

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 73 OF 2015

1. Mrs. Isha Sameer Dessai
Alias Nima Khapru Fol Dessai
Age 45 years,
Wife of late Sameer F. Dessai,
Occupation-business, Indian National
Resident of House No. 437/B,
Shantanand, Shanti Nagar,
Aquem, Margao, Goa.

... Appellant

Versus

1. Dr. Fondo Shivram Dessai,
Age 75 years, son of Shivram Dessai
(expired) since deceased represented
by his legal heirs.
 - 1(a) Dr. Sandeep Dessai
major in age,
son of late Fondu Dessai
and his wife
 - 1(b) Dr. Meenakshi Sandeep Dessai,
Major in age,
Wife of Sandeep Dessai.
 - 1(c) Mr. Amit Fondu Dessai,
major in age,
son of late Fondu Dessai
and his wife
 - 1(d) Mrs. Ashwini Amit Dessai,
Wife of Amit F. Dessai,
All residents of 22, Sada Sundar,
Keluskar Marg, Shivaji Park,
Mumbai – 400 028
2. Smt. Sarladevi F. Dessai,
Wife of late Fondu Dessai

Resident of 22, Sada Sundar,
Keluskar Marg, Shivaji Park,
Mumbai – 400 028.

... **Respondents**

Mr. Abhay Nachinolkar, Advocate for the Appellant.

Mr. Sudesh Usgaonkar, Advocate with Ms. Marie Rosette Pereira, Advocate for the Respondents.

Coram :- F. M. REIS, J
Date : 21st March, 2017.

ORAL JUDGMENT:

Heard Shri. Abhay Nachinolkar, learned Counsel appearing for the Appellant and Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents.

2. The above Appeal came to be admitted by an Order dated 16.09.2015 on the following substantial questions of law:

- (a) Whether the widow of a son, who has predeceased his parents, is an heir of her in-laws and, consequently, is entitled to the inheritance of the in-laws ?
- (b) Whether upon the death of the original plaintiff no. 1 (the father in law of appellant), the appellant is entitled to succeed, by way of representation in terms of Article 1980 of the applicable law of Succession, to the estate of the original plaintiff no. 1 ?

3. Mr. Nachinolkar, learned Counsel appearing for the Appellant submits that though the husband of the Appellant had predeceased the parents-in-law, the right of the widow to claim the properties which otherwise would devolve

upon her husband cannot be defeated at the instance of the Respondents. The learned Counsel further pointed out that the widow of the son of the Respondents is entitled to the rights which would accrue to her husband if he was otherwise living. The learned Counsel has thereafter taken me through the Judgment passed by the Courts below to point out that both the Courts have erroneously considered the relevant provisions of law to come to the conclusion that the Appellants have no right to the subject house. The learned Counsel further submits that in any event under Article 1980 of the Portuguese Civil Code, the widow has got a right of representation to the assets which would otherwise devolve upon her deceased husband after the death of the father-in-law. The learned Counsel has thereafter taken me through the said provisions of Article 1980 of the Portuguese Civil Code which specifies that right would devolve upon any relative of the deceased as if the person was living which would include the Appellant herein. The learned Counsel, as such, pointed out that the Impugned Judgment deserves to be quashed and set aside.

4. On the other hand, Shri S. Usgaonkar, the learned Counsel appearing for the Respondents submits that the admitted position is that the property belongs to the parents. The learned Counsel further pointed out that the Appellant has no right to the subject property as, admittedly, no right therein had accrued to her deceased husband. The learned Counsel further submits that, admittedly,

the husband of the Respondent no. 1 had predeceased her parents-in-law, and, as such, no rights in the subject property was part of the moiety belonging to the couple. The learned Counsel as such pointed out that the question of relying on the Article 1980 of the PCC is totally misconceived as admittedly, the Appellant is not a heir of the parents-in-law.

5. I have considered the submissions of the learned Counsel and I have also gone through the records.

6. As far as the first substantial question of law is concerned, by Judgment passed today in Second Appeal No. 41 of 2013, I have taken the view that the widow is not the heir of parents-in-law for the reasons stated therein. The first substantial question of law is accordingly answered against the Appellant herein.

7. As far as the second substantial question of law is concerned, Article 1980 of the Portuguese Civil Code reads thus:

Article 1980:
(Right of representation)

There is right of representation, when the law designates certain relatives of a deceased person to succeed to all the rights to which such person would have succeeded, if living.

8. On going through the said provisions, to claim a right of representation

the Appellant has to be entitled to succeed in the inheritance of the deceased. In the present case, the Appellant is not a legal heir of the parents-in-law. Apart from that, no right in the subject property has entered the moiety of the couple during the subsistence of the marriage. The contention of Mr. Nachinolkar, the learned Counsel appearing for the Appellant that the moiety would extend even to the properties which the husband would otherwise be entitled to inherit cannot be accepted nor has any basis under the relevant provisions of law. Even during the lifetime of the son the wife of the son is not the legal heir of the parents-in-law. In such circumstances, I find that the contention that the Appellant is entitled for a right of representation under Article 1980 of the Portuguese Civil Code cannot be accepted.

9. Apart from that, it is admitted position that there is no ground raised by the Appellant even before the learned Trial Judge nor before the Appellate Court. There is no foundation laid by the Appellant either in the pleadings nor in the submissions before the lower Courts to raise such contention in the present Appeal. This Court in a Second Appeal cannot examine a case which was not raised in the pleadings or submissions before the Courts below. As such, I find that the second substantial question of law will not arise in the present Appeal. In any event, the Appellant is not a legal heir in terms of Article 1980 of the Portuguese Civil Code.

10. In view of the above, I find no merits in the above Appeal which stands accordingly rejected.

F. M. REIS, J.

msr