

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL No. 49 OF 2016

1. Vishwanath Yadav,
son of late Shri. Ramdular Yadav
Aged 48 years,
Businessman,

2. Mr. Amarnath Yadav,
son of late Shri. Ramdular Yadav,
aged 48 years,
businessman,

3. Mrs. Krishna Yadav,
d/o late Shri. Ramdullar Yadav,
aged 40 years,
Housewife,
All r/o House no. 90
Sai Nagar,
Dactolem, Mangor Hill,
Vasco da Gama, Goa.

... Appellants

V e r s u s

1. Mr. Kashinath Yadav,
s/o late Shri. Ramdular Yadav,
aged 55 years,
r/o House no. 90,
Sai Nagar, Dactolem, Mangor Hill,
Vasco Da Gama, Goa.

2. Punjab National Bank,
Vasco Branch,
Vasco da Gama, Goa.

... Respondents.

Mr. S. Vales, Advocate for the Appellants.

Mr. Prasad Desai, Advocate for the Respondent no. 1.

Coram :- F. M. REIS, J

Date : 15th March, 2017

ORAL JUDGMENT

Heard Mr. S. Vales, learned Counsel appearing for the Appellants and Mr. Prasad Desai, learned Counsel appearing for the Respondents.

2. Admit, on the following substantial question of law :

(1) Whether the Lower Appellate Court was justified to hold that the amount standing in the name of the mother of the Appellants and the Respondents could be withdrawn by her successors only after the shares are determined in the Inventory Proceedings ?

3. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

4. Briefly, the facts of the case are that the suit filed by the Appellants, inter alia, is for the distribution of the amount lying in the savings account and two Fixed Deposits to the Appellants and the Respondent no. 1 in equal proportion being the children of Smt. Chameli Yadav, who is the mother of the Appellants and the Respondent no.1, now deceased. It is the case of the Appellants that the amount standing in the name of the deceased mother devolved upon the Appellants and the Respondent no. 1 herein in equal shares and, as such, the Respondent no. 2-Bank be directed to distribute the said amount in terms thereof. It is further their case that the Respondent no. 1 was appointed as a nominee to the said accounts by the

deceased mother and that as the Respondent no.2-Bank was refusing to distribute the said amount, the suit was filed for the distribution of the amounts and, consequential reliefs. The Respondent no. 1 filed written statements admitting that the Appellants and the Respondent no.1 are the legal heirs of the deceased Chameli Yadav. But, however, it is the contention that the Appellants and the Respondent no. 1 are not entitled equally the amount lying in the subject account. The learned Trial Judge by Judgment and Decree dated 10.03.2015, decreed the suit filed by the Appellants, and inter alia, held that the Appellants and the Respondent no. 1 are equally entitled for the said amount. The learned Judge further directed the Bank to pay equally the amounts outstanding to the credit of the said deceased mother in the subject accounts to the Appellants and the Respondent no. 1. Being aggrieved by the said Judgment, the Respondent no. 1 filed an Appeal before the Lower Appellate Court. The Lower Appellate Court framed two points for determination one being whether the Appellants and the Respondent no. 1 are entitled to receive the amount standing in the name of late Chameli Yadav and whether the Respondent no. 1 proves that he alone is entitled to withdraw the said amount standing in the name of the deceased mother. By Judgment and Decree dated 28.12.2015, the Lower Appellate Court answered the first point for determination in the negative. The Lower Appellate Court whilst discussing the second point for determination has found that the Appellants and the Respondent no. 1 are entitled to the amount standing to the credit of the deceased-Estate Leaver.

But, however, the learned Judge held that unless and until Inventory Proceedings were initiated terming the shares of the parties, the question of distributing the amount as claimed by the Appellants is not at all justified. The learned Judge had also found that the Respondent no. 1 is alone not entitled to claim the said amount. Being aggrieved by the said Judgment, the Appellants have preferred the present Appeal.

