

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 194 OF 2019**

Mr. Conceicao Dias,
Major of age,
Son of late Santana Dias,
Resident at H. No.506, Fondegall,
Curtorim, Salcete, Goa.

.... Petitioner

V e r s u s

1. Mrs. Terezinha Dias,
aged 51 years,
Housewife and her husband,

2. Francisco Xavier D'Costa,
aged 52 years,

Both residents at H. No.593,
Igorje Waddo,
Sao Jose de Areal,
Salcete, Goa.

..... Respondents

Mr. S. Usgaonkar, Senior Advocate with Adv. Palyekar Vinita
Vishram for the Petitioner.

Mr. M. S. Joshi, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 11th April 2019.

Oral Judgment:

Rule, made returnable forthwith. Mr. Joshi, the learned
counsel waives service on behalf of the respondents. Heard finally
by consent of parties.

2. By this petition, the petitioner, who is the Head of the Family is challenging the order dated 6/12/2018 passed by the learned District Judge, at Margao in Miscellaneous Civil Appeal No.4/2018. By the impugned judgment, the learned District Judge has confirmed the order dated 7/11/2017 passed by the Inventory Court below application (Exhibit D-47) in Regular Inventory Proceedings No.186/2010/G. By the said order, the Inventory Court has allowed the application (Exhibit D-47) filed by the respondents for their impleadment as interested parties, on the basis of a Will dated 12/2/2016 executed by Milgraes Dias.

3. The only contention raised on behalf of the petitioner is that the application for impleadment could not have been allowed without an inquiry. For this purpose reliance is placed by the learned Senior Counsel for the petitioner on section 395 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (Act, for short).

4. It is submitted that there is a previous Will dated 14/2/2014 which is executed with the help of an interpreter both in Konkani as well as English languages. It is pointed out that the subsequent

Will dated 12/2/2016 is recorded only in English, when the testator was not knowing English. It is submitted that both the Courts below have relied upon the solitary circumstance, of the Will being signed by the testator in English and, therefore, an inference is drawn that the testator was knowing English, which finding is not acceptable. He, therefore, submits that the Inventory Court may be directed to decide the application after inquiry, in accordance with Section 395 of the said Act, which corresponds to Article 1375 of the Portuguese Civil Procedure Code.

5. Mr. Joshi, the learned counsel for the respondents has relied upon section 210 of the said Act, in order to submit that the subsequent Will when it is made even without making a reference to the earlier one, has the effect of revoking the earlier Will. It is submitted that the Courts below have rightly held that the respondents would be required to be impleaded as interested parties.

6. I have considered the circumstances and the submissions made.

7. Section 395 of the Act, which is relevant for the purpose, reads thus:

395. Application to be declared interested party, legatee or creditor and to be made party to the proceeding.—

(1) Any person may, at any stage of the Inventory proceeding, apply that he may be impleaded as interested party, legatee or creditor. Such application shall be accompanied by documents and a list of witnesses relied upon.

(2) The vendee of a share in an undivided inheritance may at any stage of the inventory proceeding, before the licitation takes place, apply that he may be impleaded as interested party and such application shall be accompanied by documents and a list of witnesses relied upon.

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

8. It can thus be seen that as per Sub section 1 of Section 395, any person may, at any stage of the inventory proceedings, apply

for his impleadment as interested party, legatee or creditor and such application has to be accompanied by documents and a list of witnesses relied upon. Sub section (3) of section 395 provides, that the Head of the family and the other interested parties may give their say along with documents and list of witnesses to be relied upon and the Court has to decide the application after recording evidence and hearing the parties. There is no reference to section 395 or the procedure prescribed therein, in the order of the Inventory Court and the judgment of the Appellate court. In my considered view, the Inventory Court was required to hold an inquiry in accordance with section 395 (3) of the Act before deciding the application for impleadment and for this reason alone, the petition has to succeed. In the result, the following order is passed:

ORDER:

- (i) The petition is partly allowed. The impugned order is hereby set aside.
- (ii) The application (Exhibit D-47) is restored back to the file of the Inventory Court for deciding it afresh, in accordance with law, after holding an inquiry in accordance with sub section (3) of section 395 of the Act.

(iii) Rival contentions of the parties are left open.

(iv) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

ap/-