

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 658 OF 2019

SABINA LOPES AND 2 ORS.,

... Petitioners

Versus

ALEIXO RAFAEL FERNANDES AND 24
ORS.,

... Respondents

Mr. Dinesh Eknath Naik, Advocate for the Petitioner.
Mr. Valmiki Menezes and Ms. S.Narvekar, Advocates for the
Respondent nos.1, 2, 3 and 6.

Coram:- C. V. BHADANG, J.

Date:- 16th September, 2019

P.C.

The challenge in this petition is to the order dated 09.07.2019 by which the application, exhibit D-17, filed by the petitioners, who are the interested parties nos.7 to 27 under Article 2126 of the Portuguese Civil Code (Civil Code, for short), has been dismissed by the Inventory Court.

2. The record discloses that prior to the passing of the impugned order, an application, exhibit D-16, was filed by the respondent no.1, Head of Family (HoF) on 29.04.2019 for auction of the asset which appears to be plot admeasuring 1,700 square metres with a residential house standing thereon bearing House No.1275 [1258 Old]. The Inventory Court allowed the said application on

the same date. The roznama dated 29.04.2019 records that the parties had given their no objection for the grant of the application, exhibit D-16. It is now sought to be considered that there was no such concession made.

3. I am afraid, such a contention cannot be accepted for more reasons than one. Firstly, it was for the petitioners to approach the Inventory Court with an appropriate application pointing out that the record of the roznama dated 29.04.2019 purportedly recording their no objection has been incorrectly recorded. No such application has been made by the petitioners. That apart, even the application which was subsequently filed by the petitioners seeking partition also does not contain any recital that the concession recorded on 29.04.2019 has been incorrectly recorded. It is now well settled that if a party intends to contravene the record of the Trial Court as having been incorrectly recorded, it has to approach the concerned Court at the earliest possible opportunity, pointing out that there was no such concession given at the hearing which is not done in this case. That apart, prima facie, it appears that under Section 412 of the Goa Succession, Special Notaries and Inventory Proceeding Act 2012 (Act, for short), properties which are other than the residential houses, can be subject matter of partition by metes and bounds. This is one of the reasons given by the Inventory Court while dismissing the application filed by the

petitioners.

4. Thus, no case for interference is made out. The petition is without any merits and is dismissed with no order as to costs.

C. V. BHADANG, J.

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