

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.9 OF 2020

ANTONIO MARIO DE
 CONCEICAO BARBOSA
 BARRETO AND ANR.,

... Appellants

VS

ANITA BARBOSA BARRETO
 E LIMA FERNANDES AND
 30 ORS.,

... Respondents

Mr. M. B. Da Costa, Senior Advocate with Ms. K. Betquecar, Advocate for the Appellants.

Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar, Advocate for Respondent Nos. 2, 3, 4, 5, 7, 8, 9, 12, and 13.

Ms. L. Rego, Advocate for Respondent Nos. 21 to 24.

Coram: M. S. SONAK, J

Date: 17th February 2021

P.C.

Heard Mr. M. B. Da Costa, learned Senior Advocate with Ms. Betquecar for the Appellants, Mr. R. G. Ramani learned Senior Advocate with Mr. P. Kakodkar for Respondent Nos. 2, 3, 4, 5, 7, 8, 9, 12, and 13, and Ms. L. Rego learned counsel for Respondent Nos. 21 to 24.

2. This appeal is against the order dated 5th November 2019 below Exhibit 52 made by the Inventory Court (IIIrd Additional Adhoc Senior Civil Judge, Margao) purporting to dismiss the Appellants'

objections to the valuation report prepared by engineer Noronha and the Respondents' objections to the valuation report prepared by engineer Laad.

3. Ms. L. Rego, learned counsel appearing on behalf of Respondent Nos. 21 to 24 objects to the maintainability of this appeal before this Court by pointing out that valuation in the Inventory Proceedings was less than 20 lakhs and since the Inventory Proceedings are to be regarded as a suit, this appeal would lie only before the District Court and not before this Court. She relied on ***Mrs. Ida Barreto & Ors . Vs Mr. Maxmiano Furtado and Ors.*¹**.

4. Mr. M. B. Da Costa, learned Senior Advocate for the Appellants pointed out that there is a contrary decision of another learned Single Judge in ***Vero Nunes and another Vs Euroco Erasmo Nunes and others*²** and in which it has been held that the Appeal From Order will lie before this Court irrespective of valuation in the Inventory Proceedings.

5. Since, the decision relied upon by Ms. Rego has taken into consideration the earlier decision in *Vero Nunes* (supra), ordinarily, the objection raised by Ms. Rego would have to be upheld unless a case was made out that a reference to the wider bench is necessary.

1 Appeal From Order No.50/2014 dated 6th July, 2017

2 Writ Petition No.119 of 2010 dated 23rd November 2010

6. Mr. Costa, learned Senior Advocate submits that a reference may be warranted to resolve the conflict between the two decisions. He submits that in any case, the decision in *Vero Nunes* (supra) could not have been deviated from and it is at that stage that a reference ought to have been made to the wider bench.

7. In the facts of the present case, there is no necessity to go into the dispute of maintainability. This is because if the impugned order dated 5th November 2019 below Exhibit 52 is perused, it is apparent that the Appellants' objections to the engineer Noronha's report have not been adverted to, at all much less considered and rejected. Before this Court, the nature of objections was highlighted by Mr. Costa and it is these very objections that were raised before the Inventory Court as well. However, from the perusal of the impugned order, it is apparent that these objections have not been adverted to much less considered. The Inventory Court has allowed the objections to Engineer Laad's report and virtually as a corollary without even advertng to the objections raised, accepted the report prepared by engineer Noronha. This is a case of failure to exercise jurisdiction which was vested in the Inventory Court. This issue also raises an aspect of natural justice, since the Appellants are made to suffer an adverse order without even advertng to the contentions raised by the Appellants.

8. Therefore, in the peculiar facts of this case, the exercise of

jurisdiction under Article 227 of the Constitution of India is warranted. In these peculiar facts, therefore, it is not necessary to go into the issue raised by Ms. Rego as to whether an appeal lies before this Court or it will have to be instituted before the District Court.

9. Even if the objections were to be upheld and this appeal was to be placed on the file of the District Judge, the same result would ensue. However, in the meanwhile, there would be a delay and virtually all the parties to these proceedings are complaining about the delay in disposal of Inventory Proceedings. This is yet another reason as to why, in these peculiar facts, it is only proper that the jurisdiction under Article 227 of the Constitution of India is invoked.

10. Therefore, the impugned order dated 5th November 2019 below Exhibit 52 is hereby set aside on the aforesaid grounds and the matter is remanded to the Inventory Court to dispose of the application objecting to the valuation report prepared by the Engineers Noronha and Laad afresh.

11. In disposing of such application, learned Inventory Court should also take into account the provisions of Sections 8 and 409 of the Goa Succession Special Notaries and Inventory Proceeding Act, 2021, particularly on the aspect of the date/year to which the appropriate valuation must refer to as also other matters like payment of

valuer fees, etc. In short, all contentions of parties are expressly left open and the same will have to be considered by the Inventory Court in pursuance of the present remand.

12. This appeal is disposed of by the aforesaid order. Parties to appear before the Inventory Court on 1st March 2021 at 10.00 a.m. and file an authenticated copy of this order.

13. The Inventory Court is directed to dispose of the objections as expeditiously as possible and in any case within three months from the date the parties file authenticated copy of this order.

14. The Civil Application does not survive and the same is also disposed of.

M. S. SONAK, J

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TARI AMRUT
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