5. Shri Vales, learned Counsel appearing for the Appellants, has pointed out that merely because the Respondent no. 1 is a nominee of the subject deposit, he is not entitled to the amount standing to the credit of the deceased Chameli Yadav. Learned Counsel further submits that the amounts standing to the credit of the said deceased devolved upon the Appellants and the Respondent no. 1 equally upon the death of their mother. Learned Counsel further submits that merely because the Respondent no. 1 is a nominee, by no stretch of imagination, can he be entitled to claim the amounts from the Bank. Learned Counsel further pointed out that the question of initiating any Inventory Proceedings would not at all arise as, according to him, there are no dispositions by the deceased-Estate Leaver and the subject asset devolved upon the Appellants and the Respondent no. 1 equally. Learned Counsel as such pointed out that the impugned Judgment be quashed and set aside.

6. On the other hand, Shri Prasad Desai, learned Counsel appearing for the Respondent no. 1, has pointed out that though the

Respondent no. 1 as a nominee is not entitled to the amounts but the Respondent no. 1 is entitled to claim the amounts from the Respondent no. 2 and, thereafter, distribute the amounts in favour of the legal heirs only after the Inventory Proceedings are initiated and the shares of the parties are determined. Learned Counsel further pointed out that in terms of the provision of Section 45 ZA of the Banking Regulations Act, a nominee is entitled to receive the amount from the Bank and, as such, the receipt of the amount by the nominees discharges the Bank of the liability to pay the amount standing in the name of the Estate Leaver. Learned Counsel further pointed out that this provision itself suggests that the Appellants are not entitled to claim the amounts by filing the present Suit unless the shares are determined in the proper Inventory Proceedings.

7. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. On the basis thereof, the points for consideration are (1) Whether a nominee can recover the amounts from the Bank on behalf of all the legal representatives when the legal representatives themselves have put up a claim to recover such amount from the concerned Bank and (2) Whether such amounts can be claimed only after the Inventory Proceedings are initiated.

8. With regard to the first point, this Court in a Judgment reported in **1998 (2) GLT 350** in the case of **Smt. Sunita Shambhu Shirodkar vs Shri Madhukar Lotlikar & Ors.** has held that the nominee does not step into

the shoes of the legal heirs merely on account of his nomination by the depositor. The provisions of Section 45 ZA of the Banking Regulations Act relied upon by the learned Counsel appearing for the Respondent no. 1 have also been taken into consideration whilst coming to the conclusion that even though the nominee may have a right to recover the amounts from the Bank, nevertheless, it is always open to the Court to direct such amount to be deposited in the Court for distribution among the legal heirs. The learned Single Judge of this Court has observed at Paras 10, 11, 12 and 13 thus :

“10. Now as far as the State of Goa is concerned, the law of succession which is in force in the State provides that where any person dies without disposing of his properties, or disposing only a part thereof, or having made the disposition, the will is annulled, revoked or lapses, all legal heirs shall have the said properties or part thereof, in respect of which the testator has not made any disposition. The provisions in this regard are found in Article 1968 of Portuguese Civil Code. The order of legal succession is firstly to the descendants, then to the ascendants, followed by brothers and their descendants, then surviving spouse, then to the collaterals and lastly to the State as is provided in Article 1969 of the said Code.

11. Applying the law laid down by the Apex Court in the above referred matter and

considering the provisions of the law of succession in force in the State as also the provisions contained in Section 45 ZA of the said Act, it is clear that whenever a depositor appoints his nominee and the depositor dies before the maturity of the fixed deposit for release, the nominee so appointed would certainly be entitled to collect the amount payable on such fixed deposit amount on its maturity for release. However, that would not take away the right of the legal heirs of the deceased depositor from claiming right to the amount standing to the credit of the deceased depositor in accordance with the provisions of law of succession in force. This is so because a nominee is merely a representative of the lawful successor of the deceased depositor to receive the payment on the maturity of the deposit for release. The nominee does not step in the shoes of the legal heirs merely on account of nomination by a depositor.

