

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 590 OF 2018**

MAXMILLIAN VICTOR ALVARO
RODRIGUES, REP. BY POA & ANR. ... PETITIONERS

Versus

BYRON CHARLES KEVIN RODRIGUES
@ BYRON RODRIGUES & 7 ORS. ... RESPONDENTS

Shri Gajendra Usgaonkar, Advocate for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 20th JUNE 2018

ORAL ORDER:

Heard Shri Usgaonkar, the learned Counsel for the petitioners, for some time.

2. The petitioners are challenging the order dated 27.04.2018, passed by the Inventory Court in Regular Inventory Proceedings No. 201/2014/F, by which, the application (Exhibit-17/D), filed by the petitioners (who are party nos. 13 and 14, before the Inventory Court), has been rejected. The petitioners have unsuccessfully challenged the said order before the learned District Court, in Miscellaneous Civil Appeal No. 41/2016, which has been dismissed on 27.02.2018.

3. The inventory proceedings are filed on the death of Agnelo Custodio Manuel Rodrigues, who expired on 22.12.1969 and his wife Maria Armezinda Piedade Xaverina Dias e Rodrigues, who expired on 14.06.1979. Agnelo Rodrigues and Maria Dias e Rodrigues, happen to be the grandparents of the petitioners. The inventory proceedings have been initiated by the respondent no. 1/who is the Cabeça de Casal.

4. The petitioners had filed an objection (Exhibit-17/D), on the ground that in view of Article 2017 of the Portuguese Civil Code, 1867 (Code of 1867, for short) read with Article 1371 of the Portuguese Civil Procedure Code, 1939 (Code of 1939, for short), the inventory proceedings filed beyond the period of thirty years, from the death of inventario, is not maintainable.

5. Both the Courts below have concurrently found that there is nothing in Article 2017 of the Code of 1867 to say that inventory proceedings cannot be filed, beyond the period of thirty years. Insofar as Article 1371 of the Code of 1939 is concerned, it postulates closure of the inventory proceedings, in view of the declaration by the head of the family. Insofar as the said article is concerned, the Courts below have found and rightly so, that the head of the family had not filed any such

declaration and therefore, Article 2017 of the Code of 1867, cannot be attracted.

6. Shri Usgaonkar, the learned Counsel for the petitioners has submitted that after the death of inventario, the heirs were in possession of their respective portions as owners thereof and the father of the petitioner no. 1 had perfected the title on the said property. The learned District Judge has found that the said claim has to be raised in the inventory proceedings, which has to be examined by the Court. *Prima facie*, it cannot be accepted that one of the co-owners/co-sharers can claim adverse possession, inasmuch as, the possession by one co-sharer is always on behalf of the other co-sharers, unless there is an express ouster, which is not claimed, at least, at this stage.

7. I have carefully gone through the orders passed by the learned Inventory Court and the learned District Judge and I do not find that they suffer from any infirmity. Accordingly, the petition is dismissed.

C.V. BHADANG, J.

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