

IN THE HIGH COURT OF BOMBAY AT GOA

WP No. 1083 of 2019

Victor Luis Monteiro,
 Son of Joaquim Monteiro,
 Aged abut 44 years, businessman,
 Resident of House No.70,
 Cuelim, Cansaulim, Goa.

..... Petitioner

V e r s u s

1. Rashid Salvador Sousa,
 Son of Maria Amilcar Cunha Sousa,
 Aged about 49 years,
 Resident of T-2, A 302, Fourth Floor,
 Suman Residency, Opp. St. Joaquim Chapel,
 Borda, Margao-Goa.

2. Wiliam Gomes,
 Major in age,

3. Zaira Gomes,
 Major in age, wife of William Gomes,
 Residents of H. No.297, Villa Gomes,
 Calta, Majorda, Salcete, Goa.

4. Jose Luis alias Josce Domenio Luis,
 Major in age, Resident of Carmona,
 Salcete, Goa.

..... Respondents.

Ms. Amira Razaq, Advocate for the Petitioner.

Mr. M. D. Costa, Senior Advocate with Ms. Karisma Betquecr, Advocate for Respondent no.1.

Mr. Vilas Thali, Advocate for the Respondent no.2 and 3.

Mr. Nigel Fernandes, Advocate for Respondent no.4.

CORAM: DAMA SESHADRI NAIDU, J.**Date: 9th March 2021.****Order:**

The fourth respondent initiated inventory proceeding. At that time, in terms of section 375 (4) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (“the Act”), he gave what could be termed

notional value to the properties. And that notional value determined the pecuniary jurisdiction of the court of the first instance, that is the trial Court. It is the Civil Judge, Senior Division. And as the matter is before the Senior Civil Judge, the inventory proceedings are called the 'special inventory proceedings'.

2. When the inventory proceedings were pending, the petitioner applied to the trial Court to come on record. He has claimed that he is the legatee of the Estate Lever's three successors. Indeed, he was duly brought on record. Then, another person, claiming to be a legatee from the Estate Leaver's other successors, also applied to bring himself on record. The petitioner, however, opposed it. In the end, through an order dated 9/10/2019, the trial Court allowed that application. Aggrieved, the petitioner has filed this writ petition.

3. Before Ms. Razaq could advance her arguments to support the petitioner's contentions, all the learned counsel for the respondents had raised a preliminary objection. According to them, in terms of section 451 of the Act, the petitioner has an efficacious alternative remedy: an appeal rather than a writ petition under Article 227 of the Constitution of India. To elaborate, they have submitted that all orders, even if interlocutory nature, shall be challenged before an appellate Court. The only limitation on that appeal provision is that the order sought to be impugned should not be an administrative order. Therefore, the learned counsel have contended that an order impleading a party to the proceedings is not an administrative order; it is a judicial order. And that can be challenged as a Miscellaneous Appeal before a competent appellate civil Court.

4. Confining her arguments to the jurisdictional issue, Ms. Razaq, in response, has submitted that to file an appeal, there ought to be a pecuniary value of the property fixed. Here that stage has not arrived. Once there is no value given to the assets, an aggrieved party ought to invoke Article 227 of the Constitution of India. So, it cannot be said there is any efficacious alternative remedy available for the aggrieved person.

5. After appreciating the rival contentions. I have told the petitioner's counsel that in the face of section 451, the petitioner's arguments may not carry much conviction. Then, Ms. Razaq has argued on how the notional value of the assets should be fixed for the parties to appeal.

6. Ms. Razaq points out that inventory proceedings are akin to a partition suit, and no party can be treated as *dominus litis*. Therefore, the notional or fanciful value fixed by one party shall not prejudice another party. That is, until the actual determination of the value happens under section 409 of the Act, all the parties may give their own notional value and seek remedies based on that pecuniary limit. So, she wants the Court to permit the petitioner to fix a notional value as deemed desirable and choose an appellate forum.

7. On the other hand, Shri M. D'Costa, the learned Senior Counsel appearing for the first respondent, has drawn my attention to section 375 (4) of the Act. According to him, this provision casts a burden on whoever initiates the inventory proceedings to fix the value of inheritance and choose the forum accordingly. Therefore, the value fixed by the initiator of the proceedings has a statutory base. Then, he has further drawn my attention to section 409 and has contended that as that stage has not arrived, it is idle to labour on the impact of that provision. He has also, as a matter of procedure, highlighted that at the stage of licitation or auction, the value fixed under section 409 assumes importance.

