

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 646 OF 2017**

1. Mrs. Rosita Fernandes, daughter of late Salvador Fernandes and her husband.
2. Mr. Peter Fernandes, Both residents of H. No. 264, A.C., Pacheco Road, Near B.M. Servicing, Borda, Margao, Goa.
3. Mrs. Thereza Fernandes e Dias, daughter of late Salvador Fernandes, major in age, Ungirim, Curtorim, Salcete-Goa.
4. Mrs. Flaviana Fernandes, daughter of late Salvador Fernandes, major in age, Resident of RH-5, JX Braganza Residency, Borda, Margao.
5. Mr. Manuel Fernandes, son of late Salvador Fernandes and his wife.
6. Mrs. Teofila Fernandes, both major in age, residents of House No. 1077, Madel, Curtorim, Salcete, Goa 403 709.

.... Petitioners

Versus

1. Mr. Inacio Piedade Fernandes, son of late Antonio Fernandes, major of 64 years, married, landlord, resident of H. No. 860, Bastora, Curtorim, Salcete, Goa and his wife.
2. Mrs. Piedade Pereira Fernandes, daughter of Minguel Pereira, major of 62 years, married, housewife, also resident of H. No. 860, Bastora, Curtorim, Salcete, Goa.
3. Mr. Rafael Fernandes, son of late Salvador Fernandes and his wife.
4. Mrs. Placida Fernandes, both major in age, residents of Flat No. 9, Sahajeevan Apts., Airport Road, Chicalim, Goa.

5. Mrs. Salita Fernandes, daughter of late Salvador Fernandes and her husband.
6. Mr. John Fernandes, both major in age, residents of Sarvodaya Co-op Housing Society, Yeshwant Nagar, Vakola, Santa Cruz (E), Mumbai-55.
7. Mrs. Sheila Fernandes e Cardozo, daughter of late Fransisco Fernandes and her husband.
8. Mr. Cardidade S. Cardozo, both major in age, resident of H. No. 265, Vodlem Bhat, Taleigao, Panaji-Goa.
9. Mrs. Helen Fernandes e Pereira, daughter of late Fransisco Fernandes and her husband.
10. Mr. Rockey Pereira, both major in age, residents of Near Vithoba Temple, S/2, Betim, Bardez, Goa.
11. Mrs. Olga Fernandes e Gomes, daughter of late Fransisco Fernandes and her husband.
12. Mr. Minguel Gomes, both major in age, both residents of Room No. 27, Police Montopio Quarters, Behind All India Radio, Altinho, Panaji-Goa.
13. Mrs. Antoneta Fernandes, daughter of late Fransisco Fernandes and her husband,
14. Mr. Kavin Fernandes, both major in age, both residents of Kenkez village, H. No. 154, Near St. Sebastian Chapel, Comba, Margao, Goa.
15. Mr. Lourence Gomes, son of late Martinho Hipolito Gomes and his wife.
16. Mrs. Queeny Gomes, both major in age, residing at H. No. 84, Hollant Road, Dabolim Post Office, Issorcim, Mormugao, Goa.
17. Mr. Francisco Gomes, son of late Martinho Hipolito Gomes and his wife.

18. Mrs. Nefa Gomes, both major in age, residents of H. No. 227, Below Desterro Church, Vasco-da-Gama, Goa.
19. Mr. Piedade Santan Fernandes, son of late Antonio Fernandes and his wife.
20. Mrs. Ubaldina Fernandes, both major in age, resident of Rua do Comercio No-4-aEsq,2780, Porto Salvo, Portugal.
21. Mr. Bento Dias, major in age, residents of Ungirim, Curtorim, Salcete-Goa. Respondents

Shri Jayant P. Mulgaonkar, Advocate for the Petitioners.

Shri J. Coelho Pereira, Senior Advocate with Shri Vinod Korgaonkar, Advocate for the Respondent No. 1.

CORAM:- C.V. BHADANG, J.

DATE:- 20th SEPTEMBER, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The respondent no. 1 is the Cabeça de Casal and the only contesting party. Shri Vinod Korgaonkar, the learned Counsel, waives service for the respondent no. 1. Heard finally by consent of parties.

