

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 41 OF 2013

1. Laxmibai Narayan Prabhu (since Deceased)
Through legal heirs
 - 1(a). Shri Prashant Narayan Prabhu and wife, major,
 - 1(b). Mrs. Anuja Prashant Prabhu, major
both 1 and 2 resident of
Ponsulem, Canacona, Goa
 - 1(c). Mrs. Jaya Arvind Kamat and her husband, major,
 - 1(d). Shri. Arvind G. Kamat, major,
both 3 and 4 residents of
Flat No. 2, Reserve Bank Colony,
Amboli, Andheri (W), Mumbai.
 - 1(e). Mrs. Samiksha S. Bhende and husband, major,
 - 1(f). Shri Sadashiv Bhende, major,
both 5 and 6 resident of
Stat Apartments, Colemorod,
Margao, Goa.
 - 1(g). Mrs. Siya V. Dhangui and husband, major,
 - 1(h). Shri Vivek Dangu, major,
both 7 and 8 residents of
Anita Apartments, Opp.
P.W.D., Fatorda, Goa.

... Appellants

Versus

1. Smt. Medha Naguesh Prabhu, major
widow of Negesh Prabhu
resident near Nirmala Convent
Mastimol, Canacona, Goa.
2. Shri Ramnath Damodar Prabhu,
Major, Widower
3. Mrs Kumud Ramnath Prabhu (now deceased)
through her L.Rs.
 - 3(a) Smt. Sushma Rajesh Mhambre and
her husband, major,

- 3(b) Shri Rajesh Mhambre, major,
No. 2 and 3 residents of Vanadevi,
Opp. Gavas Hospital, Dangui Colony
Mapusa, Bardez Goa.
4. Mrs. Prathiba Pradeep Prabhudessai, major
5. Shri Pradeep Gopal Prabhudessai, major,
4 and 5 both residents H. No. 60, Mastimol,
Sheller, Canacona, Goa.
6. Anita Nagesh Prabhu, major
Resident of Savitrikrupa
Block No. 5 Gopi Tank Road
Shivaji Park, Mumbai – 400 016
7. Shri Prakash Damodar Prabhu and wife, major
8. Smt. Rekha Prakash Prabhu, major,
both resident of G-1 Ramakant
Apartments, Opp. Pharmacy College
Panaji, Goa.
9. Shri Sadanand Damodar Prabhu and wife, major
10. Smt. Neeta Sadanand Prabhu, major
both resident at 3rd floor Sapana
Plaza, Behind Grace Church,
Margao, Goa – 403 601.
11. Shri Umesh Damodar Prabhu and wife, major,
12. Smt. Milan Umesh Prabhu, major
both residents of 6/71/2
First Floor Savitrivishwa
Near Maruti Mandir, Mala, Panaj, Goa.
13. Shri Dinesh Damodar Prabhu and wife, major
14. Smt. Madhubala Dinesh Prabhu, major
both residents of 206-B, Versova,
Rajkamal Co-op. Hsg. Society Ltd.
Off. Yari Road Verdova Andheri (W)
Mumbai – 400 061

... **Respondents**

Shri M. B. D'costa, Senior Advocate with Ms. K. Betquekar, Advocate for the Appellants.

None for Respondent no. 1.

Mr. A. D. Bhobe, with Ms. S. Bhobe, Advocate for Respondents no. 2, 3(a) and 3(b).

Coram :- F. M. REIS, J
Date : 21th March, 2017.

ORAL JUDGMENT:

Heard Shri. M. B. D'Costa, learned Senior Counsel appearing for the Appellants, Shri A. D. Bhobe, learned Counsel appearing for the Respondent no. 2, 3(a) and 3(b). None for the Respondent no. 1, though served.

2. The above Appeal came to be admitted by an Order dated 29.08.2013 on the following substantial question of law:

- 1 Whether the widow of a son, who has predeceased his parents, is not an heir of her in laws and, consequently, is not entitled to the inheritance of the in laws?

