

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.18 OF 2020

Smt. Jayshree N. Rajebhosale
@ Bimabairauji Rane, through
Power of Attorney, V.N.
Rajebhosale, Plot No.114, PDA
Colony, Alto Porvorim, Goa.

.... Appellant

Versus

- 1 Shri Dildar Murarrao
Nimbalkar,
Indian National, Major of
age, R/o. H.No.226,
Laxminarayan, Desai
Nagar, Sankhali, Goa.
Currently residing at :
R/o. Flat No.2, Vithai Banai
Sankol, near Kamala
Vinayak, E Ward, Tarabai
Park, Kolhapur
Maharashtra.
- 2 Shri Pradip Murarrao
Nimbalkar
Indian National, Major of
age, R/o. 233/1,
Siddhivinayak Apartment,
Tarabai Park, Kolhapur
Maharashtra.
- 3 Smt. Priyavranda
Prataprao Jadhav, @
Crishanabairauji Rane,
R/o. Plot No.1, Mahadev
Nagar, Near R.K. Nagar,
Society No.1, Kolhapur,
Maharashtra.
- 4 Smt. Priyavranda
Prataprao Jadhav @
Crishanabairauji Rane,

} Deleted

R/o. Plot No.1, Mahadev
Nagar, Near R.K. Nagar,
Society No.1, Kolhapur,
Maharashtra.

- 4 Smt. Rajashri Babajirao
Rane, Indian National,
Major of age, Widow of
Babajirao Rane, Naikwada,
Maulingeum (N), Bicholim,
Goa.
- 5 Baburao Hirbarao Desai
(since deceased,
represented by) Suchitra
Vinay Desai/Tupke, Indian
National, Major of age,
R/o. H.No.169, Velho
House, Opposite Ram
Mandir, Near Dhond
Society, Bhatlem, Panaji-
Goa.

.... Respondents

Shri Parag Rao, Advocate for the Appellant.

Shri I. Agha, Advocate for the Respondent No.1.

Shri Sachin Desai with Shri Eeshan Usapkar, Advocate for the
Respondent No.2.

Shri J.J. Mulgaonkar, Advocate for the Respondent No.3.

Shri V. Naik, Advocate for the Respondent No.4.

Shri Chirag Angle, Advocate for Respondent No.5.

CORAM : - SMT. M.S. JAWALKAR, J.

Reserved on : 13th July 2021

Pronounced on : 27th July 2021

JUDGMENT :

Heard Shri Parag Rao, learned Counsel for the appellant,
Shri I. Agha, learned Counsel for the respondent no.1, Shri
Sachin Desai with Shri Eeshan Usapkar, learned Counsel for

the respondent no.2, Shri J.J. Mulgaonkar, learned Counsel for the respondent no.3 and Shri V. Naik, learned Counsel for the respondent no.4.

2. Admit. This appeal is taken up for final disposal with the consent of and at the request of the parties. Learned Counsel appearing for the respective respondents waive service.

3. Present appeal against order is filed under Section 451 of the Goa Succession, Special Notaries and Inventory Act, 2012 (for the sake of brevity 'Goa Succession Act') against the order dated 20.11.2019 in Special Inventory Proceeding No.1/2011/A passed by the Senior Civil Judge, 'A' Court Bicholim, below Exhibit D-48 & D-49.

4. Brief facts of the case are as under:

One Babajirao Raujirao Rane expired on 04.01.2011 at Belgaum without leaving any Will of disposition of his property during his life time.

5. Smt. Sujata Babajirao Rane (widow of Babajirao Rane) filed an application on 24.01.2011 under Article 1369 of

the Portuguese Civil Procedure Code for inventory and declaration of administrator. It was her contention that deceased was residing with the applicant in the ancestral house at Maulingeum, Bicholim Goa. He left behind him the applicant as moiety holder and no descendants or ascendants and the collaterals, if any, were required to be ascertained. He left behind immovable property at Maulingeum - Bicholim and Porvorim and some other places which are required to be located. She, therefore, applied that she be appointed as the head of the family/administrator of the assets of the deceased.

6. On 21.02.2011, said Smt. Sujata was appointed as the head of the family, who filed her first statement as the head of the family. She submitted that deceased Babajirao left no ascendants or descendants, who can claim a share in the inheritance left by the deceased and that the collaterals, if any, are required to be ascertained by giving a specific notice in the Official Gazette and the local newspaper for information. Accordingly, Civil Judge, Senior Division, Bicholim, directed publication of inventory for appearance of interested parties.