12. Undisputedly the appellant alongwith the respondents are the legal heirs of the deceased Yeshwant. There is no doubt that respondents 1 and 2 were appointed as the nominees of deceased Yeshwant as regards the fixed deposit amount in question. Moreover, once it is not in dispute that the appellant is also a legal heir of the deceased Yeshwant, it is too premature to hold at this stage that the appellant

would not be entitled to claim share in the fixed deposit amount which was lying to the credit of Yeshwant on the date of his death. There is no doubt that as to whether the appellant is entitled to claim the said amount or any share therein will be decided at the time of final disposal of the inventory proceedings. Moreover, at this stage, one or two of the legal heirs of the deceased Yeshwant cannot exclusively appropriate for themselves any of the estate left behind by the deceased Yeshwant and for the same reason, the respondents no. 1 and 2 cannot exclusively appropriate for themselves in the fixed deposit amount which was lying with the State Bank of India, Verem Branch to the credit of late Yeshwant. In the facts and circumstances, therefore, the Trial Court ought to have directed the respondents 1 and 2 to deposit in the Court the said amount withdrawn by them from the State Bank of India, Verem Branch, from the account of deceased Yeshwant. The Trial Court having rejected to grant such a relief only on the ground that the right of the appellant is to be decided at the final stage, has acted with material irregularity in exercise of its jurisdiction and in arbitrary manner. The impugned order, therefore, cannot be sustained and is liable to be quashed and set aside and the application filed by the appellant dated 4th July 1994 is liable to be allowed, the respondents are required to be

directed to deposit the amount collected by them from the said Bank from the account of the deceased depositor Yeshwant along with the interest thereon.

13. In the result, therefore, the appeal succeeds and the impugned order is hereby quashed and set aside. The respondent no. 1 is directed to deposit within a period of one month from the amount of Rs.51,299/95 along with interest thereon at the rate of 12% per annum from the date of withdrawal of the said amount from the Bank till the date of deposit of the entire amount in the Trial Court in the said inventory proceedings. The respondent no. 2 is directed to deposit within a period of one month from today the amount of Rs.45,423/- along with interest thereon at the rate of 12% per annum from the date of withdrawal of the said amount from the Bank till the date of deposit of the entire amount in the Trial Court in the said inventory proceedings. Pending the hearing and final disposal of the inventory proceedings, the respondents are restrained from withdrawing any amount deposited in any other Bank standing to the credit of deceased Yeshwant. The Respondents 1 and 2 shall pay costs of Rs.1000/- to the appellant.”

9. Taking note of the said observations merely relying upon Section

45 ZA of the Banking Regulations Act, does not assist the Respondent no. 1 to contend that he is entitled to withdraw the amounts from the Respondent no. 2 specially when the Appellants have raised a dispute in the present case to allow the Respondent no. 1 to collect the amounts from the Respondent no. 2.

10. With regard to the next contention of the learned Counsel appearing for the Respondent no. 1 that rights have to be determined only in the Inventory Proceedings as such rights devolve upon the legal heirs after such shares are determined, I find that the transmission of the right to the inheritance takes place immediately upon the death of the deceased Estate Leaver in terms of Article 2011 of the Portuguese Civil Code. The provisions of Section 13 of the Goa Succession Act of 2012 provides that transmission takes place simultaneously upon the death of the deceased. In such circumstances, the right to claim the amounts standing in the name of the deceased-Estate Leaver would accrue to the Appellants and the Respondent no. 1 who are stated to be the only legal successors of the deceased Chameli Yadav upon her death. The provisions of Article 2016 of the Portuguese Civil Code provides that when more than one person are entitled to the inheritance of the deceased-Estate Leaver, such rights devolve jointly upon all the legal heirs. A similar provision is also found in Section 15 of the Goa Succession Act of 2012 which provides that such rights which devolve upon the death of the deceased are indivisible. In such circumstances, the

contention of the learned Counsel appearing for the Respondent no. 1 that such rights would accrue only after Inventory Proceedings and shares are determined cannot be accepted.

