

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.35 OF 2017

Filomena Fernandes & Ors	 Applicants
Versus	
Rosa Quiteria Fernandes & Ors	 Respondents

Mr. V. Menezes, Advocate for the Applicants.

Coram : N.M. Jamdar, J.

Date : 23 November 2017.

P.C.:

The Applicants are aggrieved by the order passed by the learned Senior Civil Judge, Margao, dated 29 July 2017 disposing of the preliminary issue raised by the Applicants-Defendants that the suit is barred under Section 11 of the Civil Procedure Code.

2. It appears that the Inventory Proceedings took place between the parties earlier which culminated into a final order. Subsequently, the present suit came to be filed by the Respondents in the Court of Senior Civil Judge, Margao. The Applicants sought to raise an issue of *res judicata* as a preliminary issue which application was rejected by the learned Civil Judge on 31 July 2010 which order

was confirmed by the District Court on 17 January 2013. The Writ Petition filed by the Applicants bearing No.413 of 2013, was disposed of on 7 October 2013 directing the learned Civil Judge to decide the issue of *res judicata* before the other issues are tried. Pursuant to which the issue was considered by the learned Civil Judge and the impugned order came to be passed.

3. The learned counsel for the Applicants sought to contend that assuming Section 11 of the Civil Procedure Code does not strictly apply the principles behind Section 11 of the Civil Procedure Code will always apply as earlier Inventory Proceedings were culminated where the parties led evidence.

4. However, the present application does not proceed on those lines. The Applicants have confined their contention to Section 11 which refers to a Suit. In strict sense, the Inventory Proceedings are not a Suit. There is no error committed by the learned Judge in taking the said view.

5. However, the question still remains whether the arguments advanced by the learned counsel for the Applicants in this Civil Revision Application has merit or not. The argument being that the principles behind Section 11 of the Civil Procedure Code should

apply even to the Inventory Proceedings which are contested and tried like a suit. This argument being a legal argument can always be advanced by the Applicants at the time of hearing of the suit. Considering the fact that the suit is pending since the year 2010, I am not inclined to stay the trial of the suit as the Applicants can always raise the legal issue mentioned above at the time of the hearing as stated, to be considered on its own merits.

6. With these observations, the Revision Application is disposed of.

N.M. Jamdar, J.