7. Said Sujata, on 25.07.2014, gave additional statement and disclosed that in pursuance of the notices

published Smt. Jayshree Nanasaheb Rajebhonsale @ Bimabai Rauji Rane, sister of deceased and Smt. Priyavranda Pratap Rao Jadhav @ Crishnabai Rauji Rane, step sister of the deceased Babajirao, are the collaterals, who have interest in the assets of inheritance left by the deceased. The said statement was accepted and proceedings were fixed for list of assets and distribution of property.

8. Said Sujata Rane expired on 13.11.2014, without any Will or bequeath. One Shailejadevi Murarrao Nimbalkar (mother of Sujata Babajirao Rane) applied on 17.12.2014 for taking her name on record being heir of Sujata and be appointed as administrator in respect of the share of deceased Sujata. It is also her contention that said Sujata has executed an amicable family settlement with the heirs of the deceased Babajirao Rane.

9. One Baburao Desai, claimed to be an interested party and legal descendant of Janakibai, first wife of Rauji Rane. It is claimed that deceased Babajirao was the son of the third wife of Rauji Rane. He claimed that the inventory no.884 of 47 is under challenge as at the relevant time the interested party was minor and it is null and void. The suit in respect

thereof is pending. Said Baburao also applied for his appointment as Cabeça de Casal in the proceedings vide application dated 25.11.2014.

10. Similarly, Jayshree Nanasaheb Rajebhosale @ Bimabai Rauji Rane (sister of deceased Babaji Rauji Rane) also applied on 10.07.2015 (Exhibit D-48), as being collateral be appointed as the head of family in the proceedings.

11. One Dildar Murarrao Nimbalkar (brother of deceased Sujata Rane) also applied to grant leave to bring his name as legal representatives of the applicant Smt. Sujata Babajirao Rane on record (Exhibit 39 dtd. 28.11.2014).

12. It appears from record that vide order dated 12.06.2017 applicant Dildar was permitted to lead evidence in his possession. Accordingly, he placed on record documents and led oral evidence.

13. It is true that when Sujata Babajirao Rane expired her mother Shailejadevi Murarrao Nimbalkar was alive and being ancestor of Sujata entitled to claim right in property as well as to be appointed as Cabeça de Casal/administrator.

14. Learned Counsel for the appellant submits that the learned trial Court passed impugned order below Exhibit D-48, which is application filed by the interested party Mrs. Jayshree Rajebhosle and Exhibit D-49, which is objection/reply filed by Shri Dildar Murarrao Nimbalkar to the application of Baburao Desai. Exhibit D-48 is dismissed and Exhibit D-49 is granted. It is contended that the learned Trial Judge failed to appreciate that said Dildar was not taken on record as a party to inventory proceedings and, in his reply, he came to be appointed as administrator.

15. It is further submitted that from the facts and evidence on record, it is clear that trial Court failed to appreciate that the application for impleadment filed by Mr. Dildar M. Nimbalkar is still pending and, as such, he was not even impleaded as legal heir of Sujata/interested party and despite not being an interested party he has been appointed as the head of the family, to administer the estate of the deceased against the provisions of law. The learned trial Court, at the most, could have dismissed application for appointment of head of the family of the appellant. However, there was no question of appointing respondent no.1-Dildar as the head of the family.

Moreover, that reply is also not to the application filed by the present appellant. Therefore, there was no challenge to her application. Without deciding application of respondent no.1-Dildar and without deciding other applications pending for appointment of head of family, learned trial Court on the basis of reply filed by respondent no.1-Dildar that too to the application of one Baburao Desai, appointed him as the head of the family. Learned trial Court failed to appreciate that Dildar did not qualify as legal heir inasmuch as in his evidence he had clearly admitted that the mother of late Sujata Babajirao Rane applied for her appointment as the head of the family. Learned Counsel also pointed out the provisions of the Goa Succession Act. He has drawn my attention to Section 395, which provision relates to the application to be declared interested party, legatee or creditor and to be made party to the proceeding. Sub-clause (3) reads as under:

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

16. Learned Counsel also drew my attention to Section 52, which speaks about order of legal succession. In that order, descendant exclude other entries and if there are no

descendants then ascendants will inherit by excluding the collaterals or their descendants or other heir. In view of this Section it is submitted that when Sujata died issueless her ascendants, that is, her mother was alive. As such, Dildar was nowhere in the picture and no question of his appointment as the head of the family arise. He also drew my attention to Section 247 which speaks about to whom the office of the head of the family belongs. If cross of the respondent no.1-Dildar is perused, he has admitted that enquiry is necessary. He also stated that he is neither ascendant nor he was impleaded in inventory proceedings. When he moved an application for impleadment, at the relevant time, mother of Sujata was very much alive. As such, Dildar is not qualified as legal heir being collateral. In such circumstances, the learned trial Court erroneously appointed him as Cabeça de Casal without deciding his application for impleadment first.

