

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO.36 OF 2017.

Mr. Anthony Alfred Vaz,		Appellant.
Vs.		
Domingo Vas @ Doming Vaz and 7 ors.		Respondents.

Coram:- PRITHVIRAJ K. CHAVAN,J.
Reserved on:-28th November, 2017.
Pronounced on:- 5th December,2017.

Shri J. Godinho, Advocate for the appellant.
Shri A. Lobo, Advocate for the respondent nos.1, 4, 5, 6 and 7.

ORDER

The challenge in this appeal is to an order of dismissal of the review application by the 3rd Adhoc Additional Senior Civil Judge, Margao, filed by the original Interested Party no.(vii) by which learned Trial Court held that there was a due and proper service of notice upon the appellant/Interest Party no.(vii).

2. I heard Shri J. Godinho, learned Counsel appearing for the appellant and Shri J. Lobo, learned Counsel appearing for the respondent nos.1, 4, 5, 6 and 7.

3. The respondent no.1 has instituted an Inventory Proceedings and was appointed as Cabeça de Casal. Summones were

issued to the Interested Parties on 24.6.2013. Bailiff served interested party nos.3 and 4 on 29.6.2013. Interested party nos.5 and 6 were served on 3.7.2013. Contention of the appellant is that there was no proper service upon him for the reason that the bailiff made a statement that he visited Gogal Margao and Sarzor Village on 3.7.2013 when the Interested Parties refused to accept the summons, on that basis, bailiff submitted the report on 3.7.2013 alongwith an affidavit. Inventariante moved an application dated 5.8.2013 before the trial Court for an order of deemed service. Accordingly, learned Trial Court by an order dated 5.8.2013 observed that it was a good service because Interested Party nos.(i), (vii), and (viii) refused to accept the summons. It is the contention of the appellant that his sister, who is one of the Interested Party, informed him about the Inventory Proceedings and auction which was to be held in the Court. The appellant, therefore, deputed his representative as he was not ready for such eventuality. According to the appellant, he had no option but to participate in the auction which was fixed by the Court. The appellant, thereafter, preferred a review application to quash an order dated 5.8.2013 which came to be dismissed by the learned Trial Court by the impugned order.

4. It is thus argued by the learned Counsel for the appellant that though it is deemed that the first notice was served upon him,

the second notice of public auction was not duly served upon him strictly as per law. Though appellant had appeared in the matter when he came to know about the same, the main contention of the learned Counsel is that appellant lost an opportunity to contest the proceedings at the first instance. As such, learned Counsel submits that auction proceedings are bad in law for want of proper service upon him.

5. On the other hand, learned Counsel for the respondent nos.1, 4, 5, 6 and 7 submits that there was a due and proper service on the appellant which is evident from the record. It is further argued by the learned Counsel for the respondent that intention of the appellant is nothing but to protract the case. The learned Counsel has drawn my attention to the bailiff's report as well as certified copies of the vakalatnama filed on behalf of the appellant before the trial Court as well as certified copy of a special power of attorney executed by the appellant in favour of one Viraj Vishnu Amonkar to appear, act and to do all necessary things including participation in licitation/auction in Special Inventory proceedings. Both the appellants and his wife filed the vakalatnama on 18.3.2014. As such, learned Counsel argued that appellant cannot blow hot and cold when there is no material placed on record to substantiate that there was no proper service.

6. Undisputedly, appellant is the husband of Interested Party no.8. The report of the bailiff dated 3.7.2013 clearly indicates that when he reached the given address of the Interested Parties nos.(i) (vii) and (viii), they were found at their present house. Bailiff had explained the contents of the notice to them, but they refused to accept their notices. Refusal of the notice amounts to good service. On the basis of the bailiff's report, the learned Trial Court by its order dated 5.8.2013, which appears in the roznama, indicates that since interested party nos.(i), (vii) and (viii) had refused to accept the summons/notices issued to them by the Court and therefore, they deemed to have been served. It is difficult to digest the contention of the appellant that there was no proper service in the light of the fact that there was a clear report of the bailiff coupled with the fact that the appellant and his wife tendered their respective vakalatnamas appointing Advocate Caitano Mascarenhas and other as their Advocate in the Inventory Proceedings on 18.3.2014. It is even difficult to accept the contention of the learned Counsel for the appellant that the auction proceedings are bad in law for the reason that he has also given a Special Power of Attorney to one Mr. Viraj Vishnu Amonkar to participate in the auction in the Special Inventory Proceeding no. 20/2013/III. Filing of the vakalatnama after the notice of auction as well as appointment of a Special Power of Attorney belies the contention of the appellant that there was no proper

service.

7. I do not find any illegality or impropriety in the impugned order passed by the learned Trial Court in which it has been specifically observed that notices of auction were directed to be issued to the Interested Parties pursuant to which interested party nos.(vii) and (viii) put up their appearance on 18.3.2014 and participated in the auction proceedings. The application for review was filed in the month of January, 2015 i.e after about 10 months from their appearances. Interestingly, even in the appeal memo, the appellant in verification as well as tittle of the appeal furnished his address as Flat no.2, 1st Floor, Uno de Janeiro Building, Margao, Salcete Goa which he does not dispute. The bailiff had visited the same address for the service. The only conclusion which would flow from the aforesaid fact is that the appellant is trying to protract the trial despite due service and participation in the auction proceedings in the trial Court. In fact no review application was tenable as there was no error apparent on the face of the record. Be that as it may, the appeal is devoid of merits and, therefore, needs to be dismissed. Appeal stands dismissed with costs alongwith Civil Application No.183 of 2017.

PRITHVIRAJ K. CHAVAN, J.

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