

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 592 OF 2015

Shri Divakar R. Dalvi, s/o of late Raghoba Dalvi, 74 years of age, R/o 74, Sai Raj Park, Shantinagar, Ponda-Goa. ...Petitioner

V e r s u s

1. The Deputy Collector & SDO, Bicholim, Sub Division Bicholim, Goa.
2. Shri Balkrishna Martoba Dalvi (since Deceased) Through his LR's
 - a) Sudin Balkrishna Dalvi
 - b) Jayesh Balkrishna Dalvi Both r/o F-4, Saraswati Co-op Housing Society, YeshwantNagar, TiskPonda, Goa 403 401.
3. Shri Ratnakar Martoba Dalvi (since deceased) through his LR's
 - a) Anjali Ratnakar Dalvi
 - b) Chetan @ Umesh Ratnakar Dalvi

Both R/o. H. No. 1332, Ratnajali Bungalow, Behind Sri Daya Shankar Parvati Ganesh Temple Road, Khadpabandh, Ponda, Goa 403 401.
4. Shri Ramesh Martoba Dalvi (Since Deceased) through his LR's
 - a) Prabha Ramesh Dalvi

b) Nilesh Ramesh Dalvi
Both R/o Mangurish Krupa, Sapna
Town, Opp Menezes Factory, Curti,
Ponda, Goa 403 401.

c) Priya Vithal Kamat, R/o Green
Valley Appts, Khadpabandh, Ponda,
Goa 403401.

5. Shri Vinayak Shamba Dalvi (Since
Deceased) Through his LR's

a) Shamba Raghoba Dalvi C/o Smt
Sonal Sanjay Dalvi, DFOX-1, 4th
& 5th Floor, Dr Lourenco Almeida
Complex, Ponda, Goa 403401.

b) Suman Shamba Dalvi (Since
Deceased) Through his LR's

i) Ranjana Datta Nadkarni
Villa No-102, Westerlies
Complex, Behind Neomis
Saloon, Vanelim, Colva
Salcete Goa.

ii) Sandhya Pandurang Naik
"Tirthrupa" A N Naik Road,
Opp HDFC Bank, Aquem
Alto, Margao 403601.

iii) Varsha Vinayak Narvekar
(Varsh Madhav Nevrekar) 2nd
Floor Vishal Building, Dr.
Braganza Pereira Road, Opp
Taj Vivanta, Panaji Goa
403001.

iv) Pandurang Anant Naik
"Tirthrupa" A N Naik Road,
Opp HDFC Bank, Aquem

Alto, Margao 403601.

v) Datta Shivaji Nadkarni
Villa No-102, Westerlies
Complex, Behind Neomis
Saloon, Vanelim, Calva
Salcete Goa

vi) Madhav Vinayak Nevrekar
2nd Floor Vishal Building, Dr.
Braganza Pereira Road, Opp
Taj Vivanta, Panaji Goa
403001.

b) Rajendra Shamba Dalvi
R/o E-3, 1st Floor, Feira Alta
Appartments, Altinho,
Mapusa, Bardez, Goa 403507.

i) Harshal Rajendra Dalvi R/o
E-3, 1st Floor, Feira Alta
Appartments, Altinho,
Mapusa, Bardez, Goa 403507.

c) Sanjay Shamba Dalvi C/o
Smt Sonal Sanjay Dalvi,
DFOX-1, 4th &5th Floor, Dr
Lourenco Almeida Complex,
Ponda, Goa 403401.

i) Sonal Sanjay Dalvi DFOX-
1, 4th &5th Floor, Dr
Lourenco Almeida Complex,
Ponda, Goa 403401.

d) Manohar Raghoba Dalvi S-
3, Wing II, 2nd floor, Above
Ashwini Patholab, Saidutt
Appartments, Shantinagar,
Ponda, Goa 403401.

i) Sunanda Manohar Dalvi S-

3, Wing II, 2nd floor, Above
Ashwini Patholab, Saidutt
Appartments, Shantinagar,
Ponda, Goa 403401.

e) Gurudas Raghoba Dalvi
H.No 409/6, Tara, Plot No
107, PDA Colony, Porvorim,
Bardez, Goa 403501.

f) Neeta Gurudas Dalvi C/o
Gurudas Dalvi, H. No 409/6,
Tara, Plot No 107, PDA
Colony, Porvorim, Bardez,
Goa 403501.

g) Jayanti Ramesh
Mulgaonkar, Opp Assonora
Bus Stand, Assonora, Goa.

i) Ramesh Mulgaonkar Opp
Assonora Bus Stand,
Assonora, Goa.

6. Shri Dattatraya Naguesh Dalvi
(Since Deceased) Through his
LR's

a) Rajendra Dattatray Dalvi
R/o G-3, Shanta Apartments,
Ambegol, Ponda, Goa
403401.

b) Hemant Dattatray Dalvi
R/o T-5, Central Wing,
Kurtarkar Commercial
Arcade, Behind Canara Bank,
Kaziwada, Ponda, Goa
403401.

c) Mahendra Dattatray Dalvi

R/o A-3, Anant Ratna Co-op
Housing Society,
Khadpabandh, - Ponda, Goa
403401.

d) Krishnabai Dattatray Dalvi
C/o Smt Nayan Suresh
Sardesai, Parijat Buiding,
Khadpabandh, Ponda, Goa
403401.

7. Shri Chandrakant Raghunath
Dalvi (Since Deceased)
Through his LR's

a) Shivprasad Chandrakant
Dalvi C/o Shirishkumar Dalvi,
295, Ambegal Pale, Goa
403401.

b) Shirishkumar Chandrakant
Dalvi R/o 295, Ambegal Pale,
Goa 403401.

