

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1009 OF 2016**

1. Salvacao Gonsalves,
Major, Married, housewife,
and her husband,
2. Custodio Sequeira,
Major, both landlords, r/o H. No. 187,
Toleaband, Igramol, Quepem.
3. Ana Rosa P. Gonsalves,
Major, housewife, (since deceased)
- 3a). Michael Victor Fernandes,
Major, Married to
- 3b). Avita Fernandes,
Major,
4. Arcadias Francisco X. Fernandes,
Husband of app. No. 3, Major,
All resident at H. No. 78,
Igramol, Quepem
5. Pedro Conceicao Mario Gonsalves,
Seaman, Major, and his wife;
6. Romaldina Dourado,
Major, Both r/o H. No. 146,
Igramol, Quepem.

.... Petitioners*Versus*

1. Pedro Fernandes,
Major, r/o H. No. 30/2, Vagorna,
Tilamol, Xeldem, Quepem,
And his wife;
2. Luisa Fernandes (since deceased)
now her L.Rs)

- 2a). Agostinho Fernandes,
Major, and his wife;
- 2b) Joanita Fernandes,
Major, Both r/o H. No. 380,
Porno Waddo Ambaulim,
Quepem.
- 2c) Joao Miguel Fernandes,
Major and his wife;
- 2d) Filipinha Fernandes,
Major, Both r/o H. No. not known,
Cjinchvaddo, Ambaulim,
Quepem.
- 2e) Lourenco Fernandes,
Major and his wife;
- 2f) Marcelina Fernandes,
Major, Both r/o H. No. 30/3,
Behind Football Ground,
Tilamol, Quepem.
- 2g) Jose Manuel Fernandes,
Major, and his wife;
- 2h) Remetina Fernandes,
Major, Both H. No. not known,
Chinchvaddo, near Cemetery,
Ambaulim, Quepem.
- 2i) Eugenia Fernandes,
Major and her husband;
- 2j) Lourenco Fernandes,
major, Both r/o H. No. not known,
Chinchvaddo, near Cemetery,
Ambaulim, Quepem.
- 2k) Cacilda Oliveira, Widow,
Major and her children;

- 2ki) Elvis Oliveira,
Major, And his wife;
- 2kii) Shamira Carvalho,
Major, Both r/o H. No.21/1,
Mulem, Paroda, Quepem.
- 3. Gloria Estibeiro,
Major, Widow of Antonio Gonsalves,
Housewife, and her children;
- 4. Promildo Gonsalves,
Major, Bachelor, major,
All the above r/o H.No.8,
Near Deao Palace, Quepem.
- 5. Carlos Gonsalves,
Major, Married and his wife;
- 6. Silvia Horta,
Major, Both r/o Angelica Arcade,
B-Building, 3rd Floor,
Flat No.2, Near Bazar,
Quepem.
- 7. Minaxi Gonsalves,
Major, Housewife and her husband;
- 8. Benny Vas,
Major, Both r/o Dasha Classic Bldg.
Block 5, 2nd Floor, Flat No. 8,
Fish market, Quepem.
- 9. Mira Gonsalves,
Major, Housewife, and her husband;
- 10. James Socorro Rebelo,
Major, Both r/o Guloi Vaddo,
Orlim, Salcete, Goa.
- 11. Cristina Mascarenhas,
Major, Widow of Benedito Gonsalves,
And her children;
- 12. Mario Gonsalves, Major

13. Melwin Gonsalves,
Major, Both majors, all r/o H. No. 148,
Vitol Mordi, Amona,
Quepem.
14. Estevam Antonio Fernandes,
Major, Married to
15. Jamena Fernandes,
Major, All r/o H. No. 78,
Igramol, Quepem.

... Respondents.

Mr. R. G. Ramani, Advocate for the Appellants
Mr. D. J. Pangam, Advocate for the Respondents no. 1 and 2.
Mr. V. P. Thali, Advocate for the Respondents no. 11, 12 and 13.

