

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.6 OF 2021**

DAPHNE FERNANDES E
SILVEIRA AND 7 ORS. ...Appellants

Versus

PATRICIA LOUISA FERNADNES
AND 7 ORS. ...Respondents

Mr. G. Monteiro, Advocate for the appellants.

Mr. B. P. Natekar, Advocate for the respondent Nos. 1 and 2.

CORAM: M. S. SONAK, J

DATE : 10th June 2022

P.C.:

1. Heard Mr. G. Monteiro, learned counsel for the appellants and Mr. B. P. Natekar, learned counsel for respondent Nos. 1 and 2.

2. The challenge in this appeal is to the order dated 11.06.2020 by which the inventory Court has ordered that an inquiry should be held into the objections raised by the respondent Nos. 1 and 2.

3. The impugned order dated 11.06.2020 reads as follows:-

“ Interested parties have filed objection to the list of assets.

2. On 22/1/2018 interested party Patricia Luiza Fernandes e Gonsalves and her husband Wilfred M. Gonsalves had filed objections.

3. In addition to the said objections, further objections were filed at Exh.D-21. The Head of the Family filed reply to the said objections dated 22/1/2018 at Exh.D-18 and reply to the objections at Exh.D-19.

4. Heard Ld. Advocate for the interested parties and head of the family.

5. Interested party Patricia Luiza Fernandes e Gonsalves who has filed objection, is the daughter of deceased no.1 and 2. On going through the said objections and the reply, I am of the opinion that the objections cannot be merely decided, but a detailed inquiry is decided. Interested party Patricia Luiza Fernandes e Gonsalves has to establish her objections. The objections of the head of the family to the objections of the interested party Patricia Luiza Fernandes e Gonsalves are also to be established by the Head of the Family in the said inquiry.

6. With the background, I order that inquiry should be held. Interested party Patricia Luiza Fernandes e Gonsalves to lead inquiry to establish her objections.”

4. Mr. Monteiro, learned counsel for the appellants firstly submitted that since a detailed inquiry would be required to find out whether the objections bear merit, it is only appropriate that the objectors should be relegated to filing a separate suit. Without prejudice, relying upon the decision of this Court in ***Narhari Jaiwant Hornekar and others Vs Laxman Jaiwant Hornekar and others***¹, he submitted that merely because inquiry into the objections raised is to be held, the rest of the inventory proceedings should not be stalled, since, rest of the inventory proceedings can as well proceed parallelly.

¹ Appeal From Order No.32/1998 decided on 17.09.1999

5. Mr. Monteiro, very fairly did not press the objections based on limitation. He pointed out that earlier common Advocate was appearing in the matter and at the stage when the objections were raised the position was different.

6. Mr. Natekar submits that the objectors are entitled to receive certain amount from the estate. However, he stated that the objectors would have no objection if the inventory proceeds on the other aspect parallelly.

7. As regards the first contention of Mr. Monteiro, I do not think that the objectors should be relegated to filing a separate suit in the facts and circumstances of the present case. Whether their objections or their claim for reimbursement to the estate has merit or not can certainly be inquired by the inventory Court itself. In the peculiar facts of this case requiring the objectors to file a separate suit might not only involve multiplicity of proceedings but also the possibility of conflicting orders.

8. However, there is merit in the without prejudice submission made by Mr. Monteiro. The issue as to whether the estate owes any money to the objectors can always be inquired into but for that purpose the rest of the inventory proceedings need not be delayed or stalled. The matters can proceed parallelly.

9. Mr. Monteiro correctly relied upon the observations in *Narhari Jaiwant Hornekar* (supra) where a learned Single Judge of this Court in a similar context observed that merely because inquiry is decided to be held in relation to three items in the inventory proceedings, it was not necessary to stop all further proceedings in relation to the other items which are not subject matter of the dispute in the objections.

10. Therefore, even though the impugned order is not being interfered with, the inventory Court is directed to proceed with the inquiry into the objections as well as the rest of the inventory proceedings including the issue of allotment parallelly. The rest of the inventory proceedings need not be stopped or delayed pending inquiry into the objections about entitlement of some amount towards alleged improvement made in the property listed at item Nos. 8 and 9 raised by the objectors.

11. With the aforesaid clarification and direction, this appeal is disposed of. There shall be no order for costs.

M. S. SONAK, J