17. Learned Counsel for the appellant further submitted that by the impugned order, the learned trial Judge dismissed Exhibit D-48, that is, the application of Jayshree Nanasaheb Rajebhosle. To this application, there was no reply filed by Dildar and allowed Exhibit D-49, which is reply of Dildar M. Nimbalkar to the application of one Baburao Dessai and there

was no prayer for his appointment as an administrator in Exhibit D-49. By this impugned order, the learned trial Court totally erred in appointing a third person, who is neither interested nor there is any order on the application of respondent no.1-Dildar for bringing his name as legal heir of Sujata. There are serious procedural irregularities, so also, the order is flawed. It is fundamentally wrong and erroneous. The learned trial Court ought to have appointed the fittest person after enquiry.

18. Learned Counsel for respondent no.3 Shri J. Mulgaonkar supports the contention of learned counsel for appellant, Shri Parag Rao. He further submitted that order is passed in violation of principles of natural justice. No hearing was granted in respect of appointment of Dildar. Respondent no.2, the other son of Shailejadevi Murarrao Nimbalkar, that is, Pradip Nimbalkar supports contention of the appellant. Learned Counsel for the respondent no.2, Shri Sachin Desai further submitted that Shailejadevi M. Nimbalkar executed Will in favour of Pradip M. Nimbalkar in respect of her share, interest and rights in the property.

19. Learned Counsel for respondent no.1, Shri I. Agha,

submitted that it is not correct that enquiry was not conducted. All parties were given liberty to file evidence, if any, and Dildar only filed evidence. Though it is alleged that there was a Deed of Settlement dated 17.04.2013 and entire estate was partitioned, Sujata Rane was also signatory to the said Deed. However, she has not disclosed this fact in her additional statement. He has also drawn my attention to Section 15 of the Goa Succession Act. As such, the said Deed of Settlement ought to have been registered under the Registration Act. On the basis of this family settlement, the said property was further sold on 21.05.2015. After the death of Sujata Rane there was no Administrator till his appointment, that is till 20.11.2019. It is further contended that though Shailejadevi, mother of respondent no.1-Dildar and Sujata, was alive when the application was filed, she was no more when the order came to be passed. It is also further contended that on the basis of family settlement Jayshree Rajebhosale sold property not belonging to her and that too during the pendency of litigation. Learned Counsel has also drawn my attention to the order dated 12.06.2017, of the Civil Judge Senior Division, wherein it was held that vide order dated 30.03.2016, parties were called upon long ago to lead evidence in their possession, and no party challenged this order. Hence, said order dated

30.03.2016 was declared final and conclusive and in existence of said order, the learned Judge held that interested party respondent no.1-Dildar cannot be blocked from giving the evidence. He, therefore submitted that, as such, the appellant cannot question the leading of the evidence by the respondent no.1. Hence, there is no infirmity, error or illegality in the order passed by learned trial Judge.

20. Learned Counsel Shri Rao for the appellant in reply submitted that application of respondent no.1 for impleadment is not decided at all. When the said application was moved his mother Shailejadevi Nimbalkar was alive. As such, that application itself was not maintainable. So also, Exhibit 87 - application for appointment of Dildar as administrator is also not maintainable as he was not impleaded as a party. He further submitted that the most important thing is that order is not passed below Exhibit 87 but below Exhibit D-48 and D-49. As such, strangers have been placed in driving seat.

21. I have considered rival contentions at length and have also perused the record. Admittedly, the respondent no.1 was not party to this inventory proceedings till the death of Sujata Rane. After the death of Sujata Rane on 13.11.2014

respondent no.1-Dildar filed application dated 28.11.2014 - Exhibit 39 for grant of leave to bring himself as legal representative/successor of late Smt. Sujata Babjirao Rane. It is also admitted fact that mother of respondent no.1 and Sujata was very much alive. He has drawn my attention to Section 52, which reads as under :

52. Order of legal succession - (1) The legal succession shall devolve in the following order :-

- (i) on the descendants;*
- (ii) on the ascendants, subject to the provisions of sub-section (2) of section 72;*
- (iii) on the brothers and their descendants;*
- (iv) on the surviving spouse;*
- (v) on the collateral's not comprised in clause (iii) up to the 6th degree;*
- (vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.*

If Section 52 of the Goa Succession Act is perused, it is in respect of order of legal succession. It also appears that entry (i) excludes (ii) to (vi) and if there is no heir of entry (i) the property be devolve on the legal heirs of entry (ii).