8. Shri Gurudas Raghunath
Dalvi (Since Deceased)
Through his LR's

a) Raghunath Gurudas Dalvi
R/o 6, Phase-II, Parimal Co-
op Housing Society,
Vishwambar Nagar, Dhavali,
Ponda, Goa 403401.

b) Avadhut Gurudas Dalvi R/o
10, Parimal Co-op Housing
Society, Vishwambar Nagar,
Dhavali, Panda, Goa 403401.

c) Ramabai Gurudas Dalvi
R/o 6, Phase-II, Parimal Co-
opp Housing Society,

Vishwambar Nagar, Dhavali,
Panda, Goa 403401.

9. Smt Sushilabai Shtidhar Dalvi
Through his LR's

a) Shamsundar Shridhar Dalvi
Plot No 7, Sagar Society,
Eastern Street, Tiswadi,
Donapaula, Goa

b) Madhav Shridhar Dalvi
H.No 56, Ambegal, Pale,
Bicholim, Goa 403401.

10. Shri Manguesh Ramchandra
Dalvi (Since Deceased)
Through his LR's

a) Laxmibai Manguesh Dalvi
C/o Dr Damodar Narvekar, B-
1, Devashree Enclave,
Beelavista, Sangolda, Bardez,
Goa 403511.

b) Atul @ Ramchandra
Manguesh Dalvi 53,
Ganeshprasad Co-op Housing
Society, Khadpabandh, Ponda,
Goa 403401.

c) Laxmidhar @ Amol
Manguesh Dalvi A-101,
Montveit Grande, Survey No
122, S.V.S Road, Pashan Pune
411021.

d) Jayant Ramchandra Dalvi
H.No Haddiyawada, Post
Mangueshi, Mardol Goa 403
404.

e) Dilip Ramchandra Dalvi B-1, Kapila Co-op Housing Society, Khadpabandh, Ponda, Goa 403401.

f) Rajiv Ramchandra Dalvi 104/3, Meridian Appts, Veera Desai Road, Andheri (W), Mumbai 400058.

11. Shri Laxmikant Fonba Dalvi (Since Deceased) Through his LR's

α) Ashok Laxmikant Dalvi C/o Deepak Dalvi, Flat No 3, Bldg No E, Advalpalkar Legend, Shankarwadi, Taliegao, Tiswadi, Goa 403002.

β) Dipak Laxrnikan Dalvi R/o Flat No 3, Bldg No. E, Advalpalkar Legend, Shankarwadi, Taliegao, Tiswadi, Goa 403002.

i) Lata Deepak Dalvi R/o Flat No 3, Bldg No. E, Advalpalkar Legend, Shankarwadi, Taliegao, Tiswadi, Goa 403002.

χ) Damodar Laxrnikan Dalvi F-4, Wagnagar Co-op Housing Society, St Pedro, Ribandar, Tiswadi, Goa.

ii) Meenaxi Damodar Dalvi F-4, Wagnagar Co-op Housing Society, St Pedro,

Ribandar, Tiswadi, Goa.

- d) Kiran Laxrnikant Dalvi B-3,
F-1, Vijaynagar Co-op
Housing Society, Corlim,
Tiswadi, Ilhas, Goa.
- iii) Sangeeta Kiran Dalvi B-3,
F-1, Vijaynagar Co-op
Housing Society, Corlim,
Tiswadi, Ilhas, Goa.
- e) Sadguru Laxmikant Dalvi
R/o B-2A, Madhunan Co-
op Housing Society,
Tambdi Mathi, St Inez,
Tiswadi, Panaji, Goa
403001.
- iv) Sanghya Sadguru Dalvi R/o
B-2A, Madhunan Co-op
Housing Society, Tambdi
Mathi, St Inez, Tiswadi,
Panaji, Goa 403001.
- f) Prasad Laxmikant Dalvi R/o
Bldg No 3, 2nd Floor,
Kamat Plaza, St, Inez,
Tiswadi, Panaji, Goa
403001.
- v) Deepashree Prasad Dalvi
R/o Bldg No 3, 2nd Floor,
Kamat Plaza, St, Inez,
Tiswadi, Panaji, Goa
403001.
- g) Geeta Gajanan Lawande
Waghnagar (Wagh Nagar),
Sapac, Ribandar Tiswadi
Goa 403006.

- h) Gajanan Lawande
Waghnagar (Wagh Nagar),
Sapac, Ribandar Tiswadi
Goa 403006.
- i) Alka Anil Kamat Pitul
Kamat Plaza, Ground
Floor, Near Janata Society,
Aquem Alto Margao Goa
403601.
- j) Anil/Atchut V Kamat Pitul
Kamat Plaza, Ground
Floor, Near Janata Society,
Aquem Alto Margao Goa
403601.
- k) Sunita Prassankurnar
Salgaonkar (Since
Deceased)Through his LR's
- a) Chetan P Salgaonkar
"Triveni", 1st Floor, House
No-67/A, Ward No-9,
Ansabhat, Mapusa Bardez
403507.
- b) Reshma Chetan Salgaonkar
"Triveni", 1st Floor, House
No-67/A, Ward No-9,
Ansabhat, Mapusa Bardez
403507
- c) Nikita P Salgaonkar
"Triveni", 1st Floor, House
No-67/A, Ward No-9,
Ansabhat, Mapusa Bardez
403507.
- 1) Bharati Umesh
Kudchadkar J B
Appartment, Near Pandava
Chapel, Aquem Margao

Goa 403601.

