

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 140 OF 2018

**DR. JOSE FLORIANO CRISTOVAM PINTO
AND ANR.,**

... Appellants

Versus

**DR. MICHELLE N. PINTO SOUZA (DEC)
REP., BY JENELLE N. M. DE SOUZA,
REP. BY RES. NO. 2 AND 4 ORS.,**

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. Marushka De Monte Furtado, Advocate for the Appellants.

Mr. A. F. Diniz, Advocate for Respondent No. 2.

WITH
Civil Application No. 205/2018.

WITH
Misc. Civil Application No. 299/2019.

WITH
Misc. Civil Application No. 381/2019.

Coram:- R. D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 22nd April 2019

P.C.:

Misc.Civil Application No. 381/2019

By this application the applicant seeks appointment of grand-uncle of the minor Mr. Augusto Astidio Jose Francisco de Braganza Santiago e Souza as the guardian of the said minor respondent Miss Jenelle Nicole Mariah De Souza on the ground that the said grand-uncle was already appointed by the Civil

Judge, Senior Division, Panaji in Inventory Proceedings No.90/2013/A and his appointment was not objected to by the respondents.

2. The application for appointment of grand-uncle of the minor is opposed by the natural guardian on the ground that in the proceedings before the trial court, he was appointed as the guardian and protected her interest not just in legal proceedings but in all other affairs as father and as natural guardian. The respondent no. 2 was appointed as the guardian and next friend throughout the proceedings before the lower court.

3. The applicant did not raise any objection in respect of such appointment of the respondent no.2 as guardian of the minor. We are thus, not inclined to appoint the grand-uncle as the guardian of said minor, as prayed.

4. The Misc. Civil Application is accordingly rejected with no order as to costs.

5. In the event of the applicant finding that the interest of the minor is not represented properly by the respondent No. 2, the applicant No. 2 would be entitled to make application for removal of respondent no. 2 as guardian of said minor.

Misc. Civil Application No. 299/2019

By this application, the applicant seeks transposition of respondent no.3 in First Appeal No. 140/2018 as appellant No. 3 and for consideration of the same.

2. It is the case of the applicant that the respondent no.3 had supported the case of the applicant before the Trial Court. Our attention is invited to the additional written statement filed by respondent no.3 before the trial court. Mr. Lotlikar the learned Senior counsel for the applicant states that the learned trial judge by the impugned decree passed has declared the Deed of Family Settlement as void and thus the interest of the appellants and respondent no.3 being common, no prejudice would be caused to respondent nos. 2 and 4 if respondent no.3 is transposed as appellant no. 3.

3. Mr. Diniz learned counsel for respondent nos. 2 and 4 on the other hand, submits that the respondent no.3 had not filed any written statement to the original plaint but had filed limited written statement only to the amended copy of the plaint. The limitation period for filing an appeal having expired, the respondent cannot be allowed to be transposed as respondent no.3. He submits that the decree passed by the learned trial judge has attained finality in so far as respondent no. 3 is concerned.

3. A perusal of the written statement filed by respondent no. 3 indicates that the respondent no. 3 has supported the case of applicants and has not disputed the Deed of Family Settlement and Relinquishment of Rights dated 21.06.2005. A perusal of the impugned decree passed by the learned trial judge indicates that it has been declared as void.

4. The respondent No. 3 was admittedly a party to the deed of family settlement and relinquishment, and the interest of appellants and respondent no.3 being common and the respondent no. 3 not disputes the family settlement, in our view no prejudice would be caused to respondent nos. 2 and 4 if the respondent no. 3 is transposed as appellant no. 3. In our view, if this Court finds that the impugned decree passed by the learned trial court deserved to be set aside, the same cannot be set aside only against the applicants and not against the respondent no.3. We therefore pass the following:

ORDER

Misc. Civil Application 299/2019 is allowed in terms of prayer clause(a). Amendment to be carried out within one week from today. Amended copy of the appeal be served on the learned counsel for the respondent nos. 2 and 4 within one week,

thereafter.

FIRST APPEAL NO. 140/2018.

Admit.

2. Hearing is expedited. Learned Counsel for respondent nos. 2 and 4 waives service.

3. By consent of the parties, the matter is referred to the mediation of Mr. J. E. Coelho Pereira, Senior Advocate of this Court. The learned mediator is requested to submit the report before this Court on or before 15.07.2019 with copy to be served on both the parties. The parties are at liberty to apply for early hearing in case the mediation fails. Fees and expenses of the learned mediator if any, shall be borne by both the parties equally at the first instance.

4. Parties as well as the learned mediator to act on the authenticated copy of this order.

5. The ad-interim relief granted by this Court to continue during the pendency of this First Appeal.

6. The learned mediator is requested to fix the date of the hearing in consultation with the learned Counsel for both the parties.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.

MF/-

