

vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.3 OF 2021.**

FRASER CASTELLINO AND ANR ... Applicants.

Versus

**MARY FLORA SAVARIAMMAL @
MARY COLACO @ MARY FLORA
COLACO AND 3 ORS** ... Respondents.

Mr. A. D. Bhobe and Ms. A. Fernandes, Advocates for the applicant.

Mr. J. A. Lobo, Advocate for the respondent no.2.

CORAM: MANISH PITALE, J.

DATED: 5th October, 2021.

ORAL ORDER.:

1. By this Revision Application, the applicants (original defendants) have challenged order dated 12.8.2020, passed by the Court of Civil Judge, Junior Division, Mapusa, Goa, whereby a contention raised on behalf of the applicant for rejection of plaint as being barred by the provisions of the Prohibition of Benami Transactions Act, was not accepted and the application was only partly allowed by giving a direction to the respondent nos. 1 and 2 (original Plaintiffs) to get the suit properly valued from a government certified valuer and to pay requisite Court fees on the same. The applicants are specifically aggrieved by the rejection of their contention that the plaint ought to have been rejected as being barred by the provisions of the aforesaid Act and hence, hit by Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (CPC).

2. The respondent nos.1 and 2 filed the suit for declaration and consequential reliefs against the applicants and the respondent nos. 3 and 4. It is pleaded in the plaint that the cause of action for filing the suit arose in September 2017, when the said respondents approached the Mamlatdar for the purpose of mutating their names in the survey records, as a consequence of order dated 16.8.2017 passed in Inventory proceedings by the competent Court and consequent allotment of the suit property in their favour.

3. It is specifically pleaded in the plaint that when the said respondents (original Plaintiffs) approached the concerned authority for mutation, it was realized that the name of the ancestor i.e. father/father in law of the original defendants was found on record, along with the name of the mother of the respondent no.1, on the strength of sale deed dated 29.3.1993 in respect of the suit property. Thereafter, it was pleaded that the mother of respondent no.1 i.e. one Lucy Dias had decided to purchase the property, and since the respondent no.2 was in love with the respondent no.1 and planned to marry her, he had provided consideration amount for the transaction. It is pleaded that the respondent no.2 was wholly unaware that the name of the aforesaid ancestor of the original defendants was included in the sale transaction, for the reason that the respondent no. 2 was in the United Arab Emirates and he had sent the amount from his first earnings.

4. The applicants filed the aforesaid application for rejection of the plaint by invoking the provisions of the aforesaid Act, particularly Section 4 read with Section 9A thereof. It was contended that since respondent nos.1 and 2 in paragraphs 7 and

8 of the plaint had specifically stated that consideration for the aforesaid sale transaction was provided by respondent no.2, while the transaction was completed in the name of said Lucy Dias, as per Section 4 of the aforesaid Act the suit filed by respondent nos. 1 and 2 was barred by law.

5. By the impugned order, the Court below referred to the aforesaid contentions raised on behalf of the applicant and appeared to reach a prima facie conclusion that the transaction may not be covered by exceptions as stated in another provision of the aforesaid Act. But, the Court further discussed the manner in which the respondent nos.1 and 2 had referred to the inventory proceedings and a Will dated 4.9.1996. Thereupon, the Court concluded that respondent nos.1 and 2 were not claiming right in the property solely on the basis of the aforesaid sale deed dated 29.3.1993. On this basis, the contentions raised on behalf of the applicants were rejected.

6. Mr. Bhobe, learned counsel appearing for the applicants invited the attention of this Court specifically to paragraphs 7 and 8 of the plaint and strenuously urged that the said paragraphs clearly demonstrated that the suit was hit by Section 4 of the aforesaid Act. The pleading was clear that while sale transaction was executed in the name of Lucy Dias, the consideration thereof was provided by the respondent no. 2 and that now he could not turn around and claim ownership in the property, as it was hit by the provisions of the said Act. It was further submitted that reference to the inventory proceedings in the plaint could not take away the effect of paragraphs 7 and 8 of the plaint and that therefore, the Court below had erred in rejecting the contentions raised on behalf of the applicants.