Coram :- F. M. REIS, J

Date : 27th March, 2017.

ORAL JUDGMENT:

The challenge in the above Petition is to the Order dated 31.03.2016 passed by the Lower Appellate Court. By the impugned Order the learned Judge has partly allowed the Appeal filed by the Petitioners and included the assets at item no. 11 in the List of Assets and upheld the Order passed by the learned Inventory Court delisting item no. 9.

2. Mr. R. G. Ramani, the learned Counsel appearing for the Petitioners has pointed out that as far as item no. 9 is concerned, the Estate Leaver was a tenant of the subject property and such tenancy was derived from the Cabido. Learned Counsel further pointed out that the property at item no. 9 is in

Survey No. 152/4 whereas the property at no. 11 is in Survey no. 152/4/B. The learned Counsel has thereafter taken me through the survey records to point out that the property in survey no. 152/4 stands in the name of one Benedicto Gonsalves and the property in Survey no. 152/4/B shows the occupant as Pedro Fernandes, who is the Respondent no. 1. The learned Counsel has further pointed out the case of the Petitioners has been established and, according to him though, it is claimed that the property of the Deao/Cabido, the survey records disclose otherwise. Learned Counsel further submits that the said Benedicto Gonsalves was the original Cabeça de Casal, who had enlisted the property at item no. 9 but however, according to him in collusion with the Respondent no. 1, agreed to de-enlist the said property from the List of Assets. Learned Counsel further submits that the said Benedicto Gonsalves has acted in a fraudulent position to de-list the estate from item no. 9 on erroneous consideration.

4. Learned Counsel has thereafter taken me through the Impugned Order as well as the objections raised by the Petitioners to point out that there were clear averments therein to show that it is the contention of the Petitioners that the whole exercise of raising the claim over the property at item no. 9 was in collusion with the said Benedicto Gonsalves. Learned Counsel as such submits that the Impugned Order deserves to be quashed and set aside.

5. Mr. D. J. Pangam, learned Counsel appearing for the Respondents no. 1 and 2 and Shri V. P. Thali, learned Counsel appearing for the Respondents no. 11, 12 and 13 support the Impugned Order. Learned Counsel points out that the Respondents have not challenged the Impugned Order with regard to the enlisting of the property at time no. 11 and has seriously raised objections to the averments of Mr. R. G. Ramani that the property at item no. 9 should continue in the list of assets of the Estate Leaver. Learned Counsel further submit that the learned Appellate Court has rightly appreciated their claim and as such quashed and set aside the same.

6. I have considered the submission of the learned Counsel and I have also gone through the records. It is an admitted position that the Petitioners have not produced any Lease documents with the landlord nor established the payment of the rents. The evidence required to establish tenancy admittedly has not been produced by the Petitioners. Mr. Ramani, learned Counsel for the Petitioners however points out that oral evidence produced by the Petitioners had substantiated such allegations. But however, the fact finding Appellate Court after appreciating the evidence has come to the conclusion that the Petitioners have failed to establish their claim that the Petitioners were also tenants of the property. Considering there is no Lease Agreement nor documents on record, I find that it cannot be said there is any perversity in the Impugned Order on that count. Apart from that, the Inventory

Proceedings of 1996 are stalled on the specious ground of de-enlisting item no. 9 from the List of Assets left behind by the Estate Leaver. In such circumstances, the interested party, if so advised, will have to avail of ordinary remedy to establish their claim. Admittedly, though the Petitioners claim that the Estate Leaver was a tenant of the said property, there is no material on record to show that any Declaration of Tenancy was obtained by the Estate Leaver or by the Petitioners or their heirs upon his death. There is no Purchase Sanad produced on record to substantiate such contention.

7. In such circumstances I find that there is no cause made out for this Court to exercise its jurisdiction under Article 227 of the Constitution of India. The Petitioners shall resort to ordinary remedy to get their claim adjudicated which hereby reserved in accordance with law.

11. The Petition stands rejected, accordingly.

F. M. REIS, J.

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