IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 15 OF 2018

Manuel Piedade Filipe Antonio Sequeira
@ Manuel Sequeira & Another ... Appellants
Versus
Joseph Venancio Francis Sequeira @
Joseph V. Sequeira & 31 Others ... Respondents

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Shri Peter Anthony Fernandes, Advocate for the Appellants.

Shri John Abreu Lobo, Advocate for the Respondent Nos. 1 and 2.

Shri Bhargav M. Khandeparkar, Advocate for the Respondent Nos. 22 to 30.

CORAM : C.V. BHADANG, J.
Reserved on : 8th OCTOBER, 2018
Pronounced on : 23rd OCTOBER, 2018

ORDER:

This is the fourth round of litigation between the parties before this Court, wherein the appellants are challenging an order, arising out of an inventory proceedings of the year 2003, which are supposed to be summary proceedings of a non-adversarial nature.

2. The respondent no. 22 filed Inventory Proceedings No. 35/2003/A, for partition of the estate of the deceased Salvador Sequeira and his wife Maria Fernandes. The appellant no. 1, is

the Head of the Family (HoF) appointed as such on 06.10.2008, while the appellant no. 2 is his wife. The record shows that on more than one occasion, the list of assets was revised. The first valuation report was filed somewhere on 07.04.2011 and the second valuation report is filed on 02.11.2011.

3. The appellant no. 1 claims to be a legatee/donee from the estate leaver, on the basis of a gift deed dated 13.05.1968, executed by Salvador Sequeira, in favour of the appellant no. 1 and a Will dated 18.09.1989 by Salvador Sequeira and his wife Maria Fernandes.

4. By an order dated 14.11.2011, the gift deed dated 13.05.1968 was declared as null and void, which order was set aside by this Court on 12.01.2012 and the matter was remanded back. On 28.05.2012, the gift deed was again declared to be null and void, which was again set aside by this Court on 06.02.2013. Lastly, by an order dated 30.09.2013, the Inventory Court held that the gift was never accepted and acted upon and consequently, has to be treated "as a sham document and therefore, a nullity". That order has been upheld by this Court on 08.10.2014 in Appeal From Order No. 78/2013.

5. On 23.12.2016, the interested party Shri Rovino Rodrigues (respondent no. 29) and Shri Conrad Coutinho (respondent no. 24) filed separate memos at Exhibits 444 and 445 respectively. The respondent no. 29 offered Re.1/- in excess of the valuation of each of the properties described under item nos. 4, 5, 6, 7, 8 and 9. Vide similar memo the respondent no. 24 offered Re.1/- in excess of the value given to each of the properties described under item nos. 4, 5, 6, 7, 8(b), 8(g), 8(h) and 9. The appellant no. 1 filed an objection (Exhibit-443) to both these memos, objecting to the licitation/auction as applied by the interested parties vide Exhibit nos. 444 and 445.

6. The Inventory Court by the impugned order dated 12.01.2018 has held that all the properties, except gifted by the estate leavers to their grandchildren, cannot be exempted from collation, since none of these documents make a mention that the same were in respect of the disposal quota of the deceased estate leavers. The Inventory Court also found that the licitation was ordered on 30.12.2016 and an application Exhibit 454, filed by the HoF for review of the said order was already rejected on 15.03.2017 and therefore, the appellants cannot reagitate the said point by stalling auction ordered by the Court. The Inventory Court has found that since the licitation is already

ordered, the said bid of respondent nos. 24 and 29 will be taken into consideration and the Hof, as well as the other interested parties will get a chance to "bid further in the auction". The Inventory Court has also found that the auction shall be held after verifying whether, the properties are divisible or not. It is this order, which is subject matter of challenge in this appeal, filed under Section 451(2) of the Goa Succession Special Notories and Inventory Proceedings Act, 2012 (Act, for short).

7. I have heard Shri Fernandes, the learned Counsel for the appellants. Shri Lobo, the learned Counsel appearing for the respondent nos. 1 and 2 and Shri Khandeparkar, the learned Counsel for the respondent nos. 22 to 30. Perused record.

8. It is contended by the learned Counsel for the appellants that the order dated 30.12.2016 (which is a roznama order), directing licitation was passed in the absence of the HoF or his Advocate and thus would be unsustainable. Reliance in this regard is placed on the decision of this Court in the case of **Savitribai Parkar Vs. Devendra Parkar, 1999(1) Goa L.T. 454**.

