

IN THE HIGH COURT OF BOMBAY AT GOA.**APPEAL FROM ORDER NO. 52 OF 2016.**

Ehrlic De Ataide and anr. ... Appellant.
Vs
Mrs. Maria Imelda Angelina Do
Perpetuo Socorro de Ataide E
Nunes and 2 ors. ... Respondent.

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

Mr. M. Viegas, Advocate for the respondent nos.1 and 2.

Mr. A.C. Costa, Advocate for the respondent no.3.

Coram:-PRITHVIRAJ K. CHAVAN,J.

Date :-12th July, 2017.

ORDER:

An application preferred by the appellant in the Inventory Proceedings No.43/2009/A came to rejected by the learned Civil Judge, Senior Division, Panaji by order dated 3.6.2016 which is impugned before this Court.

2. Heard Mr. M. B. D'Costa, learned Senior Counsel appearing for the appellants. Mr. M. Viegas, learned Counsel appearing for the respondent nos.1 and 2. Mr. A.C. Costa, learned Counsel appearing for the respondent no.3 has supported the arguments of the learned Senior Counsel appearing for the appellants.

3. I have perused the impugned order.

4. It is argued by the learned Senior Counsel for the appellants that the learned trial Court did not allow the appellants to be impleaded as an interested party and consequently the appellants could not produce the documents to be proved that Francisco Xavier Das Boas Novas Apolinario Militao de Ataide had made a Will dated 26.6.2017 appointing the appellants as his sole and universal heir and it clearly refers to the furniture existing in the ancestral house. It is also submitted that sister of said Francis Xavier namely Maria Emilia Marcelina Flaviana Umbelina de Ataide made a similar Will dated 26.6.1997 appointing the appellants as her sole and universal heir. The impugned order has been assailed on following few grounds namely (i) that there is non-application of mind to the Gift Deed dated 13.4.1995 at Exh.A and List of Assets filed by the Cabeça de Casal. A Bare look at the documents would show ex-facie that the assets which did not belong to Jose Maria were included in the List of Assets. (ii) The learned Trial Judge also failed to apply its mind to the fact that the Cabeça de Casal had not filed any objections to the application filed by the appellants and had thereby agreed that the appellants ought to have been impleaded and heard in the matter. The learned trial Court ought to have held that both Cabeça de Casal and the Inventariante ought to have assumed responsibility for any fact alleged in the inventory.

5. After hearing the respective Counsel for sometime it has

been agreed that matter needs to be remanded with a direction to the learned trial Court to give an opportunity to the appellants to produce description of properties more particularly items nos.19,16 and 20 by conducting an inquiry. The learned Senior Counsel for the appellants drew my attention to the Article 1383 of the Portuguese Civil Code, 1940. The learned Counsel appearing for the respondent nos.1 and 2 admit that the aforesaid properties can be excluded in view of Article 1383. The Article 1383 read thus:-

“Where any co-heir or any other person, claims the ownership of the properties described and prays that the same be excluded from the description, the dispute shall be decided, after hearing the administrator or the person who described the properties, if different, and after evidence is led and necessary information is obtained.”

6. In view of the aforesaid discussions, the impugned order needs to be quashed and set aside and as such, it stands quashed and set aside with a direction to the learned trial Court to give an opportunity to the appellants to produce relevant documents/ evidence in the light of the observations made herein above. Appeal stands disposed of in terms of the aforesaid directions.

PRITHVIRAJ K. CHAVAN,J.