

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER No. 64 OF 2019
WITH
CIVIL APPLICATION NO. 217 OF 2019
IN
APPEAL FROM ORDER No. 64 OF 2019

1. Mr. Mario Aleixo Guadalupe da Costa,
major in age, and his wife,
2. Mrs. Ercilia Conceicao Menezes e da Costa,
both residents of H. No.1124-C, Madel, Curtorim,
Salcete, Goa.
3. Mr. Ubaldo Aleixo Francisco Pilar da Costa,
major in age, and his wife
4. Mrs. Sulana Ligorina Piedade Cota Cruz e Costa,
both residents of H.No.1124-B, Madel,
Curtorim, Salcete, Goa.
5. Mr. Vital Aleixo Milagres da Costa,
major of age, and his wife
6. Mrs. Melba Josefina das Neves da Costa,
both resident of H.No.1123-B, Madel,
Curtorim, Salcete, Goa

.... Appellants.

V e r s u s

1. Mr. Jose Aleixo Guilherme da Costa,
major in age, and his wife
2. Mrs. Virgilia Rita Azavedo e da Costa,
both residents of H.No.1123-A, Madel,
Curtorim, Salcete, Goa.

3. Mrs. Imelda Monica Guadalupe da Costa e Menezes,
major in age, wife of
4. Mr. Minguelinho Mathias Menezes,
both residents of Flat No. F-3, 1st Floor,
St. Francis Colony, Cabeca, St. Cruz, Ilhas, Goa.
5. Mrs. Angela Olinda Socorita Savia da Costa,
major in age, wife of
6. Mr. Francisco Xavier do Araujo,
both residents of H. No.194,
Flores do Compo, Fondvem, Ribandar, Ilhas, Goa.
7. Mrs. Celina Jesoina Antoneta M. da Costa,
major in age, wife of
8. Mr. Joaquim Joseph D'Costa,
both residents of H.No.975,
Piqueno Rumbordem, Curtorim,
Salcete, Goa.

..... Respondents

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for the Appellants.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Ghanekar, Advocate for the Respondent.

CORAM : M. S. SONAK, J

DATE : 16th June, 2021

ORAL JUDGMENT:

Heard Mr. J. P. Mulgaonkar, learned Senior Advocate with Ms.

Rupa Banaulikar, learned Counsel for the appellants and Mr. Sudin Usgaonkar, learned Senior Advocate with Ms. Tanvi Ghanekar, learned Counsel for the respondents.

2. Admit. With the consent and at the request of learned Counsel for the parties, the appeal is taken up for disposal finally.

3. The appeal is directed against the order dated 31.08.2019 made by the Inventory Court on the objections raised at Exhibits 46, 49 and 54 by the interested parties. The objections so raised were objected to by the head of the family by filing replies at Exhibits 53 and 55.

4. Mr. Mulgaonkar, learned Senior Counsel submits that Section 400(5) of The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (the said Act) contemplates holding atleast a summary inquiry before the disposal of objections. He submits that in this case objections have been disposed of by the Inventory Court, without holding any such inquiry. He, therefore, submits that the impugned order is liable to be set aside on this ground alone.

5. Mr. Mulgaonkar, in the alternative, submits that even otherwise the reasoning of the Inventory Court is quite vulnerable as the same overlooks the material on record. Mr. Mulgaonkar submits that most of the

contentions raised by the appellant were not even considered while make the impugned order.

6. Mr. Usgaonkar, learned Senior Counsel for the respondents submits that inquiry is required to be held only if the objections are of substantial nature and not where the objections are quite frivolous. Mr. Usgaonkar submits that in any case the objections of the appellant have been duly considered by the Inventory Court and, therefore, it would be quite futile to set aside the impugned order and remand the matter for holding some formal inquiry. He submits that based on documentary evidence produced by the respondents, no other view was possible and therefore, the impugned order may not be interfered with.

