

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 711 OF 2019
WITH
CIVIL APPLICATION NO.159 OF 2019
IN
WRIT PETITION NO. 711 OF 2019
WITH
MISC. CIVIL APPLICATION NO.1845 OF 2021(Filing)
IN
WRIT PETITION NO. 711 OF 2019

SULOCHANA CHANDRAKANT ...Petitioners
HARMALKAR AND 8 ORS.

Versus

BIKAJI SAGUN
HARMALKAR AND 6 ORS ...Respondents

Mr. S.M. Singbal, Advocate for the petitioners.

Mr. Deepak Gaonkar, Advocate for the respondents.

CORAM: MANISH PITALE, J.

DATED: 5th October, 2021

P.C.:

1. This Writ Petition was heard for some time. It arises from order passed by the Court of the District Judge, whereby an appeal filed by the petitioner has been dismissed and order passed by the Court of Civil Judge, Junior Division, Mapusa, in Inventory Proceedings has been confirmed. The said order was passed by the Court of Civil Judge Junior Division on Exhibits

Nos.131 and 132, whereby the petitioner had prayed for taking on record a new plan and for amendment of the description of assets.

2. To cut the long story short, in the Inventory Proceedings pending before the aforesaid Court the petitioners are the legal heirs of the Cabeça de Casal (head of the family). By judgment and order passed in Second Appeal No.6 of 1995, it was held that the head of the family was entitled to 1/4th share in the properties in terms of the Gift Deed dated 27/02/1976.

3. In the Inventory Proceedings, by an order dated 04/03/2011, the concerned Court partly allowed the application filed by the head of the family, holding that in view of the aforesaid Gift Deed and the judgment of this Court in the Second Appeal, the head of the family was entitled to choose which 1/4th part of the Item Nos.1 and 2 of the lists of the assets would be retained by him. It was directed that the remaining 3/4th part of the said assets shall go for auction.

4. The petitioners, as the legal heirs of the head of the family, are in possession of the existing house in part of the property and the concern of the petitioners is that although they are entitled to 1/4th share of the existing house, in terms of the said order passed in the Inventory Proceedings, since the house is indivisible, if only 1/4th portion is directed to be retained and

balance $3/4^{\text{th}}$ portion is put to auction, they would be dispossessed from the existing house. It is in this backdrop that the petitioners had placed on record the new plan as per Exhibit 131 and prayed for an amendment of the description of the assets as per Exhibit 132, before the concerned Court.

5. After arguing this Writ Petition for a considerable period of time, the learned Counsel appearing for the petitioners, on instructions, offered that a Valuer could be appointed to ascertain the valuation of the existing house. Thereupon, the petitioners were prepared to pay the value of the existing house to the extent of $3/4^{\text{th}}$ of the value to the respondents who are parties in the Inventory Proceedings. It is submitted that this would be without prejudice to the right of the petitioners in $1/4^{\text{th}}$ portion of the remaining property.

6. The learned Counsel appearing for the respondents, on instructions, submits that such an offer is acceptable to the respondents and that the exercise could be carried out before the concerned Court i.e. the Court of Civil Judge, Junior Division, Mapusa, in the Inventory Proceedings.

7. In view of the above, since the petitioners are concerned about retaining the entire existing house and in terms of the offer made by them, which has been accepted by the respondents, the Writ Petition is disposed of in the following manner:

a) The parties shall jointly appoint a Valuer before the concerned Court for ascertaining the value of the aforesaid existing house.

b) The petitioners shall pay the amount equivalent to $3/4^{\text{th}}$ of the value of the house to the respondents, upon determination of such value. In return, the respondents shall give up their rights in the existing house.

c) This will be without prejudice to the rights of the parties in the remaining portions of the properties, as per orders already passed in the Inventory Proceedings by the aforesaid Court.

8. The Writ Petition stands disposed of in the above terms.

9. Needless to say, that the aforesaid directions are restricted specifically only to the aforesaid existing house. In view of disposal of the writ petition, all pending applications stand disposed of.

MANISH PITALE, J.