

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.477 OF 2013**

Shri. Claudio Marques & Anr ..Petitioners.
Vs
Smt. Marcelina78 Marques Monteiro & Ors ..Respondents.

Mr Lalitkar with Prasheen Lalitkar and Ms Aditi Naik for the petitioners.

Mr C.A. Fereira with Ashwin Costa for the respondents.

CORAM : C.V.BHADANG, J

PRONOUNCED DATE : 4th APRIL,

2017.

(THROUGH VIDEO CONFERENCE)

P.C.:-

. The petitioners, who are the interested parties are challenging the dismissal of their objection by the Inventory Court. The petitioners had sought deletion of certain items and listing of one of the assets. The said order has been confirmed in appeal by the learned District Judge vide judgment and order dated 20/03/2013 in Misc. Civil Appeal No.105/2011.

2. The brief facts necessary for the disposal of the petition may be stated thus:

Inventory Proceedings were initiated upon death of Mr. Mario Marques and his wife Smt.Carmelina Marques. The first respondent Marcelina Monteiro was appointed as Cabeça de Casal. She filed list of assets on 4/02/2009 whereby in all six properties were enlisted.

3. On 20/3/2009, the petitioners raised objection to the list

of assets. According to the petitioners the items enlisted at Sr. Nos. 1, 2, 3, 4 & 6 exclusively belong to them and, as such, these items are required to be delisted. The petitioners also claimed that the Cabeça de Casal has intentionally not enlisted property bearing Survey No.22/13 of Village Sanquelim. In short, according to the petitioners the said property was belonging to Carmelina who is one of the estate leavers and, as such, the property is required to be enlisted.

4. The Inventory Court conducted inquiry in which the petitioner Claudio Marques examined himself as (AW1) and produced certain documents including a Gift Deed dated 30/12/1982, (ExhC-29) some receipts about payment of tax and a construction license. The Cabeça de Casal examined herself as (RW1). She did not produce any documents.

5. The Inventory Court refused to accept the case of the petitioners for deletion of item nos.1 to 4 which are shop premises as also item No.6. The Inventory Court also refused to accept the claim of the petitioners for enlisting the property bearing Survey No.22/13. Thus, except allowing the correction of house number as observed in the order, the claim for deletion of Item Nos.1, 2, 3, 4 and 6 and for listing of land surveyed under No.22/13 was rejected. Aggrieved thereby the petitioners challenged the same before the learned District Judge. The learned District Judge has partly allowed the Appeal directing the parties to pursue their ordinary remedy with respect to item No.6. The rest of the order is confirmed. Feeling aggrieved, the Petitioners are before this Court.

6. I have heard Shri Lotlikar, the learned Senior Counsel for the Petitioners and Shri Ferreira, the learned Counsel for the Respondents. With the assistance of the learned Counsel for the

parties, I have gone through the impugned orders passed.

7. It is submitted by Shri Latlikar, the learned counsel for the Petitioners that the Courts below are in error in refusing to list the property bearing survey No.22/13 of village Sanquelim along with a house standing thereon. It is submitted that the property was purchased by Smt. Carmelina Afonso Marques, who is one of the estate leavers. The property ought to have been listed notwithstanding the gift Deed dated 30/12/1982 (Exhibit C-29) inasmuch as the property of the deceased will require to be listed for collation. It is submitted that the first Appellate Court has misunderstood the tenor of objections raised by the Petitioners, inasmuch as the Petitioners did not dispute the validity of the gift Deed nor the fact that it was a self acquired property of Smt. Carmelina Afonso Marques and she was entitled to execute gift deed in respect thereof. In that view of the matter the estate was liable to be listed for the purpose of collation, particularly, in view of the fact that there was no provision in the gift deed excluding the same from collation.

8. It is submitted that the first Appellate Court failed to appreciate that upon the death of the estate leaver, the properties which are the subject matter of gift are liable to be brought under the common hotchpotch for the purposes of determining the totality of the estate and to the extent to which interested parties have already benefited, as also for the purposes of finding out whether any of the interested parties had received anything in excess of their stake in the estate. It is submitted that to that extent the property which was the subject matter of the gift in favour of the first Respondent was liable to be listed in the list of assets. The learned senior counsel for the Petitioners submits that merely because the Petitioners had taken a stand in the civil suit that the property belong to the Government

cannot preclude the Petitioners from seeking listing of the said property.