2. The petitioners are challenging the order dated 02.02.2015 and the subsequent order dated 03.09.2015, by which the Inventory Court has refused to review the earlier order dated 02.02.2015.

3. The petitioners are the interested parties, who filed an application (Exhibit-37), before the Inventory Court for the following reliefs:-

(a) the delay in making the present application be condoned;

(b) that the Cadeca de Casal be directed to furnish to the present interested parties copies of the documents mentioned in Statement on Oath i.e. Deed of Gift dated 04.02.1983, Document dated 04.03.1959 and Document dated 20.02.1961 and that the matter be thereafter fixed for objections against List of Assets, if any;

(c) alternatively, an appraiser be appointed by this Hon'ble Court to appraise the List of Assets of the Estate Leavers.

4. The Inventory Court found that there is no provision under the Portuguese Code of Civil Procedure (Code, for short), to condone the delay and the time limit for raising objection to the list of assets having expired, there was no reason to turn the clock back. While rejecting the application for review, the Inventory Court took note of Article 146 of the Code to find that the said Article states that the application can be allowed to be made beyond the period only if, there are "just impediments". The Inventory Court on facts found that the petitioners had not

demonstrated any just impediments, in as much as, the promise made by the Cabeca de Casal did not interfere with the free will of the parties making it impossible for them to attend the Court and to file the objection.

5. I have heard Shri Mulgaonkar, the learned Counsel for the petitioners and Shri Pereira, the learned Senior Counsel for the respondent no. 1 and perused record.

6. Shri Mulgaonkar, the learned Counsel for the petitioners has submitted that a representation was made by the Cabeca de Casal in which, the petitioners were made to believe that their interest would be taken care of and acting on the said representation, the petitioners did not appear in the inventory proceedings, before the Inventory Court. This according to the learned Counsel is a sufficient ground and a "just impediment", within the meaning of Article 146 of the Code. Secondly, it is submitted that the alternate prayer of appointment of the appraiser/valuer has not been considered. The learned Counsel for the petitioners has placed reliance on Section 409 of the Goa Succession, Special Notories and Inventory Proceeding Act, 2012 (Act, for short), in order to submit that the appointment of the valuer is mandatory before the properties can be put to auction.

7. Shri Pereira, the learned Senior Counsel for the respondent no. 1 submits that the petitioners cannot justifiably place reliance on Article 146 of the Code, as has been rightly held by the Inventory Court. However, insofar as the alternate prayer is concerned, the learned Senior Counsel, in all fairness submits that the Inventory Court, would be required to appoint a valuer before the properties are put to auction. He therefore submits that the application may be sent to the Inventory Court, only for the limited purpose of deciding the alternate prayer of appointment of the valuer.

8. I have carefully considered the rival circumstances and the submissions made. Article 146 of the Code on which strong reliance is placed, states that an application can be allowed to be made beyond the period prescribed if, there are “just impediments”. The impediments, can be considered as just impediments only if, on account of an unforeseen event beyond the volition of the party (which places the party in an impossible position) to execute the act by himself or by an Attorney. Here the petitioners have come with a case that a representation was made and the petitioners were made to believe by the Cabeça de Casal that their interest would be taken care of. This cannot be

a ground which can be accepted, so as to call in aid the provisions of Article 146 of the Code. The Inventory Court has rightly found that such a representation cannot be considered just impediment or in the nature of an unforeseen event, which places the parties in an impossible position. In my considered view, the main prayer has been rightly rejected.

9. Insofar the alternate prayer is concerned, the impugned order does not show that the Inventory Court has considered the same. It would thus be appropriate to send the application back to the Inventory Court, only for the limited purpose of deciding the alternate prayer for appointment of a valuer. In such circumstances, the petition is partly allowed. The application (Exhibit-37) is sent back to the Inventory Court for the limited purpose of considering the alternate prayer of appointment of a valuer.

10. At this stage, the learned Counsel for the parties state that the Inventory Proceedings are of the year 2012 and may be expedited. Considering the fact that the inventory proceedings are at the stage of an auction, the Inventory Court is directed to decide the same as expeditiously as possible and preferably, within a period of six months from the receipt of this order.

Parties to co-operate for the time bound disposal of the proceedings. Rule is partly made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

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