8. Then, Shri D'Costa has further stressed that because of the pecuniary value given by the initiator in this case, the proceedings were numbered as special inventory proceedings. Otherwise, with a lower value, they could have been ordinary inventory proceedings, and they must have been before a Civil Judge of Junior Division.

9. After adopting the submission advanced by Shri D'Costa, the learned counsel for the respondent nos.2 and 3, Shri Thali has highlighted the incongruity that results if the petitioner's argument is allowed: that of each party fixing property value on his or her own. Once more than one

person is aggrieved, and each person can fix the notional value as he desires, each can choose his own appellate or revisional forum. It is impermissible, besides being chaotic. To support his contentions he has relied on, (i) *Mrs. Ida Barreto v. Mr. Maxmiano Guilherme Furtado*¹; (ii) *Vero Nunes v. Euroco Erasmo Nunes*².

10. Shri Fernandes, the learned counsel for the fourth respondent, has taken me through section 451 (2) of the Act and emphasized that the value ought to be “the value given to the assets at the time the order is made.” To elaborate, Shri Fernandes submits that when the order was made, there was only one valuation on record. That is given by the fourth respondent. Therefore, any value to be given at a later stage before section 409 comes into play must conform to the value given by the fourth respondent, the initiator of the proceedings. Therefore, he wants the court to treat the value given by the fourth respondent as the notional value until the stage of section 409 arises for determining the appellate forum.

11. Heard Ms. Razaq, the learned counsel for the petitioner; Shri M. B. D'Costa, the learned Senior Counsel for the Respondent no.1; Shri Thali, the learned counsel for the respondent nos.2 and 3; Shri Fernandes, the learned counsel for the respondent no.4.

12. Indeed, to begin with, the learned Senior Counsel for the first respondent has elaborately argued on what is said to be the malpractice taken recourse to by the petitioner. According to him, the petitioner has filed before this Court documents which are not part of the record before the trial Court. The petitioner, according to the learned Senior Counsel, filed those doctored and manipulated documents, to mislead the Court. That stand about record manipulation or tampering stands endorsed by the learned counsel for other respondents.

13. But the learned counsel for the petitioner has submitted that three documents that have been attacked as fraudulent were the draft versions of

the final pleadings filed before the trial Court. But the petitioner mistakenly handed over to her those draft copies which she filed by oversight, without checking or comparing them with the documents on record. It is, according to the petitioner's counsel, a *bona fide* mistake. For the mistake, if ever, of filing draft copies of the documents instead of the final copies as were part of the record, the petitioner's counsel has offered her unconditional apology.

14. I would like to close this issue without much ado. I accept the petitioner's or his counsel's fault is *bona fide*. But both should be vigilant when they file their pleadings or documents before this Court—for that matter, any court. Besides, I want the Registry to insist on self-verification by either the party or the counsel when unsigned typed documents are filed before the Court. That observations will suffice.

15. As to the appropriate forum for an appeal, I reckon that section 451 governs the issue. The provision reads:

451. Appeals.— (1) An appeal from the final order made in the inventory proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be an appeal under section 96 of the Code of Civil Procedure, 1908 (5 of 1908).

(2) *An appeal from order shall lie from every order, other than a merely administrative order, made in inventory proceeding to the competent court depending upon the value given to the assets at the time the order is made and appeal shall be deemed to be an appeal under section 104 of the Code of Civil Procedure, 1908 (5 of 1908).*

(italics supplied)

16. Here, an order permits a particular person to come on record. And that is a judicial order. Therefore, it is amenable to the appellate jurisdiction under section 451 (2) of the Act. Then comes the necessary corollary: the pecuniary value to determine hierarchical appellate court.

17. True, Ms. Razaq has made valiant efforts to impress upon the Court that in the inventory proceedings, the principle of *dominus litis* does not apply. Agreed. According to her, it is for the parties to fix the notional

value and chose the forum. In other words, “the probable value” given by one party should affect no other party adversely. I am afraid that argument may not carry much conviction. It is because section 451 (2) itself mandates that for determining the forum, the pecuniary value must be that given to the assets when the order was made. Here, when the order was passed, there was only one value; and that was given by the fourth respondent as the initiator of the inventory proceedings. At any rate, as the learned counsel for the respondent nos. 2 and 3 has contended that if each party is allowed to fix his own notional value before the stage of section 409 arises, it may be chaotic.