11. The only aspect which remains to be considered is whether such shares are determinable only by filing Inventory Proceedings. In the present case, it is not disputed that there are no dispositions by the Estate Leaver. The Estate Leaver admittedly expired i.e. without leaving any Will at the time of her death. In such circumstances, the rights of the legal heirs upon the death of the Estate Leaver would devolve equally in favour of Appellants and the Respondent no. 1. In such circumstances, the contention of the learned Counsel appearing for the Respondent no. 1 that the shares have to be determined in the Inventory Proceedings, cannot be accepted. In this connection, the Division Bench of this Court in a Judgment reported in **2015(4) Mh. L. J. 347** in the case of **Shrihari Vidhyadhar Upadhye & Ors. vs. Prashant Vidhyadhar Upadhye & anr.** has observed at Paras 13, 14 and 15 thus :

“13. It would also be relevant to note that in terms of the provisions of Article 1391 of the Portuguese Civil Procedure Code, which governs the procedure in the inventory proceedings, once the parties are intimated of the list of assets in the manner as provided by Article 1379 of the Portuguese Civil Procedure Code, if interested parties do not apply for

licitation within 48 hours, such right gets waived and there can be no licitation. In such a case, the property enlisted in such proceedings would be allotted to the interested parties in accordance with their respective shares. On reading the said provisions, in case the parties to the suit agree to partition the properties of the estate leaver as per the agreed shares, it would mean that the parties have given up their rights to the licitation. As such, there is no reason to refuse a relief of partition when the shares of the parties are determinable and the parties to the suit agreed to get the properties divided by metes and bounds. Only in cases in which there are dispositions such as Will, Gift, etc., the suit for partition without getting the shares determined or agreed upon by all the parties in terms of law, would not be maintainable.

14. The learned Judge while passing the impugned judgment has failed to consider that in the present case, there were no dispositions which would require that the shares of the parties are to be determined in inventory proceedings. The learned counsel appearing for the respondents has admitted the shares of the defendant in the property of the estate leaver and also agreed that such property be partitioned by metes and bounds. In such circumstances, the learned Judge was not justified to rely upon the judgment of the learned

Single Judge of this Court in the case of Cruz Fernandes (supra) which was not at all applicable to the facts of the present case.

15. For the aforesaid reasons, we find that the impugned judgment and decree dated 07.06.2014 deserves to be quashed and set aside. The learned Judge would have to proceed with the suit and partition the property as per the shares agreed upon by the parties in accordance with law. The learned Judge would also take into consideration while effecting such partition the agreement between the parties to partition the property in terms of the plan produced by PW2 and essentially allot the portions to the parties as reflected in such plan. The point for determination is answered accordingly.”

12. The Division Bench of this Court, wherein one of us (F.M. Reis, J) was a party has taken a view that when there are no dispositions and the rights are determinable in terms of the relevant provisions of law of Succession, a Suit for partition would also lie. In such circumstances, I find that the Lower Appellate Court was not justified to hold that the Appellants and the Respondent no. 1 can claim the amounts only after Inventory Proceedings are initiated to partition the estate of the Estate-Leaver. The Appellants and the Respondent no. 1 are equally entitled to the amounts outstanding to the credit of the deceased Chameli Yadav in the subject savings Bank Account and two subject fixed deposits. It is also not the case

of the parties herein that either the Appellants or the Respondent no. 1 who are the only successors of the deceased Estate Leaver owe any amounts or have any liability to the estate of the deceased.

13. It is pointed out by the learned Counsel appearing for the Appellants that the Respondent no. 2 has pointed out that they would abide by the directions passed in the above Suit. The substantial question of law is answered accordingly.

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

ORDER

- (I) The Appeal is allowed.
- (ii) The impugned Judgment and Decree dated 28.12.15 passed by the Lower Appellate Court is quashed and set aside.
- (iii) The Judgment passed by the learned Trial Judge dated 10.03.15 stands upheld.
- (iv) The Appeal stands disposed accordingly with no Orders as to costs.

F .M. REIS, J.

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