- m) Umesh Kudchadkar J B
Appartment, Near Pandava
Chapel, Aquem Margao
Goa 403601.

12. Shri Heramb Venkatesh Dalvi
(Since Deceased) Through his
LR's

- a) Sudhesh Heramb Dalvi
R/o 5th Floor, Sanchayani
House, Dada Vaidhya
Road, Opp Mahalaxmi
Temple, Tiswadi, Panaji,
Goa 403001.
- b) Pranoti Sudhesh Dalvi
R/o 5th Floor, Sanchayani
House, Dada Vaidhya
Road, Opp Mahalaxmi
Temple, Tiswadi, Panaji,
Goa 403001.
- c) Pranoti Sudhesh Dalvi
R/o 5th Floor, Sanchayani
House, Dada Vaidhya
Road, Opp Mahalaxmi
Temple, Tiswadi, Panaji,
Goa 403001.
- d) Amogh Kunkolienkar R/o
Krishnakamal Bldg. Opp
St. Inez Church, 1st Floor,
St Inez, Panaji, Tiswadi,
Goa 403001
- e) Niraj Vagle R/o Kamat
Royale, Building No 9,
Flat No 722, Kerant

Street, Caranzalem,
Tiswadi, Goa 403002

f) Alisha Niraj Vagle R/o
Kamat Royale, Building
No 9, Flat No 722, Kerant
Street, Caranzalem,
Tiswadi, Goa 403002

g) Pradip Azrenkar R/o Flat
No AS4, Laxmi Housing
Society, Behind Police
Station, Comba, Margao,
Goa 403601.

h) Supriya Pradip Azrenkar,
Flat No AS4, Laxmi
Housing Society, Behind
Police Station, Comba,
Margao, Goa 403601.

13 Shri Anant Shamba Dalvi (Since
Deceased) Through his LR's

α) Pritam Anant Dalvi R/o H. No
70, Ambegal, Pale, Bicholim,
Goa 403105.

14. Shri Vishnu Sadhashiv Dalvi
(Since Deceased) Through his
LR's

(a) Guirish Sadanand Dalvi Asst
Director Transport, 1st Floor,
Junta House, Panaji, Tiswadi,
Goa 403001.

(b) Prakash Sadashiv Dalvi R/o
Manguirish Krupa, H. No 119
A/3, Karaswada, Thivim Ind
Estate, PO Mapusa, Bardez,

Goa 403526.

(c) Chaya Visnu Dalvi H.No 166,
Ambegal, Pale, Bicholim, Goa
403105.

(d) Alpana Shakar Kulkarni Villa
B-5, Drearnwoods, Opp The
Village Party Hall, Pateapur
Nuvem, Salcete Goa 403601.

(e) Vibha Vassudev Samant C-
101, Sai Sagar Tower, Sai Baba
Complex, Mohan Gokhale Marg,
Goregaon East, Mumbai 400063.

(f) Aditi Dessai A15/1.1,
Gurukripa Society, Sector 3,
Sanpada, Navi Mumbai 400705.

15. Shri Prabhakar Shankar Dalvi
(Since Deceased)Through his
LR's

a) Shankar Prabhakar Dalvi
Shri Mangeshprasad, Lane no.
2, PMC Ward, Durgabhat,
Ponda, Goa 403401.

b) Deelipkumar Prabhakar
Dalvi Flat No F2, Bldg No 14,
Shri Chaityanya Co-op
Housing Society, Navelkar
Estate, Baiguinim,
Tiswadi,Old Goa 403402.

c) Sagar Prabhakar Dalvi 1st
Floor, Ashirwad Bldg, Opp
Electricity Department,
Haveli, Curti, Ponda, Goa
403401.

16. Shri Govind Naguesh Dalvi
(Since Deceased) Through his
LR's

- a) Dr Sanjiv Govind Dalvi
Directorate of Health
Services, Govt of Goa,
Campal Panaji, Tiswadi,
Goa 403001.
- b) Dipak Govind Dalvi C/o
Dr Sanjiv Govind Dalvi,
Directorate of Health
Services, Govt of Goa,
Campal Panaji, Tiswadi,
Goa 403001.
- c) Anagha Ajit Dalvi C/o Dr
Sanjiv Govind Dalvi,
Directorate of Health
Services, Govt of Goa,
Campal Panaji, Tiswadi,
Goa 403001.

...Respondents

Mrs. A. A. Agni, Senior Advocate with *Ms. Jay Sawaikar,*
Advocate for the Petitioner.

Ms. Neha Kholkar, Additional Government Advocate for
Respondent no.1-State.

Mr. C. A. Ferreira, Advocate with *Mr. S. Kamulkar, Advocate*
for the Respondent nos. 5(e) and 5(f).

Mr. Y. V. Nadkarni, Advocate with *Mr. S. Kamat, Advocate*
for Respondent no. 12(a) to 12(a)(3) and 12(b).

CORAM: MANISH PITALE, J
Reserved on: 7th December 2021
Pronounced on: 4th January 2022

JUDGMENT

1. The validity of an order dated 30.05.2015, passed by Respondent no.1-Deputy Collector, hinges on interpretation and application of Section 61(2) of The Goa Daman and Diu Land Revenue Code, 1968, (for short, '*the aforesaid Code*') to the facts of the present case.

