

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 107 OF 2016

Smt. Juliet Alves e Subramaniam,
Aged 62 years,
daughter of late Milagris Gerald Alves,
Married, housewife,
Resident of Bowen Church Building,
Top Floor, Tullach Road,
Mumbaui – 400 039.

..... Appellant

V e r s u s

1. Mr. Alex Francis Wolfango Alves,
Major of age,
Son of late Milagris Gerald Alves,
Married, retired,
Resident of H. No. 976, Bacbhatt,
Raia, Salcete, Goa.

.... (Original Applicant)

2. Ana Maria Alves,
Major of age,
Wife of Alex Francis Wolfango Alves,
Resident of H. No. 976, Bacbhatt,
Raia, Salcete, Goa.

..... Respondents

Mr. P. A. Kholkar, Advocate for the Appellants.

Mr. Kaif Noorani, Advocate for the Respondents.

Coram :- **F. M. REIS, J**

Date : **13th January, 2017**

ORAL JUDGMENT

Heard Shri Kholkar, learned Counsel appearing for the Appellant and
Shri Kaif Noorani, learned Counsel appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 05.01.2017 on the following substantial questions of law :

(i) Whether the impugned Judgment passed by the learned Trial Judge disposing of the Inventory Proceedings stands vitiated for not complying with the mandatory provisions applicable for the disposal of Inventory Proceedings ?

(ii) Whether the learned Judge has misconstrued the material on record to erroneously come to the conclusion that the Appellant has failed to make out a sufficient cause for condonation of delay ?

3. The challenge in the above Appeal is to the final homologation of the Inventory Proceedings initiated upon the Estate Leaver wherein the Appellants and the Respondents were interested parties. It is the contention of the parties that though the Appellants were served in the Inventory Proceedings, the Court proceeded to dispose of the Proceedings by allotting the assets in favour of the Respondents and without allotting any share in favour of the Appellant. It is further pointed out that the Inventory Court has not followed the procedure well laid down in law whilst disposing of the Inventory Proceedings and, as such, the final Judgment itself stands vitiated. Learned Counsel further pointed out that the Appellants had preferred an Appeal against the said Judgment of the Inventory Court before the Lower Appellate Court which came to be dismissed as the application for condonation of delay was rejected. Learned Counsel further pointed out that there was sufficient cause shown by the Appellants to condone the delay as, according to him, the proceedings in the Inventory Court were *exparte* and, in

fact, the Appellants were not notified of the final decision of homologating the partition. It is further submitted that the Lower Appellate Court has erroneously proceeded to ascertain as to whether the Appellants had made out a case not to appear before the Inventory Court on the day fixed for appearance of the Appellant. Learned Counsel as such submits that the impugned Order deserves to be quashed and set aside.

4. Mr. Noorani, learned Counsel appearing for the Respondents, has pointed out that the Respondents have no objection in case the impugned Judgment of the Inventory Court homologating the partition is quashed and set aside and the Inventory Court is directed to proceed with the Inventory Proceedings in accordance with law. Learned Counsel to that effect has also filed a Pursis containing an email which is taken on record and marked 'X' for identification.

5. In view of the above, I find that considering that the Respondents have fairly accepted that the matter be remanded to the Inventory Court to proceed with the Inventory Proceedings in accordance with law, the impugned Judgment passed by the Lower Appellate Court as well as by the learned Inventory Court cannot be sustained and deserves to be quashed and set aside.

6. In view of the above, I pass the following :

ORDER

(I) The impugned Order dated 24.02.2015 passed by the Lower Appellate Court as well as the

Judgment dated 16.02.2013 passed by the Inventory Court are quashed and set aside.

(II) The Inventory Court is as such directed to proceed with the Regular Inventory Proceedings no. 152/2011/F in accordance with law.

(III) Appeal stands disposed of accordingly.

F .M. REIS, J.

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