

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 100 OF 2019**

Mrs. Shanti Gulab Hegde,
 Wife of Late Gulab Hegde,
 Aged 72 years, Housewife,
 R/O H. NO. 463,
 Benaulim, Salcete Goa
 Rep. By her attorney
 Mr. Sunil Gurudas Bhatikar,
 Aged 44 years, Service
 R/O Flat No.F-10,
 “Silver Mist” CD Countryside,
 Murida, Fatorda, Salcete Goa.

.... Appellant.

(since deceased through Mr. Sunil Gurudas Bhatikar 44years
 service, R/o Flat no.F-1D, Silver Mist, Fatorda, Salcete,Goa)
 (amendment carried out as per order dtd 11.7.19)

V e r s u s

1. Mrs. Ratnabai Hegde,
 w/o Mr. Manohar Hegde,
 R/O. H. No. 346, Mondo,
 Benaulim, Salcete, Goa and 6 others.

..... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Adv. Sayli Keny for the Appellant.
 Adv. Rohit Bras De Sa with Adv. Ms. A. Nagvenkar for Respondent
 nos.1,2,3,4,5,6 & 7

Coram:- C. V. BHADANG, J.

Date:- 4th October, 2019.

Oral Order:

This appeal is heard finally by consent of parties.

2. The challenge in this appeal is to the order dated 12/3/2018 passed by

the Inventory Court in Special Inventory Proceedings no.43/2014/I, by which the Inventory Court has upheld the objection of the respondent/interested parties. The objection is that the inventory proceedings initiated by now deceased Shanti Gulab Hegde, who is the widowed daughter-in-law of the Estate Lever is not maintainable. The contention on behalf of the respondent before the inventory court was that under section 375 (3) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (The Act, for short), only the moiety holder i.e the widow of the estate lever and heirs apart from others as stated in the said section, are entitled to initiate inventory proceedings. It was specifically contended that the widowed daughter-in-law of the estate lever is not a heir which has been accepted by the inventory court. The said order of the inventory court is challenged by the appellant Shanti Hegde in the present appeal.

3. There is a subsequent development the said appellant namely Shanti Hegde has expired on 14/6/2019 and an application being MCA No.672/2019 was filed by one Sunil Gurudas Bhatikar, who was the Power of Attorney of the appellant Shanti Gulab Hedge. It was contended in the said application that the applicant is also a legatee of Shanti Gulab Hegde, under a Will dated 28/6/2000.

4. On behalf of the respondents an objection was raised on the basis of section 395 of the said Act. It was contented that a party claiming to be a legal representative on the basis of a Will has to file an application accompanied by documents and the list of the witness relied upon before the inventory court which can then decide the issue on the basis of an inquiry.

5. On 17/7/2019 this Court found that by the impugned order the inventory court while upholding the objection raised on behalf of the respondent has dropped the inventory proceedings. Thus as of now there was no inquiry as such pending before the inventory court. In that view of the matter, keeping the said issue open, MCA no.672/2019 was allowed.

6. I have heard Mr. Lotlikar, the learned Senior Counsel for the appellant and Mr. De Sa, the learned counsel for the respondent.

7. Mr. Lotlikar, the learned Senior Counsel for the appellant has submitted that the estate lever died on 15/5/1974 and one of his sons namely Gulab Hegde died on 4/12/1993. The original appellant, Mrs. Shanti Gulab Hegde happens to be the widow of Gulab Hegde. Shanti Hegde died on 14/6/2019. It is submitted that she being the widowed daughter-in-law of the estate lever would be a heir of the estate lever and thus would be entitled to

initiate inventory proceedings.

8. Mr. De Sa, the learned counsel for the respondents has placed reliance on the decision of this Court in the case of **Shri Ranjit Satardekar Vs. Smt. Clotildes Fernandes and others** (Appeal From Order No.18 of 2006 decided on 13/4/2006). Reliance is specifically placed on para 14 of the said judgment in order to submit that this Court has held that on a correct interpretation of Article 1412 of the Portuguese Civil Code (Code, for short), it is only the heirs (not their spouses) and the moiety holder spouse of the estate lever who are entitled to participate in the licitation. It has been held that there is no separate right to his or her spouse to participate in the auction. Secondly it is contended that in any event, after the death of Shanti Hegde in terms of section 395 of the Act, the appellant claiming to be the legatee has to file an independent application before the inventory court which shall decide the issues on the basis of an inquiry being conducted.

9. Mr. Lotlikar, the learned Senior Counsel for the appellant in rejoinder has submitted that the decision in the case of **Shri Ranjit Satardekar** may not apply as it was relating to a right of the heir to take part in the licitation.

10. I have considered the submissions made. I find that there is a

subsequent development in this case, which has relevance, namely, the death of Mrs. Shanti Gulab Hegde on 14/6/2019. There is an additional issue which has cropped up as to whether Mr. Sunil G. Bhatikar can claim to be the legatee of Mrs. Shanti Gulab Hegde based on the Will dated 28/6/2000, which as provided for, in section 395 of the Act, has to be decided by the inventory court on the basis of an inquiry. It further appears that the decision in the case of **Ranjit Satardekar (supra)** was not brought to the notice of the inventory court when the impugned order came to be passed. Thus keeping both the issues open, the inventory proceedings can be restored back to the file of the inventory court for deciding them afresh in accordance with law. Hence the following order is passed:

O R D E R:

- (i) The appeal is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) Special Inventory Proceedings no.43/2014/I are restored back to the file of the inventory court.
- (iii) The appellant. Mr. Sunil Gurudas Bhatikar shall file an appropriate application as required by section 395 of the Act on the basis of the Will dated 28/6/2000 along with documents, if any, before the inventory court on or before 8/11/2019.

(iv) If such an application is filed, the inventory court shall decide the same along with the issue whether Mrs. Shanti Gulab Hegde is entitled to initiate the inventory proceedings (which is also left open to be decided by the inventory court) afresh, after hearing the parties and in accordance with law.

(v) The parties to appear before the inventory court on 8/11/2019.

C. V. BHADANG, J.

ap/-