

IN THE HIGH COURT OF BOMBAY AT GOA**APPEAL FROM ORDER NO. 52 OF 2019**

1. Dr. Ravindra V. Parulekar,
and his spouse,
2. Smt. Smita Ravindra V. Parulekar,
both residents of House No.179,
Patrong, Baina, Vasco-da-Gama,
Goa- 403 802.

..... Appellants

V e r s u s

1. Mr. Damodar V. Parulekar,
and his spouse,
Smt. Rupali Damdoar Parulekar,
both residents of House No. H-12,
Hill View, Madhuban Co-operative,
Housing Society Ltd., St. Inez,
P. O. Caranzalem, Panaji,
Goa – 403 002.

..... Respondent

Mr. G. Vijaychandra, Advocate for the Appellants.

Mr. R. G. Ramani, Senior Advocate with Adv. Ms. Srushti Patil for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 3rd February 2021.

ORDER:

The first appellant and the first respondent are brothers. The second appellant and the second respondent are their respective wives. The mother of the first appellant and the first respondent was the Estate Leaver. On her death, the succession opened. Therefore, the first and the second respondents—one son and his wife—initiated inventory proceedings, being Special Inventory Proceedings No.07/2011/A before the Civil Judge, Senior Division, at Vasco. The first appellant, in those proceedings, claimed that the mother had died testate, making him the legatee for 50% of her disposable

estate. This assertion led to separate judicial proceedings, which eventually culminated in a Judgment in Second Appeal from this Court. Without dilating on those collateral developments, I may note that this Court has eventually held that the Will is valid and that the appellants are entitled to 50% of the Estate Leaver's disposable assets.

2. That said, I must also note that this bequeathment is not by metes and bounds. In other words, the first appellants' entitlement as a legatee is to 50% of joint property on which structures exist.

3. Once the Will had been brought on record, the appellants invoked section 130 of the Goa Succession, Special Notaries, and Inventory proceeding Act, 2012. They sought from the Trial Court three heads of relief:

- (i) That the property bequeathed to the first appellant should be excluded from the purview of the inventory proceedings and only the residual assets should be subjected to further division amongst the claimants;
- (ii) As the first appellant had been taking care of the property, he should be compensated;
- (iii) The first appellant should be given time to quantify that compensation.

4. On contest, the trial Court rejected the appellants' all three claims. Aggrieved, the appellants have filed this Appeal From Order.

5. I have heard Shri G. Vijaychandran, the learned counsel for the Appellants; and Shri R.G. Ramani, the learned Senior Counsel for the respondents.

6. Both the learned counsel have argued at length. It would suffice if I extract those contentions during the course of this disposition, instead of setting them out in detail.

7. True, the appellants wanted the bequeathed share separated before the Inventory Court could decide the legal heirs' respective moieties in the residue. In fact, the trial Court, as rightly contended by Shri Vijaychadran,

has not addressed that issue in so many words. That said, I have two options: remand or decide on the merits. I feel it serves the ends of justice if this Court decides that controversy. If the estate has comprised distinct items and a legatee has been bequeathed specific items, then the separation of what has been bequeathed from the residuary is a feasible choice—and an obvious one, too.

8. Here, both parties agree that the property comprises structures, such as a house and a clinic. But the Will has not specified which part of the property has been bequeathed. Therefore, it is for the Inventory Court to appreciate the evidence being led by the parties as to the good and bad qualities of the property and eventually decide which part of the property, amounting to 50%, should fall to the appellant, the legatee. Until then, a division may not be possible. So, I reckon the appellants' claim is premature. That said, I clarify that the appellants can as well request the Inventory Court to undertake that exercise. Of course, it lies in the Inventory Court's discretion to take that issue up either at this stage or at the final stage when the property gets divided.

9. Now I may come to the compensation and its quantification. Indeed, section 130 of the Goa Succession, Special Notaries, and Inventory proceeding Act, 2012 Act allows the Estate Manager to claim compensation. Section 5 of the same Act distinguishes between an heir and a legatee.

10. If the first appellant claims that he is an heir having maintained the property, he is entitled to compensation over the property that falls to the share of others.

11. In the end, both the learned counsel have agreed that the compensation, if any, should be confined to the share that may fall to the other heirs, rather than to the Estate Manager. Here, the appellants are entitled to 50% as legatees. From the residuary 50%, they are entitled again to a half share as the heirs. Thus, the appellants will get three fourth and the respondents one fourth. The compensation if at all to be paid, it is a

matter of evidence. That is, whether the appellants have expended any money. And if money has been spent, has the Estate Manager spent it out of the proceeds generated by the very property or from his own pocket?. Even on that account, the compensation should be to the extent of one fourth.

12. Again, as has been rightly contended by the respondents' counsel, it is a matter of evidence. Therefore, I leave it open for both the parties to lead evidence and invite a finding from the Inventory Court at an appropriate stage as is to be determined by it.

As a result, I affirm the impugned order, dated 8/7/2019, and dispose of the Appeal From Order with the above observations.

DAMA SESHADRI NAIDU, J.

AP/-

**MARIA
AURA
PEREIRA**

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by MARIA AURA
PEREIRA
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