2. The Petitioner filed an application dated 18.01.2011 before Respondent no.1 under Section 61 of the aforesaid Code seeking partition of his share from property located in survey no. 207/1 and 208/1 of Village Pale. The Petitioner placed reliance on five registered Sale Deeds executed in his favour by certain co-owners of the property. It is an admitted position that the Petitioner is also a co-owner of the property. According to the Petitioner, since undivided shares of his vendors were sold to him by way of aforesaid Sale Deeds, he was entitled to invoke Section 61(2) of the aforesaid Code, which provides that a co-holder can apply to the Collector for a partition of his share in a holding.

3. Some of the co-owners i.e. the contesting Respondents in this Writ Petition filed objections to the said application. They claimed that when the Petitioner approached Respondent no.1 on the basis that undivided shares of the vendors were sold in his favour, he could not have claimed a specific area of the property while seeking partition. It was also claimed that since the shares of the co-owners were not ascertained and there was yet to be a partition of the property by metes and bounds, the application could not be entertained by Respondent no.1. Some of the co-owners while

raising objection to the aforesaid application, stated that the Sale Deeds in question were *ex facie* invalid for the reason that the names of the vendors were themselves not recorded in Survey form No. I and XIV and that the Sale Deeds were not executed by the daughter of one of the vendors. On this basis, it was claimed that there was a serious dispute of title raised by the objectors and that the application could not be entertained in view of the proviso to Section 61(2) of the said Code, which states that where any question as to title is raised, no partition shall be made until such question has been decided by a civil suit.

4. In this application seeking partition, the Petitioner filed an application for placing on record additional documents, which included details of an Inventory Proceeding pending before the competent Court and the Petitioner claimed that the said documents could assist the Respondent no.1 in deciding the application for partition in a comprehensive manner.

5. By the impugned order, the Respondent no.1 not only dismissed the application for production of documents but further held that the application for partition shall be kept in abeyance until the parties obtained an order from a competent Court of law by which the property is partitioned by metes and bounds or there is a family partition dividing the property by metes and bounds.

6. Aggrieved by the said order, the Petitioner filed the present Petition, wherein Rule was granted. The Petition has come up for final hearing. At this stage, a contention which was earlier sought to be raised on behalf of the contesting Respondents as regards

availability of alternative remedy, was not pressed on their behalf and submissions of the parties were heard on merits.

7. Mrs. Agni, learned Senior Counsel appearing for the Petitioner, submitted that the nature of objections raised on behalf of the contesting Respondents in the present case, could not be said to be raising a question as to title. It was submitted that the co-owners having sold their undivided shares to the Petitioner, was not disputed on behalf of the contesting Respondents and, therefore, all that Respondent no.1-Deputy Collector was required to do was to identify the share of the Petitioner on the basis of his entitlement reflected in the registered Sale Deeds and to partition the property, to put the Petitioner in possession of such share. It was submitted that, so long as the registered Sale Deeds executed in favour of the Petitioner were not challenged in accordance with law, the title of the Petitioner could certainly not be disputed. On this basis, it was submitted that the proceedings before Respondent no.1 could not be kept in abeyance. There was no cause for the Petitioner to have invoked the jurisdiction of the Civil Court and since, admittedly the contesting Respondents had failed to challenge the registered Sale Deeds executed in favour of the Petitioner, there could not be said to be any question raised as to the title of the Petitioner, thereby demonstrating that the application for partition ought to have been decided on merits.

8. It was further submitted on behalf of the Petitioner that the application for production of additional documents was wrongly dismissed by Respondent no.1, for the reason that the said documents were required to assist Respondent no.1 in deciding the

application for partition. It was submitted that in the interest of justice, the application for production of additional documents deserved to be granted and the Respondent no.1 ought to be directed to decide the application for partition on merits, by holding that the said application was not hit by the proviso to Section 61(2) of the aforesaid Code. It was submitted on behalf of the Petitioner that the Respondent no.1 erred in relying upon the Judgment of this Court in the case of *Prakash Nathyaba Bhosale vs Laxman Ganaba Bhosale*¹ and Full Bench judgment of the Madhya Pradesh High Court in the case of *Nagjiram vs. Mangilal & Ors.*². The said judgments were sought to be distinguished on facts, as well as on the interpretation of Section 61(2) of the aforesaid Code.

9. On the other hand, Mr. C. A. Ferreira, learned Counsel appearing for the contesting Respondent nos.5(e) and 5(f) and Mr. Y. V. Nadkarni, learned Counsel appearing for Respondent nos. 12(a) to 12(a)(3) and 12(b), submitted that Respondent no.1 had properly applied the proviso to Section 61(2) of the aforesaid Code to the facts of the present case. It was submitted that the nature of objections raised on behalf of the contesting Respondents clearly raised a question of title. Once the contesting Respondents raised objections to the Sale Deeds, it went to the root of the matter as regards title of the Petitioner and hence the Respondent no.1 was justified in keeping in abeyance the proceedings in the application filed by the Petitioner. It was submitted that the ratio of the judgment of the Full Bench of the Madhya Pradesh High Court in the case of *Nagjiram vs. Mangilal* (supra) applied to the present

1 AIR 2003 Bom 41

2 AIR 1977 MP 8 FULL BENCH

case, for the reason that Section 178 of Madhya Pradesh Land Revenue Code, 1959, which was the subject matter of consideration in the said Full Bench Judgment, was *pari materia* to Section 61(2) of the aforesaid Act. It was further submitted that this Court in the case of ***Ramkrishna Janardhan Bhat @ Ramkrishna Janardan Pingre vs. Gold Resorts & Hotels Pvt. Ltd. & Ors.***³ had specifically considered Section 61(2) of the aforesaid Code and after appreciating the said Full Bench Judgment of the Madhya Pradesh High Court, held in the favour of the position sought to be canvassed on behalf of the contesting Respondents.