22. Thus, Shailejadevi is the ascendant of Sujata, who would be the legal successor as Sujata died issueless. At any rate, on the date of application of Dildar, for bringing his name as legal heir, the application was not maintainable as he was collateral and not the ascendant. The learned trial Judge erred

in holding that Dildar is ascendant of deceased Sujata Rane being her brother.

23. Apart from this, it can be seen that the learned trial Court passed order below Exhibit D-48 & D-49. Exhibit D-48 dated 10.07.2015 is the application filed by Jayshree Rajebhosle for her appointment, whereas Exhibit 49 is the reply of Dildar Nimbalkar to the application dated 28.11.2014. This reply is to the application filed by one Shri Baburao Desai for his appointment as Cabeça De Casal/administrator. The evidence led by him is not at all pleaded in his reply below Exhibit D-49. In evidence, he deposed against Jayshree without there being any reply to her application. If there would be any reply to her application, she would have thought of leading evidence in rebuttal. As other applicants extended their no objection for her appointment as Cabeça de Casal/administrator, that does not mean that in the case of rejection of her claim they will not be entitled for their claim to be appointed as administrator. Moreover, it reveals from the 'Note' below cross-examination of Dildar, that the objection was taken by the Counsel of Dildar to cross-examine Advocate Desai for interested party as he is not impleaded as a party in the said proceedings. In fact, similar is the case of the applicant Dildar. Though he is permitted to lead

evidence he has to first establish how he is interested person and needs to be impleaded as party to the proceedings.

24. The learned trial Court in paragraphs 3 to 10, discussed what is the case of Dildar on the basis of his affidavit of evidence only and there is no finding on how Dildar is suitable to be appointed as an Administrator. Repeatedly Dildar was described as ascendant, but he is neither ascendant nor descendant but the collateral of Sujata. The most important is Exhibit D-49 which is the reply and there is no any whisper about Jayshree's application for her appointment as a Cabeça De Casal/administrator. The learned trial Court without granting any opportunity to other persons passed the order of appointment of Dildar as head of the family by allowing Exhibit D-49 (which is reply of Dildar to the application of one Baburao Dessai). At the most, the learned Judge would have rejected the application of Jayshree but without deciding all other applications on record for impleadment or for appointment the impugned order came to be passed. As there was no reply to the application filed by Jayshree and other applicant gave consent for her appointment as administrator, she might have chosen not to lead any evidence. By that, respondent no.1-Dildar cannot become a suitable and interested person without

there being any order on his application for impleadment as legal heir as well as his appointment as administrator.

25. In my considered opinion, learned trial Judge ought to have taken all applications for impleadment as well as for appointment as an administrator together. Passing order on application of Jayshree for appointment the learned trial Judge considered the reply of respondent no.1-Dildar to the application of one Baburao Desai. Not only this, the Court appointed Dildar, on that basis, as an administrator which is apparently illegal and erroneous and against the procedure established by law. The other applications ought to be decided along with the application of Jayshree. As such, the order passed below Exhibit D-48 & Exhibit D-49 is liable to be set aside, apparently being illegal, erroneous and contrary to the procedure established by law.

26. Accordingly, I proceed to pass the following:

O R D E R

- (i) The Appeal From Order is hereby allowed.
- (ii) The impugned order dated 20.11.2019, passed by the Senior Civil Judge, 'A' Court, Bicholim, below Exhibit D-48 & D-49 in Special

Inventory Proceeding No.1/2011/A is hereby quashed and set aside.

(iii) The learned Senior Civil Judge, 'A' Court, Bicholim, is hereby directed to decide all the pending applications for impleadment as party to inventory proceedings first and then the applications for appointment as Cabeça de Casal/administrator.

(iv) There shall be no order as to costs.

SMT. M.S. JAWALKAR, J.

NH

27. At this juncture, Shri I. Agha, the learned Counsel for the respondent no.1, prays for staying the effect of the order for six weeks to approach the Hon'ble Supreme Court.

28. To grant fair opportunity, the request of the learned Counsel for the respondent no.1 is granted. This order is stayed for a period of six weeks.

SMT. M.S. JAWALKAR, J.

NH

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HALDANKAR

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