18. Besides, the value the fourth respondent, as the initiator of the inventory proceedings, has notionally fixed has a statutory basis. Chapter XXXVI deals with “Head of the Family”. Under this Chapter, section 375 concerns the “petition”. Sub-section (4) of that section requires the petition to “set out the name, address, *locus standi* of the petitioner, the name of the estate leaver, facts determining the jurisdiction of the court, *value of the inheritance*, identification of the person” who will discharge the functions of the head of the family and whether there are heirs subject to orphan’s jurisdiction. Thus, the value mentioned in the petition setting the inventory proceedings in motion has a statutory basis.

19. After section 375 comes section 409. It deals with “valuation”. Where no objections have been raised as regards the list of assets or the objections raised have been already decided, the court shall order that the assets be valued as on the date of the opening of the inheritance and shall, for that purpose, appoint a valuer. It is for licitation—a mode of partitioning property held in common by sale at auction.

20. Even presidentially, I reckon both *Ida Barreto* and *Vera Nunes* have endorsed the view that it is the value fixed by the initiator when the order was passed that determines the forum.

21. In *Ida Barreto*, this Court has referred to the commentary by *Anotinio Joao de Lopes Cardoso* on Judicial Partition. In that commentary,

as noted by this Court, there was a reference to a citation that in inventories, the value is only “determined when the value of the assets is known at the stage the description is done and after this value is determined, the jurisdiction is defined and fixed, unless there is an increase in the value by licitation or appraisal”. That is, “the value of the assets which is known at the stage of description would determine the forum of the appeal”. *Ida Barreto* has also held that the value of the appeal would not depend on the Chart of Partition drawn after licitation.

22. *Ida Barreto* followed *Vero Nunes*; *Sheela Rodrigues v. Lourencinha Ana D'Cruz Rodrigues*³; *Lourdes Gregorio Gomindes v. Milagres Santana Gomindes*⁴; and *Renoir I.B. Cota v. Mr. Wright Clement Cota*⁵. According to *Ida Barreto*, each these judgments amply substantiates that it is the initial valuation which would determine the forum of appeal and not that done at different stages which would provide multiple fora of appeal to the parties depending on the stage of valuation and create an anomalous situation.

23. *Sheela Rodrigues*, this Court has held that the inventory proceedings, indisputably, are conducted before and decided by the Civil Judges. It is also not in dispute that every application for initiating inventory proceedings should disclose the probable value of the assets of the deceased, on whose death the inventory proceedings are sought to be initiated. In the end, *Sheela Rodrigues* has held that the inventory proceedings are “suits” for Section 22 of the Civil Courts Act. So, the appeal against order in inventory proceedings where the value of the assets exceeds Rs. 1,00,000/- would lie to the High Court.

24. In *Vero Nunes*, the inventory proceedings were initially valued at Rs. 1 Lac. During the inventory proceedings, the Administrator valued the assets at Rs. 5.35 Lacs. Later, the petitioners led evidence and claimed that some assets had the value of 5 Crores. Then, the trial Court disposed of

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several objections taken by the interested parties. In appeals preferred by the respondents challenging the trial Court's order, the petitioners, who are respondent nos. 5 and 6 in the appeals, objected to the maintainability of the appeals before the District Court. According to the petitioners, as the value of the assets was more than Rs. 20 lacs, the appeals would lie before this Court and not before the District Court.

25. To begin with, the lower Appellate Court has held that in terms of Section 22 of Goa Civil Courts Act, the appeals would lie before the District Court. According to it, it was so because the value of subject matter did not exceed Rs. 1 Lac. It has also held that because of the amendment, the jurisdiction of the District Court has been increased to Rs. 20 Lacs. So, the Appellate Court would have jurisdiction to entertain the appeals. It has further reasoned that actual valuation of the properties involved in the proceedings was not determined by the trial Judge; so, the valuation disclosed at the time of filing of the inventory must be considered as the value to entertain the appeals.

26. This Court has endorsed the lower Appellate Court's view. According to it, the stage for the Inventory Court's valuing the assets did not arise. So the "learned Lower Appellate Court cannot be said to have erred in holding that it has jurisdiction to entertain the appeals". *Vero Nunes*, in the end, declares that "the valuation at the time of the suit determines the appellate forum and not the amount decreed". That is, in the absence of any independent valuation by the Inventory Court, the value given when the inventory proceedings were initiated determines the appellate forum.

I, therefore, hold that this Writ Petition is not maintainable. As a consequence, I also hold that the petitioner may invoke the appellate remedy under section 451 (2). Bona fide, the petitioner has been prosecuting the case before this Court, which has no jurisdiction. Therefore, the Appellate Court that takes up the appeal under section 451 (2) will duly consider the

petitioner's application, if any, filed for the condonation of delay, keeping in view section 14 of the Limitation Act.

DAMA SESHADRI NAIDU, J.

AP/-