10. On this basis, it was submitted that once the contesting Respondents raised a specific dispute as regards the title and entitlement of the Petitioner to share in the property and hence partition, there was no alternative for the Respondent no.1 but to keep the proceedings in abeyance. If the Petitioner desired to pursue the said application for partition, he ought to first knock the doors of the Civil Court, as per proviso to Section 61(2) of the aforesaid Code and, thereafter, approach the Respondent no.1 for revival of the proceedings in the application for partition, depending upon the outcome of the proceedings before the Civil Court. It was submitted that under Section 61(2) of the aforesaid Code, when a co-holder of the property applies for partition before a Collector, the same can be considered and granted so long as there is no dispute raised by other co-holders and there is consent on their part for undertaking the exercise of partition. In this context, attention of this Court was invited to The Goa, Daman and Diu Land Revenue (Partition of Holdings) Rules, 1969, framed under Section 199(2) of

3 2018 (1) Bom C.R. 708

the aforesaid Code, particularly Rule 2 thereof. It was emphasized that under the aforesaid Rule, the Petitioner as the Applicant before Respondent no.1, was required to give the names of all the co-holders and also the extent of their shares. In this backdrop, by inviting attention to the application filed on behalf of the Petitioner, it was submitted that the same was deficient and hence, no interference was warranted in the impugned Order passed by Respondent no.1.

11. In the Writ Petition, two applications were filed for placing additional documents on record. These documents include copies of the five registered Sale Deeds executed in favour of the Petitioner. Considering the nature of contentions raised on behalf of the rival parties, both the applications i.e. Misc. Civil Applications Nos. 33 of 2016 and 483 of 2016, are allowed since it is found that the said documents would assist this Court in deciding the present Writ Petition.

12. Before considering the rival submissions, it would be appropriate to refer to the said provision of law, as it stood at the relevant time. The said provision reads as follows:

“61. Partition. — (1) Subject to the provisions of any law for the time being in force for the prevention of fragmentation and consolidation of holdings, a holding may be partitioned on the decree of a civil court or on application of co-holders in the manner hereinafter prescribed.

(2) If in any holding there is more than one co-

holder, any such co-holder may apply to the Collector for a partition of his share in the holding:

Provided that, where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit.

(3) Subject to the provisions of sub-section (4), the Collector may, after hearing the co-holders, divide the holding and apportion the assessment of the holding in accordance with the rules made by the Government under this Code.

Provided that nothing in this sub-section shall apply to any land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894), in respect of which no suit is pending in any Court and it shall be lawful for the Director of Settlement and Land Records to carry out partition and effect necessary changes in the land record on the basis of records relating to possession obtained under section 16 of the Land Acquisition Act, 1894 (Central Act 1 of 1894).]

(4) The application under sub-section (2) shall be rejected if the partition applied for results in creating a holding, the area or land revenue of which will be below such limits as may be prescribed.

(5) Expenses properly incurred in making partition of a holding shall be recoverable as a revenue demand in such proportion as the Collector may think fit from the co-holders at whose request the partition is made, or from the persons interested in the partition.”

13. A bare perusal of the above-quoted provision shows that a holding can be partitioned either on a Decree of a Civil Court or on an application of a co-holder to the Collector for partition of his share in the holding. But, the proviso to Section 61(2) of the Code makes it clear that when a question as to title is raised, the Collector shall not make any partition until such question is decided by a civil suit. The question of title would arise upon a dispute being raised in that regard when an application is moved by a co-holder before the Collector. The moment such a dispute is raised, the question of title would arise, thereby triggering the proviso to Section 61(2) of the Code.

14. There is no indication in the above-quoted provision as to the manner in which the question of title may arise or whether the applicability of the proviso would depend upon who approaches the competent Court by filing a civil suit. All that is provided is, where any question as to title is raised, the Collector shall not make partition under Section 61(2) of the Code until such question is decided by a civil suit.

15. In this context, the Judgment of the Full Bench of the Madhya Pradesh High Court in the case of *Nagjiram vs. Mangilal* (supra), assumes importance. Section 178 of the Madhya Pradesh Land Revenue Code, 1959, was subject matter of consideration before the Full Bench, which reads as follows:

“Section 178: Partition of holding: — (1) if in any holding which has been assessed for the purpose of agriculture under Section 59, there are more than one Bhumiswami, any such Bhumiswami may apply to a Tahsildar for a partition of his share in the holding: Provided that no such partition shall be made, if any question of title is raised, until such question has been decided by a civil suit.

(2) The Tahsildar may, after hearing the co-tenure holders divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

Explanation I.- For purpose of this section any co-sharer of the holding of a Bhumiswami who has obtained a declaration of his title in such holding from a competent civil court shall be deemed to be a co-tenure holder of such holding.”

16. A bare perusal of the above-quoted Section 178 of the Madhya Pradesh Land Revenue Code, 1959, shows that the proviso to Section 178(1) thereof is *pari materia* to Section 61(2) of the aforesaid Code applicable in the State of Goa. While considering the aforesaid provision, various aspects were brought to the notice of the Full Bench of the Madhya Pradesh High Court, particularly the manner in which the proviso would operate when an application for partition is submitted by a co-holder of the property. The Full Bench of the Madhya Pradesh High Court held that the proviso is attracted as soon as any question of title is raised and that a question

of title is raised within the meaning of the proviso when the applicants' right to partition is disputed. It is further held that the proviso comes into place even when the question of title is genuine or bogus, strong or weak, *bonafide* or *malafide*. It is further elaborated in the said Judgment that the proviso does not empower or authorize the revenue authorities to give any direction as to the person who should go to the Civil Court and that no direction in that regard can be issued.

