

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 8 OF 2016**

Mr. Cosme Rumaldo Silveira,
Son of late Lamartine A. Silveira,
aged 59 years, business,
r/o Opp. Officers Colony,
Zuarinagar, Sancoale,
Dabolim-Goa.

.... Appellant

V e r s u s

1. Mr. Abhijit Jayant Naik,
Alias Mr. Bablo alias Abhijit
Naik, age 40 years, in service.
2. Mrs. Pranita Abhijit Naik,
age 38 years, housewife,
Both residents of H. No.77,
Bablo Naik House,
Nr. Junta House,
Swami Vivekananda Road,
Panaji, Goa.
3. Mrs. Anagha Viraj Mandrekar,
age 38 years, housewife,
4. Mr. Viraj Shrikant Mandrekar,
age 41 years, in service,
Both residents of C/o Manish Nehete,
C-10, 10th floor,
C-Wing, Siddhivinayak Tower,
Runawal Nagar,
Nr. Vikas Complex,
Thane (W), Mumbai
5. Mr. Kaustubh Jayant Naik,
age 36 years, in service.
6. Mrs. Sapna Kaustubh Naik,

age 33 years, housewife,
Both residents of H. No.77,
Bablo Naik House,
Nr. Junta House,
Swami Vivekananda Road,
Panaji, Goa.

7. Dr. (Mrs.) Sarla Shirke,
age 71 years, Medical Practitioner

8. Mr. Satischandra Vasant Shirke,
age 72 years, retired,
Both residents of Flat no.B 32-TI,
Milroc Retreat,
Ribandar, Goa.

..... Respondents

Adv. Valmiki Menezes with Adv. A. Shirodkar for the Appellant.

Adv. S. Adelar for Respondents no.1 and 2.

Adv. Amey Kakodkar for Respondents no.4, 5 and 6.

Adv. Vallabh Pangam for Respondent no.7.

Coram:- C. V. BHADANG, J.

Date:- 30th August 2018.

Oral Order:

The appellant is the original intervener who had sought intervention in the inventory proceedings bearing no. 55/1989/A. The application for intervention filed by the appellant purportedly under Article 1375 of the Portuguese Civil Procedure Code came to be dismissed by the Inventory Court by the impugned order dated 6/11/2015.

2. The brief facts are that out of several properties which are involved in the inventory proceedings, the appellant has purchased 11/12th share from out

of the property at item no.15 by a registered sale deed dated 10/10/2012. Indisputably the interested parties have filed Special Civil suit no.10/2014/A before the learned Senior Civil Judge at Ponda inter alia seeking a declaration that the sale deed dated 10/10/2012 as also the agreement of sale dated 27/4/2012 executed in favour of the petitioner is null and void. Be that as it may, the petitioner sought intervention in the inventory proceedings on the ground that he is the purchaser of the 11/12th share from out of the property at item no.15 which is subject matter of the inventory proceedings.

3. The learned trial court in para 9 of the impugned order has observed that by the intervention application the appellant was seeking to bid for all the items in the inventory which appears to be not correct. It is specifically submitted by Shri Menezes, the learned counsel for the appellants that the petitioner cannot and has no intention to bid for the rest of the property except the property at item no.15.

4. Shri Kakodkar, the learned counsel appearing for the respondents no.3 to 6 on the basis of section 430 of the Goa Succession Special Notaries and Inventory Proceeding Act, 2012 has submitted that even otherwise a purchaser cannot bid at the auction. It is only the interested parties who could bid along with donees and the legatees.

5. Indisputably the Act came into force in December 2016. The learned counsel for the parties have brought to my notice the provisions of section 395 and 397 of the Act. According to Shri Menezes, the learned counsel for the appellants, the provisions of section 395 are wide enough to cover any person who may apply for being impleaded as an interested party and it would include a vendee of a share in the undivided property which is subject matter of inheritance.

6. On the contrary, it is submitted by the learned counsel for the respondent that for sub section (2) of section 395 to apply to the vendee should be the purchaser of the of the entire undivided inheritance and not a part of it, as in the present case. To put it otherwise, the contention is that a stranger who has purchased a share in respect of the entire undivided inheritance of a co-heir or a moiety holder can only seek impleadment and not a person who has purchased a share in a part of the undivided inheritance.

7. On hearing the learned counsel for the parties and on perusal of the impugned order, I find that all these aspects would be better considered by the learned trial court in the first instance. As noticed earlier, one of the reasons which weighed with the learned trial court to refuse intervention was that according to the learned trial court, the applicant was seeking to bid for

all the items in the inventory proceedings, which is not correct. Considering the overall circumstances and further having regard to the fact that subsequent to the passing of the impugned order the provisions of the Act have come into force (which according to the parties would apply to the pending inventory proceedings) it would be appropriate that the application is remitted back to the inventory court for deciding it afresh in accordance with law.

8. In such circumstances the appeal is partly allowed. The impugned order is hereby set aside. The application Exhibit 85 is restored back to the file of the inventory court which shall decide the said application afresh after hearing the parties and in accordance with law. Rival contentions of the parties on merit are left open. In the circumstances there shall be no order as to costs. The Inventory Court shall decide the application as expeditiously as possible and preferably within a period of three months from the receipt hereof.

C. V. BHADANG, J.

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