IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 55 OF 2019.

ANTONIO OLAVO MENINO
VAZ @ OLAVO VAZ AND ANR., …. Appellants.

VS

DR. FRANCISCO VAZ AND
11 ORS., …. Respondents.

Shri C. A. Coutinho, Advocate for the appellant.
Shri Menino Pereira, Advocate for the respondent nos.1 and 2.
Shri M. D'Souza, Advocate for the respondent no.9.

Coram:- DAMA SESHADRI NAIDU, J.
Date:-9th February 2021.

ORAL ORDER

Facts:

In September 2009, the appellant was appointed the head of the family, in the Inventory Proceeding involving himself and other legal heirs of the estate leavers: the parents. In August 2016, the 1st and the 2nd respondents applied to the trial Court to remove the appellant from being the head of the family.

2. In turn, the trial Court tried the issue and eventually passed the impugned order, dated 13.8.2019. It has held that the appellant incurred disqualification under section 384 of the Goa Succession Special Notaries and Inventory Proceeding Act, 2012 ("the Act"). Aggrieved, the appellant has filed this Appeal from Order.

Arguments:

Appellant:

3. Shri Coutinho, the learned counsel for the appellant, has submitted that the appellant himself is one of the co-owners, and he has every concern for the property. The allegations he has faced, according to

him, are trivial. To underline his submission, the learned counsel has drawn my attention to the taxi bills.

4. Shri Coutinho has first drawn my attention to section 379 of the Act, which enumerates the rights and the obligations the head of the family has. Then, he has taken me to section 384 of the Act, which lists out the aspects of misconduct. According to him, the respondents' complaint, perhaps, attracts only clause (7) of section 384. But Shri Coutinho hastens to add that the application, vague as it has been, has not set out how the appellant failed to discharge the duties as the head of the family.

5. In this context, Shri Coutinho has referred to the tenancy dispute involving the estate. According to him, the appellant has been trying to negotiate an advantageous deal with the tenants. Instead of appreciating the appellant's efforts, the trial Court has tried to "fine-tune" the tenancy litigation, which is not before it.

Respondents:

6. On the other hand, Shri Menino Pereira, the learned counsel for the respondents 1 and 2, has taken me through the record. He has, then, pointed out that the appellant submitted no statement of accounts for years on end, until the respondents applied in September 2016 for his removal. According to him, the whole section 379 stands violated.

7. To elaborate on his submission, the learned counsel has drawn my attention to the appellant's deposition before the trial Court. From that, he has pointed out that the appellant has even refused to testify before the trial Court that the statement of the account he has produced is correct and reflects the true position. Then, the trial Court was constrained to serve a warning on the appellant not to be evasive while deposing on oath before a court of law.

8. Eventually, Shri Pereira has submitted that the appellant has failed to function as the head of the family in tune with the statutory

mandate under section 379 of the Act. So the trial Court has, he stresses, ordered his removal.

9. Heard Shri C. A. Coutinho, the learned counsel for the appellant; and Shri M. Pereira, the learned counsel for the respondents.

Discussion:

10. The issue concerns the removal of the head of the family in inventory proceedings. To appreciate the issue, we must, first, examine the statutory scheme on the issue.

11. Section 379 enumerates the "Rights and Duties of the head of the family". And the provision reads:

> Section 379 - *Rights and Duties of the Head of the family.*-- (a) The head of the family, as manager of the estate, *shall receive all income and profits of the assets in his possession* and shall meet the normal liabilities of the inheritance and *shall every year render accounts to the court*, in the miscellaneous proceeding, in case the usufruct of the assets does not belong to him.
> The head of the family is bound to render accounts from the date he takes charge of the assets of the inheritance *and to deposit the balance amount in a Nationalized Bank*, after the amount required to meet the expenses for management of the assets is deducted. Any sum handed over to the heirs under section 252 shall be included in the expenses.
> (b) …
> (c) The head of the family shall be bound to defend and protect the estate.
> (d) …
> (e) …
> (f) …
>
> (italics supplied)

12. A head of the family, under section 379, shall receive all income and profits of the assets in his possession; he shall meet the normal liabilities of the inheritance; then, "shall every year render accounts to the court". This obligation applies when the "usufruct of the assets does not belong" to the head of the family. Here, the appellant is only a co-owner, accountable to all other co-owners. Indeed, the head of the family must render accounts from the date he takes charge of the assets of the inheritance. And he should "deposit the balance amount in a Nationalized Bank", after deducting the money

he has spent on the asset management. That apart, the head of the family shall defend and protect the estate.

13. Now, let us see when a head of the family may be removed. Section 384 of the Act enumerates those instances. And the provision reads:

> 384. *Removal of the head of the family.* (1) The head of the family may be removed when he,
> (i) delays in filing the list of assets and liabilities;
> (ii) fails to indicate to the valuers the assets which are to be evaluated;
> *(iii) does not appear in court, when required;*
> (iv) does not produce the required documents;
> *(v) does not give declarations or statements which are required from him; or*
> *(vi) does not manage the assets with zeal and prudence;*
> *(vii) in any other manner fails to discharge the duties of the office.*
> (2) …
> (3) …
> (4) …
> (5) …
> (6) …

14. If we consider sub-section (1) of section 384, we gather that the head of the family earns disqualification, for instance, when he fails to appear in court whenever required; when he fails to "give declarations or statements" required from him; when he fails to manage the assets with zeal and prudence. Then comes clause (vii) of sub-section (1), which is residuary: if the head of the family fails to discharge the duties of his office "in any other manner".

15. The issue is, has the appellant, as the head of the family, failed to discharge his duties? It is a question of fact. Let us appreciate the evidence.

16. The trial Court has recorded that the appellant has admitted that four cases have been dismissed for default. Despite that, he did not try to get them restored. To justify his inaction, the appellant has told the trial Court that "there were settlement talks between him and the tenants". In this context, the trial Court has observed that "when he was

asked to give further details of the said settlement talks, [the appellant] was reluctant to divulge the said facts". As the appellant was evasive, the trial Court was constrained to warn him of the consequences of his prevarication.

17. After that, the appellant has changed his version and deposed that the settlement had not materialised. In that backdrop, the trial Court has observed that the appellant never involved the other co-owners even if the settlement talks were true. Nor has he taken any steps for having the eviction proceedings restored.

18. The appellant has admitted that the tenants have been paying the rent. But for many years those rents have not been accounted for. First, the deposits were into his personal account, and some of the admitted amounts were missing from the account. In fact, the appellant has refused to answer certain questions about a few tenants. Besides that, the trial Court has found commissions and omissions on the appellant's part on many counts.

19. Though the appellant has tried to project the taxi fare as a trivial issue, the trial Court has refused to buy that line of defence. It has found fudging of accounts, fabrication of evidence, and manipulation of records.

20. Thus, the trial Court has found that the appellant did earn a disqualification under section 384 of the Act. And, essentially, its findings are findings of fact, based on evidence, which, to me, stands well analysed and appreciated.

So I find no ground to interfere with the trial Court's findings. As a result, this Appeal From Order is dismissed—no order on costs.

DAMA SESHADRI NAIDU, J.

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