17. A specific contention was raised on behalf of the party applying for partition in the aforesaid case before the Full Bench of the Madhya Pradesh High Court, that the objectors may raise any kind of flimsy or frivolous dispute as to title and yet the revenue authorities would have to blindly and mechanically stop the proceedings. While rejecting such an argument, it was held that whatever be the nature of the dispute leading to a question as to title, the party pursuing the application before the revenue authority may move the Civil Court, if so advised. The Court could not direct either party to move the Civil Court. It was held that if nobody moved the Civil Court, the proceedings before the revenue authority would be abortive. In this context, it was specifically held that Section 178(1) read with the proviso under the Madhya Pradesh Land Revenue Code, 1959, would operate effectively when there is no dispute as to title. Otherwise, the matter would have to be decided in a Civil Suit. The Full Bench rendered its conclusions in paragraph 15 as follows:

“15. *The conclusions we have reached may now be summed up thus:*

(i) When there are more Bhumiswamis than one, to any holding (which has been assessed for the purpose of agriculture) every one of them has the right to apply to the Tahsildar for a partition of his share.

(ii) the proviso to Section 178 (1) of the Madhya Pradesh Land Revenue Code, 1959, is attracted as soon as any question of title is raised. The Revenue authority has no jurisdiction to enter into any such question, whether the question of title raised is genuine or bogus, strong or weak, bona fide or mala fide.

(iii) When a question of title is raised, partition shall not be made and the Revenue authority shall stay its hands to await the decision of the Civil Court.

(iv) The Revenue authority has no jurisdiction to give any direction to any particular party to institute a civil suit, much less to fix any time for that purpose.

(v) The application for partition will in such case remain in abeyance until the question of title is decided. The

Revenue authority may for statistical purpose consign the proceeding to the record room to be recalled when the decision of the Civil Court is received. The application for partition cannot be dismissed.

(vi) When the decision of the Civil Court is received, the Revenue authorities shall proceed to make the partition having regard to the decision of the Civil Court.

(vii) Paitram v. Board of Revenue (1968 Jab LJ 304) was not correctly decided in so far as it was held that a direction ought to be given to one of the parties.

(viii) Gangaram v. Kanhaiyalal (1971 Jab LJ 819) was not correctly decided in so far as it was held that the party seeking partition must necessarily go to the Civil Court. All that the Revenue authority can do is to tell the parties that since a question of title is raised, it would not proceed with the partition proceedings. The Revenue authority must stop on that point and leave the parties to take recourse to the civil suit. Naturally, that party will go to the Civil

Court, who wants the partition proceeding to be proceeded with and completed. However, it is not for the Revenue authority to advise either of the parties or to give any direction to either of them to institute a civil suit.”

18. The aforesaid Full Bench judgement of the Madhya Pradesh High Court was cited before a learned Single Judge of this Court in the case of ***Ramkrishna Janardhan Bhat*** (supra) in the context of Section 61(2) of the aforesaid Code applicable to the State of Goa.

19. The learned Single Judge of this Court found that the ratio of the Full Bench judgment of the Madhya Pradesh High Court concerning the *pari materia* provision was relevant and applicable. It was also found that under the proviso to Section 61(2) of the Code, partition is barred whenever the title to the property is in dispute and that, therefore, the jurisdiction of the Collector in terms of Section 61(2) of the Code is by implication of consent. In the said case, the Applicant for partition contended that since the challenge to the Sale Deeds was not raised and that there were plans annexed to the Sale Deeds identifying the property sold to the Respondent no.1 therein, the Full Bench judgment of the Madhya Pradesh High Court was distinguishable and that the Collector ought to have proceeded with the application for partition on merits. The said contention was rejected by this Court by holding that if the contention was accepted, it would clearly whittle down the proviso to Section 61(2) of the said Code.

20. The learned Senior Counsel appearing for the Petitioner vehemently submitted that the view adopted by the learned Single Judge of this Court in the case of *Ramkrishna Janardhan Bhat* (supra) was erroneous as it amounted to reading something into the aforesaid provision of the Code. But, this Court is of the opinion that the jurisdiction under Section 61(2) of the Code, held to be jurisdiction of consent in the said judgment, is in the backdrop of the language of the proviso to Section 61(2) of the Code, which specifically provides that whenever a question of title arises, the Collector cannot make a partition on the basis of the application filed by a co-holder, for the reason that the other co-holders have raised a dispute and they have not consented to the claims of the Applicant before the Collector. The question of title would arise when such dispute or objections are raised on behalf of any of the co-holders.

21. Having considered the aforesaid provision of the Code and the judgments brought to the notice of this Court, it becomes necessary to consider the nature of objections raised on behalf of the contesting Respondents in the present case, to ascertain whether a question of title is raised or not. Answer to the said question would lead to a decision on the applicability of proviso to Section 61(2) of the said Code to the facts of the present case, which in turn, would assist this Court in determining whether the Respondent no.1 in the impugned order was justified in keeping the proceedings in abeyance until the parties obtained an order from a competent Court of law.

