

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO.27 OF 2017.**

Mr. Andre Antonio Rosario Da
Costa and anr. ... Appellants.

Vs

Mrs. Angela Patricia Da Costa and
2 ors. ... Respondents.

Mr. M. B. D'Costa Senior Advocate with Ms. K. Betquekar, Advocate
for the appellants.

Mr. J. J. Mulgaonkar, Advocate for the respondent nos.1 to 3.

Coram:-PRITHVIRAJ K. CHAVAN,J.
Reserved on :-10th July, 2017.
Pronounced on:-19th July, 2017.

ORDER:

Heard Shri M. B. D'Costa, learned Senior Counsel for the
appellants and Mr. J. J. Mulgaonkar, learned Counsel for the
respondent nos.1 to 3.

2. Feeling aggrieved with the order dated 22.12.2016 passed
in Regular Inventory Proceedings No.107/2014/III by the Ad-hoc
Senior Civil Judge at Margao, the appellants have preferred the
present appeal under Section 451(2) of the Goa Succession Special
Notaries and Inventory Proceedings Act, 2012 read with Section 104
of the C.P.C., 1908.

3. The appellants had moved an application for removal of the respondent no.1/Cabeca de Casal mainly on the grounds that the Cabeca de Casal failed to disclose in her statement on oath dated 16.8.2014 the fact of execution of a Public Will dated 13.9.2007 by the deceased Inventariado during his lifetime despite having knowledge about the same. Secondly, Cabeca de Casal failed to comply with Article 2072 read with Article 2073 of the PCC and also failed to make correct disclosure of the assets of the deceased. The next ground urged for removal of the Cabeca de Casal is that she had failed to discharge her duties as she had failed to make correct valuation of the immovable properties listed only for the reason that she deceitfully wants to delay the Inventory Proceedings. Lastly, removal is sought on the ground that because of her ill-health the Cabeca de Casal is unable to perform her duties in that capacity.

4. By the impugned order, the learned Civil Judge dismissed the application with costs of ₹300/- (Rupees three hundred only).

5. The learned Senior Counsel assailed the impugned order mainly on the grounds referred herein above. Articles 2072 and 2073 of the Portuguese Civil Code (For short "PCC") reads thus:-

"Article 2072:- The administrator shall declare:

1. The name and status of the estate-leaver, the day, month, year on which, and place where, he

died;

2. The name, status, age and capacity of the heirs testamentary or legal, without excluding those who might exist in the state of known conception.
3. Where the estate-leaver died with a Will and in such case he shall produce the original or authentic copy of the same Will;
4. Whether the estate-leaver, being married, the marriage was preceded with a deed, and in such case he shall produce one transcript or authentic copy of the same.

Article 2073:- The administrator shall present for the description, faithfully and on oath, a list of all the properties of the inheritance. Sole Paragraph: After the description is made any party may apply that half of the income, of the properties not bequeathed, be distributed among the co-heirs taking into consideration the value which has been attributed to them; the administrator who fails to comply with such direction issued by the Judge, shall be removed forthwith and will be liable to pay compensation for the damage."

6. The question as to whether the Cabeca de Casal had performed her function in view of the Article 2072 and 2073 of the PCC is a matter to be inquired into by giving an opportunity to the parties and by deciding the objections, if any, raised by the appellants for removal of the head of the family. In the impugned order, the learned Civil Judge rejected the application mainly on the grounds that the interested parties had made similar prayer of the ill-health of the Cabeca de Casal in their earlier application as well as non-disclosure of the Public Will which came to be rejected by his predecessor vide order dated 6.7.2015 passed below Exh.D-4. The learned Trial Judge was of the opinion that on that count alone the application was to be dismissed. He further observed that only because the Cabeca de Casal was suffering from uncontrolled hypertension, said illness is not sufficient to remove her as a Cabeca de Casal. It is also observed in the impugned order that filing of incomplete list of assets, delay in filing description, non-mentioning of Will are the matters for which remedy is provided under the Code for the Interested Party who can raise the objections at the appropriate stage of the proceedings.

7. It appears from the impugned order as well as from the order which was passed on 6.7.2015 that there was no proper opportunity given to the appellants to prove the objections for the

purpose of removal of the head of the family. As already contemplated in Article 2073 of the PCC, it is incumbent upon the administrator to present the description of the list of properties faithfully and therefore, it is necessary to have an inquiry conducted into the said aspect.

8. In view of the aforesaid observations, I pass the following:-

ORDER

- i. The appeal is partly allowed.
- ii. The learned Civil Judge shall conduct an inquiry by giving an opportunity of hearing to the respective parties and decide the objection in accordance with law expeditiously.
- iii. The appeal stands disposed of with no order as to costs.

PRITHVIRAJ K. CHAVAN,J.

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