3. Shri M. B. D'Costa, the learned Senior Counsel submits that the Suit filed by the Respondents is on the ground that she is the heir of her father-in-law who is admittedly the owner of the suit properties. The learned Senior Counsel further submits that the husband of the Respondent no. 1 expired in the year 1984 and her father-in-law expired in the year 1992 and the said son also predeceased his mother. The learned Senior Counsel further pointed out that on plain reading of the provisions of Article 1969 of the Portuguese Civil Code, it clearly specifies that the rights of a deceased husband devolve upon the parents who are the ascendants of the deceased. The learned Senior Counsel further pointed out that admittedly during the subsistence of the

marriage, no rights to the property accrued on or belonged to the husband of the Respondent no. 1. The learned Senior Counsel further submits that the moiety extinguished upon the death of the husband of the Respondent no. 1 and, as such, the question of any right to inherit accruing after the death of the husband is beyond any stretch of imagination. The learned Senior Counsel further pointed out that as the parents succeeded to the inheritance of the husband, the question of the widow being the legal heir or successor of the parents would not at all arise. The learned Senior Counsel has thereafter taken me through the plaint filed by the Respondent no. 1 which, according to him, clearly shows that the moiety claim of the Respondent no. 1 is based on the fact that being the widow of the deceased husband, the Respondent no. 1 was entitled to succeed to the inheritance of the parents-in-law. The learned Senior Counsel has, thereafter, taken me through the Judgment passed by the Appellate Court to point out that the learned Judge has blatantly misread the relevant provisions of law to come to the conclusion that the Respondent no. 1 was a legal heir of the parents-in-law. The learned Senior Counsel as such points out that the Impugned Judgment passed by the lower Appellate Court deserves to be quashed and set aside.

4. Respondent no. 1, though served, failed to remain present despite of opportunity being given to appear in the above proceedings.

5. Shri A. D. Bhobe, learned Counsel appearing for the Respondents no. 2, 3(a) and 3(b), supports the contention of Shri M. B. D' Costa, the learned Senior Counsel appearing for the Appellants.

6. I have considered the submissions of the learned Counsel and I have also gone through the records.

7. Article 1969 of the Portuguese Civil Code reads thus:

“Article 1969:
(Order of legal succession)

1. To the descendants;
2. To the ascendants, save what is provided in Article 1236;
3. To the brothers and their descendants.
4. To the surviving spouse;
5. To the collaterals not included in Clause 3 up to the sixth degree;
6. To the State, save what is provided in Article 1663.

Sole paragraph: In the case of Clauses 1, 2 and 3 the commodities and fruits, gathered or pending, meant and necessary for the consumption of the couple, shall be deemed to be the own property of the surviving spouse, provided that at the date of the opening of the inheritance there is no pending or decreed suit for divorce or for separation of the persons and properties.”

8. On plain reading of the provisions of Article 1969, the widow who is the wife of the deceased son is not a legal heir of the parents-in-law. Apart from that, it is not disputed that no rights to the subject property had accrued to the

husband of the Respondent no. 1 during the subsistence of the marriage. In such circumstances, as the right to the subject property had not entered the moiety of the assets of the couple, the question of the Respondent no. 1 claiming any rights to the subject property merely because she is the widow of the son of the original Appellant no. 1 cannot be accepted. On perusal of the Judgment passed by the learned Appellate Court, I find that the learned Judge has misconstrued the provisions of law and provision under Article 1969 of the Portuguese Civil Code and the fact that no rights to the subject property had entered the moiety of the couple during the subsistence of the marriage. As rightly pointed out by Shri M. B. D'Costa, the learned Senior Counsel, the moiety got extinguished upon the death of the husband of the Respondent no. 1. Consequently, the claim of the Respondent no. 1 that she has a right to the properties which exclusively belong to the parents-in-law at the time of the opening of the inheritance of her deceased husband cannot be accepted. In such circumstances, the Judgment of the lower Appellate Court cannot be sustained and deserves to be quashed and set aside.

9. The substantial question of law is answered in favour of the appellants.

In view of the above, I pass the following :

ORDER

- i. The Appeal is allowed.

- ii. The Impugned Judgment and Decree dated 14.12.2012 passed by the lower Appellate Court is quashed and set aside.
- iii. The Judgment and Decree dated 04.12.2004 of the learned Trial Judge stands upheld.
- iv. Appeal stands disposed of, accordingly.

F. M. REIS, J.

msr.