

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 63 OF 2015.

1. Mrs. Beulah Dias,
Wife of William Dias,
51 years of age, married,
Indian National and
her husband
2. Mr. William Dias, Son of
late Ethelbert Dias,
49 years of age,
married, Indian national,
Both residents of Flat No.A,
1st Floor, Orion Estate,
General Bernard Guedes
Road, Panaji-Goa.
3. Mrs. Maria Cleofa Delia Lobo
alias Cleo Lobo, Age 88 years,
C/o Convent of St. John of God,
Old Goa. Represented through
her attorney The appellant
No.1 Mrs. Beulah Dias. ... Appellants.

Versus

Mr. Roque Valeriano Lobo,
Son of late Anthony Xavier
Lobo, 82 years of age,
resident of Rua Rodrigo Alvares,
Lote 12A-2D,8600-315, Portugal. ... Respondent.

Mr. Nigel Costa Frias, Advocate for the appellants.
None for the respondent.

Coram:-PRITHVIRAJ K. CHAVAN,J.
Reserved on :-10th July, 2017.
Pronounced on:-24th July, 2017.

JUDGMENT :

Heard Mr. Nigel Costa Frias, learned Counsel for the

appellants.

2. Admit.

3. By the impugned order dated 12.09.2013 passed in Inventory Proceedings No.453/2012/F, the learned Civil Judge, Junior Division "F" Court Mapusa, had rejected the objection on behalf of the interested parties No.4(iv) and 4(v) against which the present appeal is preferred.

4. Brief facts can be stated as follows:-

The respondent had filed an application for commencement of the Inventory Proceedings in terms of Article 1319 of the Portuguese Civil Code(For short "PCC") on the demise of Mr. Anthony Xavier Lobo and his wife Dorothy Lobo, expired on 29.3.1946 and 16.09.1990 respectively. The respondent was appointed as an Cabeça de Casal in terms of Article 2072 of the PCC. The said Cabeça de Casal declared the names of all the legal heirs with their spouses wherein the appellants were also declared as the legal heirs and the inheritors of the deceased Anthony Lobo and his wife. After obtaining the copies of the application for commencement of the Inventory Proceedings alongwith the death certificate and the copy of the statement on oath, the appellants raised objections vide their representation dated 18.2.2013, by making a prayer to remove

Cabeca de Casal from the post of Administrator and instead, appoint appellant no.1 as new Cabeca de Casal of the assets of the deceased Anthony Lobo and his wife. The appellants raised an objection on the ground that the assets were under valued. The objections raised by the appellants were refuted by the respondent. However, the learned Judge by the impugned order overlooked the objection dated 18.2.2013 filed by the appellants and therefore, they approached this Court.

5. The main grounds on which the impugned order has been assailed are that the learned Judge failed to consider the facts that the respondent who was appointed as an administrator to administer the estate of the deceased was not the resident of Goa but was permanent resident of Rua Rodrigo Alvares, Lote 12 A-2D, 8600-315 in Portugal. The respondent had nowhere disclosed his nationality in his application for commencement of Inventory Proceedings in terms of Section 1391 of the PCC. He had not identified himself properly as far as his nationality is concerned which had led to ambiguity. The impugned order is also assailed on the ground that the learned Judge had failed to consider the fact that the respondent had never looked over the property in the light of the fact that he is resident of Portugal who had left Goa 40 years ago. The learned Judge overlooked the fact that inheritance assets were always looked after by sister of the respondent Mrs. Maria Cleofa Delia Lobo alias Cleo Lobo and the

brother of the respondent Mr. Diago Lobo who is also father/father in law of the appellants during his life time and same were taken care of by the appellants nos.1 and 3. The learned Judge has also failed to consider the fact that appellant no.1 alongwith her aunt appellant no.3 and her uncle Mr. Albert Lobo are the only heirs of the deceased residing in the State of Goa. The learned Judge has also failed to observe that the respondent was neither residing with the deceased at the time of their death nor he is domicile of the State of Goa, therefore, disqualified from acting as an Administrator of the assets of the deceased. As a resident of Portugal the respondent would not be able to effectively perform the task of the administration of the assets of the deceased and therefore, his appointment as Cabeça de Casal would seriously prejudice the interest of the appellants including co-heirs.

6. I have heard Shri Nigel Costa Frias, learned Counsel for the appellants.

7. The learned Counsel for the appellants has rightly raised grounds in the memo of appeal, more particularly, the fact that the respondent who has been proved to be a permanent resident of Portugal would not be in a position to effectively perform his duties of administration of the assets of the deceased in the capacity as Cabeça de Casal which would indeed seriously prejudice the interest

not only of the appellants but also of the co-heirs. The learned Trial Court has failed to hold proper inquiry in the light of the Article 2070 of the PCC which provides that the assets of the deceased have to be administered by those heirs who are in possession of the said property.

8. Since the appellants have been maintaining the properties left by the deceased being beneficiary heirs and who are in effective possession ought to have been taken into consideration by conducting a due inquiry to that effect.

9. The learned counsel has drawn my attention to an oral order dated 1.12.2011 passed by this Court (Coram: F. M. Reis,J) **in Appeal from Order No.46/2011 (Maria Sales e Dias Vs Mr. Orlando Fatima Sales)**. So far as the possession of the appellants in respect of the properties of the estate leaver is concerned, the learned Judge ought to have held an inquiry to decide as regard the possession of the properties of the estate leaver and whether the appellants are entitled in law to be appointed as Cabeça de Casal on the basis of the such alleged possession. No doubt, the appellants would have to establish the lawful possession. The ratio laid down in said judgment would be squarely applicable to the present set of facts. It appears that the learned Judge has failed to exercise its jurisdiction in arriving at a proper conclusion. The impugned order,

therefore, deserves to be quashed and set aside. The learned Judge is directed to decide the claim of the appellants in the light of the observations made herein above as to whether appellant no.1 could be appointed as Cabeça de Casal in terms of Article 2070 of the PCC. As such, I pass the following:-

ORDER

- i. The appeal is partly allowed.
- ii. The impugned order dated 12.09.2013 is quashed and set aside.
- iii. The learned Judge shall decide claim of the appellants as regards removal of a Cabeça de Casal from the post of the administrator and appointment of appellant no.1 as new a Cabeça de Casal in terms of Article 2070 of the PCC after holding due inquiry and hearing all the parties in accordance with law.
- iv. Appeal stands disposed of accordingly with no order as to costs.

PRITHVIRAJ K. CHAVAN,J.

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