

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.3 OF 2017**

Mr. Ratnadeep Narayan Morajkar,  
Son of Narayan Morajkar,  
Major in age, Bank Employee,  
C/o Vina Vino Mandrekar,  
St. Sebastian Apartments,  
Gr. Fl., Khorlim, Mapusa,  
Bardez, Goa 403 517.

.... Petitioner

V/s

Mrs. Reshma Ratnadeep Marajkar  
Age 46 years, housewife,  
Residing at house no.231,  
Near Milagres Church,  
Mapusa, Bardez, Goa.

.... Respondent

Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar, Advocate  
for the Petitioner.

Shri J.J. Mulgaonkar, Advocate for the Respondent.

**CORAM : F.M. REIS, J.**

**DATE : 30<sup>th</sup> MARCH, 2017**

**ORAL JUDGMENT :**

Heard Shri Sudin Usgaonkar, the learned Senior Counsel  
appearing for the petitioner and Shri J.J. Mulgaonkar, the learned  
Counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel.

The learned Counsel appearing for the respondent waives service.

3. A short point for consideration in the above Writ Petition is whether the learned Trial Judge by order dated 4/05/2016 was justified to decide the first point for determination against the petitioner that the petitioner has failed to establish that the subject property surveyed under no.215/2 of village Dhargalim of Pernem Taluka does not belong to the couple. The challenge is also to the judgment passed by the Lower Appellate Court dated 23/09/2016 whereby the order passed by the Trial Judge came to be upheld.

4. Shri Sudin Usgaonkar, the learned Senior Counsel appearing for the petitioner has submitted that it is not in dispute that the subject property was purchased in the name of the respondent during the subsistence of the marriage. The learned Senior Counsel further submits that in view of matrimonial dispute the marriage between the petitioner and the respondent has been dissolved by divorce and thereafter inventory proceedings were initiated to partition the property of the couple. The learned Senior Counsel further submits that as the said property was not entrusted the petitioner filed objections to the list of assets filed by the respondent to the effect that the said property also forms part of the property of the couple. It is further pointed out that the respondent has raised objections inter alia contending that the property

has already been sold with the consent of the petitioner herein. The learned Trial Judge by the impugned order dated 4/05/2016 after holding an inquiry has come to the conclusion that as the petitioner has not answered question in the cross-examination with regard to the existence of such property and about the consent allegedly obtained to execute such Sale Deed, the petitioner had failed to establish that such property belonged to the couple. The learned Lower Appellate Court has endorsed the finding of the learned Trial Court.

5. Shri J.J. Mulgaonkar, the learned Counsel appearing for the respondent has supported the impugned orders. The learned Counsel further points out that the petitioner has failed to discharge the burden to establish that the said property forms part of the estate of the couple. The learned Counsel further pointed out that as the petitioner has failed to establish that the property still stands in the name of the respondent, the Courts below were justified to pass the impugned order.

6. Upon hearing the learned Counsel for the respective parties, it is not in dispute that the Sale Deed pursuant to which the property was purchased in the name of the respondent has been duly produced in the inquiry by the petitioner. It is not disputed that the respondent has failed

to produce the copy of the Sale Deed nor any certified copy of the Sale Deed executed in respect of such property to any third party. In such circumstances, the failure on the part of the respondent to produce the Sale Deed is itself fatal to the contention of the respondent in the subject injury that such Sale Deed was executed with to the consent of the petitioner. The Courts below have erroneously rejected the objections filed by the petitioner losing sight of the fact that the Sale Deed allegedly executed by the respondent was not part of the record and the non production thereof would justify the Courts to take an adverse interference against the respondent. Apart from that, the law recognises the manner in which the consent has to be obtained of the couple to dispose off immovable property. Admittedly, no such consent has been produced on record to substantiate the contention of the respondent that consent of the petitioner was obtained at the time of the alleged execution of the Sale Deed. In such circumstances, I find that both the Courts below have exercised jurisdiction erroneously and not in accordance with law which calls for interference of this Court under Article 227 of the Constitution. Apart from that, no purchaser or third party has intervened in the such property to claim any right to the said property.

7. In view of the above the following order is passed:

**ORDER**

- (i) The impugned orders dated 4/05/2016 and 23/09/2016 are quashed and set aside.
- (ii) The judgment dated 23/09/2016 passed by the Lower Appellate Court to the extent it decides that the subject property under survey no.215/2 is not part of the property of the couple is quashed and set aside.
- (iii) The learned Court shall enlist the subject property in the list of assets filed by the Cabeça de Casal.
- (iv) Rule is made absolute in the above terms.

**F.M. REIS, J.**

NH/-