22. In the present case, a perusal of the application dated 18.01.2011, filed by the Petitioner under Section 61 of the aforesaid Code would show that he has prayed for partition of his share in the properties in question by relying upon five registered Sale Deeds. The Petitioner has specifically stated the area of the property under each registered Sale Deed, to which he claims to be entitled, and thereupon he has requested for a separate holding of an area of 5775 square metres from the properties in question and for allotment of one separate holding. A perusal of the copies of the registered Sale Deeds placed on record would show that although it is stated that the undivided shares of the vendors of the Petitioner are sold to him, each Sale Deed records that the vendors have 1/32 share in the property and the area of the property is also specified in such registered Sale Deeds.

23. A perusal of the objections raised by the contesting Respondent nos. 5(e) and 5(f), before Respondent no.1 shows that the said Respondents have claimed that the application is bad, inter-alia, for non-joinder of necessary parties. It would be appropriate to quote the objections raised on behalf of the aforesaid contesting Respondents, which read as follows:

“That without prejudice to whatever stated in the aforesaid preliminary objections, the Respondents herein in reply to the Application instituted by the Applicants, respectfully states and submits as follows:

1. That the Respondents herein are the co-owners in possession of the undivided property surveyed under no. 207/1 and 208/1 of Revenue Village Pale of Bicholim Taluka.

2. With respect to contents of paragraph 1 of the Application under reply it is submitted that the Applicant is one of the heir along with the Respondents herein who are together co-owners of the undivided and unpartitioned parcel of the property survey no.207/1 and Survey no. 208/1 of Village Pale, Bicholim.

3. As to the contents of paragraph 2 of the Application under reply it is submitted that as to the contents thereof the applicant be put to strict proof thereof in as much the contents there of are not admitted for want of specific knowledge.

However, it is submitted that the Applicant who claims to have purchased the undivided rights of certain other heirs vide the therein referred Sale Deeds is incapacitated

and legally precluded from securing the relief of partitioning under 61 of Land Revenue Code as prayed as the said Sale Deeds have conveyed, if any undivided rights of some co-heirs to the Applicant and as such till the physical partitioning is done upon an inventory proceedings, or in terms of the principle of meets and bounds or through family deed of settlement, till such time no individual heir including the Applicant can petition under Section 61 of Land Revenue Code as the land remains undivided and unpartitioned.

4. With respect to the paragraph 3 & 4 of the Application It is submitted that the above mentioned property is undivided property and in the Sale Deeds relied by the Applicants it is clearly mentioned that sellers are the co-owners of the said land having 1/32nd undivided share in the said lands upon having acquired said undivided shares through sale conveyance.

5. It is submitted that as per the Sale deeds relied by the Applicants, the Applicants herein may have purchased

the 1/32nd undivided share in the said undivided property but the property is still undivided and unpartitioned hence the relief claimed by the Applicant cannot be granted.

6. It is submitted that the proportionate shares of entitlement accruing upon the Applicant herein is undivided and unpartitioned as the share in the estate constitute a part of the larger ancestral property and as such till the entitlements of shares of each heir interested party is ascertained and partitioned either through Inventory Proceeding or through family settlement deed or upon the application of the Principle of meets and bounds the present application pending adjudication instituted by the Applicants is rendered untenable thereby warranting its dismissal.

7. It is further submitted that the Respondent No.11(a) and 11(b) herein had filed an Appeal in Administrative Tribunals bearing case No. Land Revenue Appeal No. 52/2014 against the order dated 2/8/2012 passed by this

Authority in which the Applicant herein who was the Respondent No. 1 before Hon'ble Additional Tribunal had given his no objection for allowing the Appeal and has thus admitted that the above referred property is undivided in as much as entirely admitted the case as made out by Respondent No.11(a) & 11(b) herein (who were the Appellants before Additional Tribunal) and as such the applicant is now precluded from making volte facie.

8. It is submitted that the mandate of law is thus well settled and that being so, the present case is a sheer abuse of the process of law.

9. It is submitted that the reliefs as sought cannot be granted in view of the factual matrix as stated and averred hereinabove and hence the reliefs as sought by the Applicant in the application under reply cannot be granted.

10. It is specifically submitted that the applicants desire to partition as pleaded in the application under reply

emanates from ignorance of law, practice and procedure.

11. In view of the facts and circumstances stated herein above it is submitted that till the division of property by partition or by application of principle meets and bounds or by inventory as per law is concluded amongst all legal heirs the partitioning of undivided and unpartitioned property in the manner sought by the applicant cannot be allowed. It is therefore submitted that the application under reply be dismissed with cost and oblige.”

24. The objections raised on behalf of all the other contesting Respondents before the Respondent no.1 read as follows:

“i. The Deed of Sale dated 12-4-2010 is executed by Chanda Rudraji Borkar and Rudraji alias Chetan Chanda Borkar who have under the said Deed of Sale sold their undivided share in Survey No. 207/1 and 208/1 of Village Pale of Bicholim taluka. Significantly the name of the said sellers Borkars does not appear in Form XIV of Survey No. 207/1 & 208/1 of Pale Village of Bicholim Taluka. The Sale Deed shows that the

sellers claim to be descendants of late Bascora Hari Dolvy whose name also does not appear in Survey Form I and XIV although the sellers claim to be entitled to 1/32 undivided share. Another notable aspect is the sellers apparently claim 1/32 undivided share however how such undivided share got quantified/evaluate into specific area of 223.34 square metres is not known. Fact is that the said ancestral property is undivided and there is no Deed of Partition amongst the Legal Representatives/heirs/descendants of late Bascora Hari Dolvy and consequently, assuming that the sellers-Borkars are the Legal Representatives/heirs of deceased Bascora Hari Dolvy, such sellers cannot profess to be holders of any specific land much less said 223,44 square metres. The Deed of Sale dated 12-4-2010 is ex-facie invalid void and of no legal efficacy whatsoever AND consequently the purchaser Diwakar Raghoba Dalvi cannot, in the eyes of law, be treated as owner of land admeasuring 223.44 square metres from Survey Number 204/1 and 208/1 of Pale Village of Bicholim Taluka. There is another additional reason which invalidates the Deed of Sale namely the same is not been executed by Mrs. Meghna Tushar Ghosh, the daughter of Chanda R. Borkar. In this context theses opponents annexed hereto the newspaper cutting wherein the obituary

announcement of the death of Chanda R. Borkar was published and same is marked as 'Annexure A'.