It is submitted that an order passed in roznama, cannot be said to be an "order", as such. For this purpose, the learned Counsel for the appellants has placed reliance on the decision of this Court in the case of **Smt. Ratnamala Vs. Sujata, 2017 ALL M.R. (Cri) 4748**.

It is next submitted that the Inventory Court could not have directed licitation/auction, without deciding the application Exhibits 444 and 445 and the objection raised thereto by the appellants vide Exhibit 443. It is submitted that the Will cannot be said to be an “inofficious Will”, within the meaning of Section 2(i) of the Act. It is thus submitted that the Inventory Court was in error in dismissing the objection Exhibit 443, filed by the appellants. He, therefore, submits that the impugned order be set aside and the application Exhibits 444 and 445 be dismissed.

9. The learned Counsel for the respondents have supported the impugned order. It is submitted that the appellants have not challenged the order dated 15.03.2017, refusing to review the order dated 30.12.2016. It is submitted that already a second valuation is made and the Trial Court was justified in holding that the documents do not make a mention, that the same were in respect of the disposal quota of the deceased estate leavers. It is submitted that the appellants would get an opportunity to bid alongwith the others and there is no prejudice caused to the appellants.

10. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out.

11. As noticed earlier, the list of assets were revised on more than one occasion and the second valuation is also made way back on 02.11.2011. On their own saying, the order dated 30.09.2013, passed by the Inventory Court, holding that the gift deed dated 13.05.1968 was never accepted and acted upon and consequently has to be treated as a sham document and therefore, a nullity has been affirmed by this Court on 08.10.2014. The Inventory Court is right in concluding that the document on which the appellants placed reliance did not show that they are in respect of the disposal quota of the estate leavers.

12. It would be significant to note that a similar joint memo was filed by the respondent nos. 24 and 29 on 03.10.2011 to which, the HoF had filed objection on 15.10.2011. It is after this that the second valuation was ordered on 02.11.2011. Section 427 of the Act pertains to the licitation of the gifted assets, while Section 428 of the Act relates to the licitation of

bequeathed assets. It can be seen that under sub-section 1 of Section 428 of the Act, where any party applies that the bequeathed assets be put to licitation, the legatee shall be notified to give its say, within three days and as per sub-section 2 of Section 428 of the Act, if the latter objects, no licitation shall be held, but it is lawful to the heirs to apply for second valuation of the assets. As noticed earlier, in the year 2011, the respondent nos. 24 and 29 had jointly filed a similar memo, which was objected to and after which, the second valuation has been ordered and obtained.

13. The order dated 30.12.2016, passed by the Inventory Court (which is referred to as a "roznama order", by the parties), was sought to be reviewed (vide application Exhibit 454) at the instance of the appellant, which application was dismissed by the Trial Court on 15.03.2017. The appellants did not carry the said matter any further. There is no challenge to the order dated 30.12.2016 or the order dated 15.03.2017, raised in this petition. On 24.04.2018, this Court had issued notice, keeping the issue of the absence of challenge to the order rejecting the application for review open. There is no reason forthcoming as to why the appellants did not challenge the said orders.

14. Reliance placed on behalf of the appellants on the decision in the case of **Ratnamala** (supra) to my mind is misplaced. In that case, there was no specific order passed issuing process in a criminal case against the accused and in that view of the matter, it was found that the order dated 25.06.2008 (which order was a roznama order) is a reflection of happenings in the Court. In my considered view, the case of **Ratnamala** (supra) turned on its own facts.

The decision in the case of **Savitribai Parkar** (supra) cannot come to the aid of the appellants as in that case, the licitation, was held to be without proper notice to the parties on the assumption that the party was represented by a particular Advocate, when in fact, the Advocate was not representing such party. It was in these circumstances that this Court set aside the licitation alongwith all the proceedings held in the inventory.

In the present case, licitation is yet to be held and as held by the Inventory Court, the HoF and the other interested parties, will get an opportunity to bid at the auction.

15. I have also gone through the application Exhibit 454 for review of the order dated 30.12.2016. The review is *inter alia* sought on the basis of "a draft mode of partition", which was submitted on 19.08.2016, the details of which are set out in

paras 9 and 10 of the application. The Inventory Court in this regard has found that admittedly, the meeting of the parties was convened earlier and the parties could not arrive at an understanding in respect of the partition of the assets. Thus, the impugned order does not suffer from any infirmity. In the result, the appeal is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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