9. On the contrary, it is submitted by the learned counsel for the Respondent that the Respondent No.1 has filed an affidavit on 21/2/2017 clarifying the earlier stand taken in the affidavit in the evidence dated 11/2/2011. It is pointed out that in the Deed of Gift (Exh.C-29) it is specifically mentioned that the Respondent No.1 and her late husband had contributed towards the construction of the house and that the first Respondent is personally occupying the said house along with her family since its construction and is also taking care and maintaining the same and paying all rates and taxes in respect of the same. It is submitted that subsequently, the Respondent No.1 had learnt that the property bearing No.22/13 belonged to the Government and does not belong to the Prabhudessai family from whom Smt. Carmelina had purchased the same under sale deed dated 10/9/1972. It is submitted that on realizing this, the first Respondent had applied to the Government to permit her to retain the house and also the plot of land which matter is being followed up for its regularization/grant. The learned counsel for the Respondent has also referred in this regard the affidavit of Shri Neil Monteiro dated 10/1/2017, who is the son of the Respondent No.1 regarding the filing of the civil suit and its subsequent dismissal. Learned counsel further submitted that the Form No. I and XIV in respect of the property stands partly in the name of the Government and partly in the name of The Senior Superintendent of Posts Office Goa. It is submitted that the Courts below have rightly refused to enlist the said property.

10. I have carefully considered the rival contentions and submissions made.

11. The first Respondent had listed in all 6 properties viz.

- “1. A plot of land ad-measuring 50 sq. meters surveyed under No.31/13;
2. A plot of land ad-measuring 75 sq. meters surveyed under No.31/14 along with a shop standing thereon;
3. A plot of land ad-measuring 75 sq. meters surveyed under No.31/5 along with a shop standing thereon;
4. A plot of land ad-measuring 175 sq. meters surveyed under No.31/16 along with a shop standing thereon;
5. A plot of land ad-measuring 300 sq. meters surveyed under No.23/10 along with a shop standing thereon and
6. House Nos.895 and 895/1 having a built up area of 200 sq. meters standing on a land surveyed under No.25/6 ad-measuring 900 sq. meters.

All situated at village Sanquelim.”

12. The Petitioners had sought deletion of the properties at Sr. Nos.1, 2, 3, 4 and 6 and listing of the land surveyed under No. 22/13 along with a house standing thereon.

13. The Trial Court had dismissed both the prayers viz., for delisting of property at Serial Nos.1 to 4 and 6 and for listing of land surveyed under No.22/13/ The Appellate Court modified the order by relegating the parties to ordinary remedy in respect of property at Serial No.6.

14. At the outset it may be mentioned that the learned Senior counsel for the Petitioners has restricted his claim to the listing of the property viz., 22/13 and as such the limited prayer is being considered in this petition.

15. The land surveyed under No.22/13, indisputably, was

purchased by Smt. Carmelina Afonso Marques (one of the estate leavers) on 10/9/1972 from one Prabhudessai family. She had gifted the said property under a Gift Deed dated 30/12/1982 in favour of the first Respondent. Admittedly, the husband of Smt. Carmelina Afonso Marques died on 13/3/1948 while Smt. Carmelina Afonso Marques passed away on 7/9/1983. The Courts below had considered the fact that on the date of purchase of the said property by Smt. Carmelina Afonso Marques, her husband was already dead and as such it was the property exclusively owned by Smt. Carmelina Afonso Marques, which she can gift away. The learned Senior counsel for the Petitioners has contended that still the property is required to be listed for the purpose of collation. In this regard it is significant to note that the Petitioner-1 had filed Regular Civil Suit against the first Respondent and Others in the year 2006 claiming that the land surveyed under No.22/13 belongs to the Government. The suit was filed consequent to the first Respondent making certain construction on the said land in which mandatory injunction was sought against the first Respondent and others to demolish the said structure and for a perpetual injunction. The Petitioner did not pursue the suit which came to be dismissed in default which matter was not carried any further. The first Respondent filed an affidavit on 11/2/2011 claiming that the said land was exclusively belonging to her mother Smt. Carmelina Afonso Marques which she had gifted to her. Now the Respondent No.1 had filed an affidavit on 21/2/2017 claiming that she had subsequently learnt that the property belongs to the Government and she has applied for regularization/grant in respect of the same. The Form No. I and XIV of the land surveyed under No.22/13 shows name of the Government and the Senior Superintendent of Post Office as the occupants.

16. In view of this, in my considered view the dispute about the title to the suit property arises cannot be decided in summary

proceedings. The parties will have to pursue their ordinary remedy in respect of the said land. I have gone through the order passed by the learned Trial Court and the judgment of the Appellate Court and I see no reason to interfere with the said orders. In that view of the matter no case for interference is made out. Consequently, the petition is dismissed with no order as to costs.

(C. V. BHADANG, J.)