ii. Same factual position emerges in respect each of the Sale Deeds relied upon by Partition-Applicant-Diwakar Raghoba Dalvi. To avoid duplication each Sale Deed is not similarly analysed, however, in the course of hearing of this application such analysis would be done and it would be demonstrated to this Honourable Court, how worthless are each of the sale deeds relied upon by Partition-Applicant."

25. The aforesaid contesting Respondents have further stated in their objections that no co-owner can sell a specific portion of the ancestral undivided property and that each of the Sale Deeds executed in favour of the Petitioner is invalid, void and having no legal effect whatsoever. It is specifically claimed that the validity of each of the Sale Deeds has to be first adjudged by a competent Civil Court in a civil suit and, therefore, the Petitioner be directed to institute a Civil Suit in that regard. It is further stated that the Petitioner can be directed to have his title adjudicated in a competent civil suit and only thereafter, can his application be considered.

26. The moot question is, as to whether the aforesaid objections raised on behalf of the contesting Respondents raise a question as to title in the present case, thereby showing that the proviso to Section

61(2) of the Code would come into operation. Although in the above-quoted objections raised on behalf of the contesting Respondents, emphasis is placed on the fact that there is no partition by metes and bounds of the properties in question, it is also specifically stated that the shares of the co-holders are yet to be determined. A proper reading of the objections raised on behalf of the contesting Respondents, including a frontal challenge raised to the aforesaid Sale Deeds, clearly indicates that the question of title is raised by the contesting Respondents and, on that basis, they are disputing the very right of the Petitioner to seek partition. In this context, the learned Senior Counsel appearing for the Petitioner has vehemently submitted that since there are registered Sale Deeds executed in favour of the Petitioner, which have not been challenged in accordance with law by the contesting Respondents or others, the application for partition filed by the Petitioner cannot be kept in abeyance or aborted. In other words, it is claimed that the contesting Respondents could have challenged the Sale Deeds in accordance with law, and having failed to do so, they cannot claim that proviso to Section 61(2) of the Code applied, thereby preventing the Respondent no.1-Deputy Collector to decide the application for partition filed by the Petitioner on merits.

27. The aforesaid contention raised on behalf of the Petitioner cannot be accepted for the reason that the proviso to Section 61(2) of the Code simply states that when a question as to title is raised, the Collector cannot make an order of partition until such question is decided by a civil suit. In the present case, the contesting Respondents have indeed raised a question as to title before Respondent no.1, although they have not filed any civil suits or

other proceedings to challenge the registered Sale Deeds executed in favour of the Petitioner. It is also an admitted position that Respondent no.1, as a Revenue Authority under the provisions of the said Code, is not empowered to decide the question as to title raised on behalf of the contesting Respondents. But, the moment such a challenge is raised, the proviso to Section 61(2) of the Code is triggered and the Collector (Respondent no.1 in the present case) cannot proceed with the matter until such question is decided in a civil suit. There is no indication in the aforesaid provision that the objector or the person at whose behest the question as to title is raised, must file a civil suit, failing which, the Collector would have to proceed, notwithstanding the question as to title arising on the basis of the nature of objections raised in the application for partition filed under Section 61(2) of the Code.

28. In this regard, the ratio of the judgment of the Full Bench of the Madhya Pradesh High Court concerning the aforesaid *pari materia* provision applies, indicating that the nature of objection leading to a question as to title is not the deciding factor as to the manner in which the proviso to Section 61(2) of the Code would apply. It is sufficient that a question as to title arises on the basis of the material in the form of documents or otherwise placed before the Collector.

29. In the present case, it is found on facts that the nature of objections raised on behalf of the contesting Respondents indeed raise a question as to title and hence the proviso stands triggered, thereby demonstrating that the Respondent no.1 did not commit an error in holding that the application for partition filed by the

Petitioner needs to be kept in abeyance, until an order from the competent Court of law is obtained. It cannot be said that Respondent no.1 committed a jurisdictional error in giving the aforesaid direction. It is in consonance with the scheme contemplated under Section 61(2) of the aforesaid Code.

30. Even otherwise, the learned Counsel appearing on behalf of the contesting Respondents are justified in contending that complicated questions of facts requiring parties to lead detailed evidence arise in the backdrop of the objections raised on behalf of the said Respondents. Such questions cannot be decided by a Revenue Authority like the Respondent no.1 and the same can be appropriately decided only by a Civil Court.

31. Once this conclusion is reached, the order dismissing the application for production of documents by the Petitioner before Respondent no.1, pales into insignificance.

32. In view of the above, it is found that no error can be attributed to Respondent no.1 in passing the impugned order.

33. Hence, the Writ Petition is dismissed and the Rule is discharged.

MANISH PITALE, J.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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