

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 71 OF 2018**

Smt. Reminia Mascarenhas e
Gonsalves, aged 60 years,
housewife, r/o. Flat no.B-6,
third floor, Aarkay Plaza,
Duler Mapusa,
Bardez-Goa.

..... Appellant.

V e r s u s

1. Shri Benjamin Pobre
Gonsalves, aged 64 years,
r/o. Flat no.104, 1st floor,
Mandarine Hotel,
near Alankar Theatre,
Mapusa, Bardez-Goa.

2. State Bank of India,
Mapusa Branch,
Vaishay Bhavan,
Mapsua-Bardez-Goa.

..... Respondents

Shri G. Panandikar, Advocate for the Appellant.

Mr. J. P. Mulgaonkar and Ms. R. Banaulikar, Advocates for the Respondent no.1.

CORAM: C. V. BHADANG, J.

Date: 16th April, 2019.

ORAL JUDGMENT:

Heard the learned Counsel for the parties.

2. The Second Appeal is admitted on the following substantial question of law:

(i) Whether the learned District Judge has erred in holding that the appellant has no right to the disputed amount inspite of the subsistence of the marriage between the appellant and the first respondent?

3. By consent of parties, the Second Appeal is taken up for hearing on the aforesaid substantial question of law.

4. The first respondent and the appellant are husband and wife. The first respondent had filed a suit against the appellant, inter alia for declaration that an amount of Rs.8,50,000/- withdrawn from account of the parties with the respondent no.2/State Bank of India on 28/5/2004 and transferred to a NRE term deposit, belongs exclusively to the respondent no.1 and that the appellant has no right of whatsoever nature to it. The first respondent sought an order restraining the second respondent from paying the said amount of Rs.8,50,000/- lying in the NRE term deposit to the appellant.

5. The learned trial court by a judgment and decree dated 31/3/2017 partly decreed the suit and the second respondent was directed to pay the said amount of Rs.8,50,000/- along with interest, if any, to the appellant and the first respondent in equal proportion.

6. Feeling aggrieved, the appellant challenged the same before the learned District Judge at Mapusa in Regular Civil Appeal No.38 of 2017, in

which the first respondent raised a cross objection. The first appellate court by a judgment and decree dated 20/7/2018 dismissed the appeal and allowed the cross objection filed by the first respondent and decreed the suit in its entirety as prayed, thereby declaring that the amount of Rs.8,50,000/- exclusively belongs to the first respondent and that the appellant has no right of whatsoever nature to the said amount. It is in these circumstances that the appellant has filed the present second appeal.

7. During the course of the arguments at bar, it transpired that apart from the NRE term deposit, in the sum of Rs.8,50,000/- the parties are holding yet another fixed deposit being NRE FD Account No.11020741308. It was submitted that the parties will explore the possibility of an amicable settlement in which both these deposits can be equally shared by the appellant and the first respondent. Eventually the parties have filed consent terms on record which are marked "X" for identification. The consent terms are signed by the appellant and the first respondent and their respective counsel. The appellant and the first respondent, who are personally present before the Court admit the correctness of the contents thereof. The learned counsel for the parties, therefore, submit that the appeal may be disposed of in view of the consent terms.

8. I have gone through the consent terms and the terms on which the parties have reached the agreement appear to be fair and reasonable. Although the deposit being Account no. 11020741308 is not subject matter of the suit or the present appeal, it is well settled that there is no prohibition for the parties in arriving at a settlement in respect of the deposit which is not the subject matter of the suit. In such circumstances, the Second Appeal is disposed off in view of the consent terms, which will form part of the present judgment.

9. In the circumstances, there shall be no order as to costs.

10. Decree to be drawn accordingly.

C. V. BHADANG, J.

Ap/