7. On the other hand, Mr. J. Lobo, learned counsel for the contesting respondent nos. 1 and 2 took this Court through the contents of the entire plaint. It was emphasized that the thrust of the pleadings on behalf of the said respondents was that after the inventory proceedings had terminated in their favour, an effort was made for mutating their names before the competent authority, when they became aware about the existence of the names of the ancestor of the original defendants in the sale transaction pertaining to the suit property and this led to the filing of the suit. The reference to the manner in which the respondent no.2 provided amount to his mother-in-law Lucy Dias was a fact stated in the backdrop of such pleadings and on this basis, it was contended that the prohibition under the aforesaid Act did not operate against the said respondents.

8. Having heard the learned counsel for the rival parties and upon perusal of the material on record, it is necessary to consider the pleadings in the plaint to examine as to whether the plaint deserved to be rejected as being hit by the provisions of the aforesaid Act.

9. A perusal of the plaint shows that there is reference to an order dated 16.8.2017, passed by the competent Court in the inventory proceedings wherein the suit property came to be allotted to the respondent nos.1 and 2. It is then stated that when the said respondents approached the competent authority for mutation of their names in respect of the suit property on the strength of the order passed in the Inventory proceedings, they came to know that the sale deed dated 29.3.1993 consisted of the name, not only of the mother of the respondent no.1 as purchaser, but also the name of the father/father in law of the

original defendants which led to respondent nos.1 and 2 to approach the Court by filing the suit for declaration and consequential reliefs. It is specifically stated in the plaint that the cause of action arose in September 2017, after the order dated 16.8.2017 was passed in the Inventory proceedings.

10. There is no doubt about the fact that in paragraphs 7 and 8, it is stated that the respondent no.2 had arranged for an amount of ₹15,000/- for purchase of the property as Lucy Dias, mother of the respondent no.1, had shown interest in purchasing the property and since respondent no.2 intended to marry respondent no.1, he had arranged for the amount. The question is whether the statement made in paragraphs 7 and 8 would be enough to conclude that the suit itself stood barred by the provisions of the said Act and therefore, the plaint deserved to be rejected under Order 7 Rule 11(d) of the CPC. At this stage the pleadings do not indicate that the respondent no.2 is claiming ownership in the property because he had paid consideration for the sale deed. In fact, details regarding the actual consideration and whether the entire amount was given by the respondent no.1 are matters requiring evidence. It is significant that the statement made in the plaint indicates that cause of action arose in September 2017 and that the respondent nos.1 and 2 became aware about the existence of the name of the father /father in law of the original defendants in the sale deed dated 29.3.1993, only at the stage when they approached the competent authority for mutation of their names in respect of the suit property.

11. When the pleadings in paragraphs 7 and 8 are read in conjunction with the contents of the entire plaint, it appears that the aspect as to whether the respondent nos.1 and 2 were all along

aware about the details of the sale deed dated 29.3.1993 and whether their claim of accrual of cause of action in September 2017, is correct or not, are matters that would need evidence and trial. At this stage, it would be inappropriate to jump to the conclusion that statements made in paragraphs 7 and 8 would be enough to demonstrate that the plaint itself deserved to be rejected, as being barred under the provisions of the said Act. In any case, the question as to whether the suit is hit by Section 4 of the aforesaid act would have to be decided only after sufficient material is brought on record by way of evidence to demonstrate that the ingredients of Section 4 read with Section 9A of the aforesaid Act are satisfied, in the facts and circumstances of the present case. The reliefs sought in the prayer clause are relatable to the pleadings made on behalf of the respondent nos.1 and 2 in the context of the inventory proceedings and the right claimed by the respondent nos.1 and 2 on the basis of inheritance.

12. Therefore, it becomes clear that the approach adopted by the Court below cannot be found fault with and that the contentions raised on behalf of the applicants require to be tested by way of trial and by allowing the parties to lead evidence in support of their respective stands.

13. Hence, the Revision Application is found to be without any merit, and accordingly, it is dismissed.

MANISH PITALE, J.