 4 OF 2017.**

APOLINARIO AGNELO
JOAO ELIADOR TELES.,

.....Appellant.

Versus

PEDRO FRANCISCO XAVIER
TELES AND 32 ORS.,

.....Respondents.

Shri R. Menezes, Advocate for the appellant.
Shri B. Khandeparkar, Advocate for the respondent nos.1 to 11.
None present for the other respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.
Reserved on 14th August, 2017.
Pronounced on :- 6th September,2017.

ORDER:

The Appellant/Interested Party no.33 has preferred this appeal being aggrieved by an order dated 28.11.2016 passed by the Senior Civil Judge, Vasco-da-Gama below Exh.53 whereby objection raised by this party came to be rejected.

2. Heard Shri R. Menezes, learned Counsel appearing for the appellant and Shri B. Khandeparkar, learned Counsel appearing for the respondent nos.1 to 11.

3. In an Inventory Proceedings appellant has preferred an application, raising objection for licitation, on the basis of the application for licitation dated 22.12.2015 preferred by the Cabeca

de Casal. It is the contention of the appellant that in Item no.1, the area of the land, as shown in the Commission Report, is 1332 sq. mts on which there exists old and new extension of house, having covered an area of 450 sq. mts. According to the appellant, new extension was done by him and, therefore, it is not an asset of the Estate Leaver. He further submits that in view of the Will executed by the Estate Leaver no.2 in his favour from her disposable share, the same needs to be deleted from Item no.1. Thus, the appellant has raised objection for licitation.

4. Subsequently, on 15.9.2016, the Cabeça de Casal withdrew his application for licitation dated 22.12.2015 and, therefore, by the impugned order the learned trial Court, rejected the objection for licitation raised by the appellant.

5. The learned Counsel appearing for the appellant argues that the impugned order is not a speaking one and is without any basis, which would expose the appellant to irreparable loss, harm and prejudice. It is submitted that when the appellant had drawn the attention to an error in the description of assets, the trial Court ought to have made necessary corrections, after making necessary inquiry into the objections raised by the appellant.

6. On the other hand, learned Counsel appearing for the respondent nos. 1 to 11 submits that the impugned order is *nonest*,

in view of the withdrawal of application for licitation by the Cabeca de Casal dated 22.12.2015. He drew my attention to the Article 1379 of Family Laws of Goa, Daman and Diu (for short "the Act") which reads thus:-

"Once the lists of the properties have been submitted or the time limit within which they should have been submitted has expired, the file shall be made available, for examination, for forty-eight hours, to each of the heirs who have appointed Advocate, as per order of their appointment, thereafter to the advocate of the donee and of the administrator, and finally inspection shall be given, for the same period to the Public prosecutor, when the inventory is of orphan's jurisdiction.

During the period of examination or inspection the advocates and the Public prosecutor may complain about lack of description of the properties, or give their say in case the administrator or the donee deny the existence of the properties in their possession or the duty to bring them under collation, or raise question as to which properties he received and has obligation to collate.

The same thing may be done, by application, till the time of the end of examination, by the heirs and moiety holder who have not been advocates.

Sole paragraph: The lack of description of the properties may be raised subsequently at any time; but one who raises it shall satisfy that he got the knowledge of the existence of

the properties only on the date of presented the application. There upon the procedure prescribed in the next Article shall be followed."

7. Article 1379 of the Act provides that after submitting the list of properties the file shall be made available for examination for 48 hours for each of the heirs which have appointed advocate.....

8. Whereas Sub Section (2) of Section 400 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 contemplates a period of 30 days to raise objections as regards the assets which are not been listed. The appellant/interested party has filed the objection after about two years.

9. Be that as it may, there is no reason to set aside the impugned order dated 28.11.2016, as order itself is *nonest*, in view of the discussion made herein above. Consequently, I find no merit in the appeal, which stands dismissed, with no order as to costs.

PRITHVIRAJ K. CHAVAN,J.

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