

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.11/2012

1. Smt. Carmelina D'Souza e Barreto,
and her husband

2. Shri Minguelo Agnelo Barreto (Deceased)
Both residing at Fondlem,
Catiebaga, Poinguinim,
Canacona, Goa.

... Petitioners.

Versus

1. Late Joao Conceicao Barreto,

2. Late Maria Rebello,
(since deceased) (Respondent No.1
and 2 are the original
inventariados/ Estate Leavers
whose Estate is sought to
be partitioned in Inventory)

3. Smt. Margarita Barreto,
major in age, resident of Cantebag,
Poinguinim, Canacona, Goa.

3a) Shri Joao Barreto
and his wife

3b) Smt. Frany Barreto,

3c) Shri Roberto Barreto
and his wife

3d) Smt. Wilma Barreto,

3e) Shri Cassiano alias
Vijay Barreto and his wife,

3f) Smt. Avila Barreto,
all residing at Canteibaga,
Poinguinim, Canacona, Goa.

4. Shri Ligorio Corte (since deceased)
through Lrs

4a) Smt. Rita Corte,

4b) Lanroy Corte (minor)
represented by his mother
and natural guardian, Respondent
No.(4a) Smt. Rita Corte

4c) Smt. Milagrina Corte,

4d) Shri Prakash Corte
and his wife

4(d)(i) Nacimha Corte
D/o Late Juliao Prakash
Age 20 years.

4(d)(ii) Jeany Corte
D/o Late Juliao Prakash
Age 16 years.

4(d)(iii) Pency Corte
D/o Late Juliao Prakash
Age 11 years

All residents of H.No.912(A)
Welwadda, Poinguinim
Canacona – Goa.

4e) Smt. Maria Corte,
all resident of Utraband,
Loliem, Canacona, Goa.

4f) Shri Luis Fernandes,
resident of Pedem, Loliem,
Canacona, Goa.

4g) Shri Nazareth Corte,
his wife;

4h) Smt. Berta Corte,

4i) Shri Peter Corte,
and his wife

4j) Smt. Reema Corte,
all resident of Utraband,
Loliem, Canacona, Goa

4k) Shri Franky Corte,

4l) Smt. Cruzinha Fenandes,

5a) Smt. Natalina Barreto,

5b) Shri Estelite Fernandes,
all major in age, all
resident of Cantebag,
Poinguinim, Canacona, Goa.

... Respondents.

Mr.Valmiki Menezes, Advocate for the petitioners.

Mr. R.G. Ramani, Senior Advocate with Ms. S. Patil, Advocate for the respondents.

Coram:- SMT. BHARATI H. DANGRE, J.

Dated : 26th February, 2021.

ORAL JUDGMENT :

1. By the present Writ Petition the petitioners have assailed the judgment delivered by the Civil Judge, Senior Division, Cancona in the inventory proceedings instituted for the partition of estate left by one Joao Concicao Barreto and his wife Maria Rebello. The asset described in the proceedings were allotted to the interested parties in terms of the final chart of partition.

2. The case pleaded by the petitioners is, the petitioners raised on objection to the provisional chart of partition covering Survey No.146/3, 161/5, 185/17 and 183/23 and as per the provisional chart of partition, the appellants and respondents were entitled for 1/4th share of each of survey number mentioned above. The objections raised by the petitioners were to the following effect:

- a) Names of some of the legal heirs are not mentioned.
- b) No notices were issued to the other parties to the proceedings.
- c) The list of assets did not include house No.699, property under Survey No.148/1, 146/43 and 149/3.

3. The objection was also that in the enquiry resulting into the order dated 09/08/2005 by the Civil Judge, the procedure contemplated under Article 1374 has not been complied with. Another objection was to the effect that the documents were not properly appreciated as in survey records No.148/1 name of Joao Barreto was at Serial No.16 and the other names mentioned in the chart were not corresponding to the name contained in the occupant's column of the survey records.

3. The Civil Judge, Junior Division by an order dated 25/03/2010 dealt with the objections so raised and recording that before drawing the final chart of partition the notices contemplated under Article 1374 were required to be conveyed again and further family conference under Article 1392 was conveyed, was not accepted. Recording that in terms of Article 1418 dealing with the objection against the chart drawn, the scope being only rectification or objection against any irregularity, namely against inequality of the lots or against non-compliance of the order directing the partition and in light of the same it was held that under the guise of such enquiry, the Court cannot

revert back at the earlier stage and set aside its own order on the ground of irregularity. On analyzing the scope of Article 148 being limited one, the objection raised by the interested party Camerlina Barreto was dismissed.

4. The said order was challenged in appeal which was numbered as Regular Civil Appeal No. 372 of 2010. The Appellate Court has exhaustively dealt with all the objections alleging non compliance of Article 1380, 1383 and 1418 of the Portuguese Civil Code, 1867. Noting that the objections raised were determined from time to time, which included the objection on the aspect of lack of description and non-disclosure of properties by the Cabeça de Casal under Article 1380 and 1383 by the Trial Court on 12/12/2008. Recording that the objections were duly considered and rejected, the impugned judgment and decree passed by the Trial Court was found to be without any legal infirmity and the Regular Civil Appeal is dismissed.

5. Heard the learned Counsel Mr. V. Menezes for the petitioner who make a feeble attempt to raise another ground in form of objection being that the petitioners are resident of one portion of the property and he should have been allowed to retain the property and permitted to participate in the licitation, which would have a bearing on the determination of the share. However his attention being invited to the objections raised and dealt by the Court below, he fairly conceded that

the objection raised before the Court below is not specifically worded. Since the objection is raised in the Writ Petition for the first time, and it was never taken before the Courts below and though multiple objections were raised to the provisional chart of partition, the said objection do not warrant any consideration particularly when the inventory proceedings have culminated a decade ago. Mr. Menezes, also concedes to the fact that he had not been ousted from the said residential premises.

6. In the light of the aforesaid facts and circumstances, the Writ Petition do not deserve any consideration and deserves to be dismissed. It is accordingly dismissed. No order as to costs.

SMT. BHARATI H. DANGRE, J.

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