

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

MISC CIVIL APPLICATION NO.619 OF 2017

AND

SECOD APPEAL NO.116 OF 2016

Julio D'Souza & Anr

... Applicants
Appellants

Versus

Juliete Gracis Lobo & Anr

... Respondents

Mr SD Lotlikar, Senior Advocate *with Ms M. Furtado, Advocate*
for the applicants

Mr Pranay A Kamat, Advocate *for the respondents*

CORAM: G.S. PATEL,J

DATED: 7th September 2017

PC:-

1. Mr. Lotlikar for the Appellants states that Misc Civil Application No.619 of 2017 is filed proposing a draft amendment to bring on record events subsequent to the First Appellate Court's Decree impugned in this second appeal. Specifically the proposed amendment says that by a Deed of Relinquishment drawn on 8th December 2016, the Respondents have relinquished their entire right, share, title and interest in the Inventory Proceedings and this necessarily relates not to a particular property but to the entirety of the inheritance from their parents. If that is indeed so, such a relinquishment would relate back to the commencement of the

inventory proceedings, thus rendering the Second Appeal possibly unnecessary.

2. There is an affidavit-in-reply filed by the 1st Respondent contesting this civil application. The first ground taken is that the application is not maintainable because it seeks an amendment to the original written statement. However, execution of the Deed of Relinquishment at a subsequent stage (recently, after the impugned order) is not disputed. It is contended by the Respondent that this Deed was executed in terms of the Consent Terms dated 2nd December 2016 filed in Regular Civil Suit No.86/2012/C against the brother of Appellant No.1 and Respondent No.1 and relates only to certain properties. The Appellants were not parties to that Regular Civil Suit. The 1st Respondent claims that the execution of the Relinquishment Deed is in relation to the properties in a particular village, but not in relation to the properties in Bicholim Taluka which are the subject matter of the Second Appeal.

3. Having regard to these rival contentions, I propose to allow this civil application. This will be subject to certain protections that are necessary to balance the rights of both sides.

4. The civil application is made absolute and the amendment to the written statement is permitted by adding paragraph 1(d) and paragraph 12 of the written statement. Having regard to what is stated in the reply to this civil application, I do not believe that it is necessary to send the matter back to the Trial Court. I will allow both sides to address this Court fully on the question relating to the

interpretation of the Relinquishment Deed, as also on the question of its effect and impact on the Inventory Proceedings. There can be no question of the Plaintiffs (present Respondents) ever leading evidence contrary to the express terms of the Deed of Relinquishment or of them disowning the Deed of Relinquishment. Thus with the amendment as sought permitted, the record before this Court would be complete. The Second Appeal can, therefore, be admitted on some of the questions of law already set out and on an additional one that arises from the Deed of Relinquishment.

5. Hence, admit on the following substantial questions of law:

- (a) Whether the Plaintiffs could have maintained a suit for cancellation of the allotment made in the Inventory Proceedings instituted upon the death of the original estate leaver without seeking declaration as to their title to the suit property when such tile was seriously disputed by the Defendants and was followed by Inventory Proceedings in which their enjoyment or their share in the suit property was not acknowledged and therefore squarely disputed?
- (b) Whether the suit for cancellation of the allotment made in the inventory proceedings was barred by limitation and the finding to the contrary rendered by the Courts below is perverse having been based on patent misreading and mis-appreciation of the evidence on record by the Courts below?
- (c) Whether the finding recorded by the Courts below to the effect that the allotment made in the Inventory Proceedings was vitiated for non-joinder of the Plaintiffs to the said proceedings with perverse

having been rendered by ignoring the deed of release dated 3rd July 1985 (Exh.56) on an erroneous assumption that such Deed of Release was never produced on record?

- (d) Whether in the light of the Deed of Relinquishment dated 8th December 2016 the Respondents' plaint was at all maintainable?

6. Mr. Kamat waives service on behalf of the Respondents.

G. S. PATEL J.