7. The rival contentions now fall for determination.

8. Section 400 of the said Act reads as follows:

'400. Objections to the list of assets and other objections. - (1) Within 30 days from the date the head of the family submits the list of assets, the parties may raise the following objections:-

- (a) that all assets have not been listed;*
- (b) that the head of the family or the donee denies the existence of the assets in his possession;*
- (c) that the head of the family or the donee denies his duties or obligation to collate;*
- (d) that the head of the family or the donee disputes that he has received assets which are attributed to have been received by him.*

(2) Any party may, at any time after the expiry of 30 days, raise objection that all the assets have not been listed, provided such party satisfies the Court that he acquired knowledge of the existence of the properties only within the last 30 days before the presentation of the objection. But failure to raise such objection shall not deprive the party from seeking additional partition as provided in section 371.

(3) Where an objection has been raised that all assets and liabilities have not been listed, notice of the objection shall be given to the head of the family or the donee and they shall be called upon to list out the assets or liabilities left out or to give their say.

(4) Where the head of the family or donee who has been served with notice of the objections admits the existence of the assets or liabilities and acknowledges that they belong to the inheritance but requires time to list them, he may apply for time for the said purpose.

(5) Where the head of the family or the donee denies the existence of the assets or liabilities or declares that they do not belong to the inheritance, the court shall hold a summary inquiry as deemed necessary and decide whether the assets or liabilities should be listed.

(6) Where the dispute cannot be decided summarily and it is necessary to hold a detailed inquiry, the parties shall be directed to file a suit, if they so desire, in respect of the disputed asset or liability and the inventory shall proceed in the respect of the remaining assets and liabilities.

(7) Where the head of the family or the donee fails to give his reply on the date fixed therefor, it shall be presumed that he admits the existence of the assets or liabilities and the duty to list them.

- (8) (a) Where the head of the family or the conferee denies the existence of the assets in his possession or the duty to describe them or to collate or he dispute as to the assets which have been received by him, the disputes shall be decided summarily by the court.*
- (b) The provisions of sub-section (6) shall be applicable to this sub-section.*
- (c) Where the dispute cannot be decided in the inventory proceeding, the head of the family or the donee shall not receive the assets allotted to him without furnishing a security corresponding to the value of the disputed assets.'*
- (Emphasis supplied)

9. The aforesaid Section provides substantially detailed procedure as to how the objections to the list of assets and other objections have to be considered and disposed of. Sub-section 5 of Section 400 provides that where the head of the family or some of the heirs denies the existence of the assets or liabilities or declares that they do not belong to the inheritance, the Court shall hold summary inquiry as deemed necessary and decide whether the assets or liabilities to be listed. However, sub-section 6 of Section 400 provides that where the dispute cannot be decided summarily and it is necessary to hold a detailed inquiry, the parties shall be directed to file a suit, if they so desire, in respect of the disputed asset or liability and the inventory shall proceed in the respect of the remaining assets and liabilities.

10. In the present case, some of the heirs had raised certain objections to the listing of properties. As such, it was necessary for the

Inventory Court to at least hold the summary inquiry in the first instance before deciding whether the assets or liabilities should be listed or not. Admittedly, in this case no such inquiry was ever held.

11. The submission that even after holding an inquiry the result might be not different, cannot be accepted at this stage particularly where no inquiry has been held at all. Mr. Mulgaonkar submits that were an inquiry to be held, then, the appellants would have demonstrated the strength of their objections. In any case, now that the provisions of law require the holding of a summary inquiry before the assets or liabilities are listed where objections are raised to their being listed, the enquiry ought to have been held. On this short ground, the impugned order deserves to be set aside and is hereby set aside.

12. The matter is now remanded to the Inventory Court, which will have to hold a summary inquiry as contemplated by Section 400(5) of the said Act and, thereafter proceed in the matter. All contentions of all parties on merits are obviously left open for determination by the Inventory Court.

13. The parties to now appear before the Inventory Court on 28.06.2021 at 10:00AM and file authenticated copy of this order. The Inventory Court to dispose of the summary inquiry and the objections as

expeditiously as possible and in any case within a period of 4 months from the date the parties file the authenticated copy of this order.

14. The learned Counsel for the parties assure this Court that they will co-operate with the Inventory Court in the matter of expeditious disposal.

15. The Civil Application does not survive and the same is also disposed of.

16. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J.

msr.