

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.445 OF 2021.

ANTONIO SEQUEIRA COUTINHO
PEREIRA ...Petitioner.
VS
FRANCISCO JOSE DE CONCEICAO DE
SILVA NORONHA, REP. BY THEIR
ATT., RUI MANUEL DE SA PINTO AND ...Respondents.
25 ORS

Mr. F. E. Noronha, Advocates for the Petitioner.
Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, and
Mr. S. Rivankar Advocates for the respondent nos.1,2,4 and 5(a).

CORAM: MANISH PITALE, J.

Date: 22nd FEBRUARY, 2022

ORAL ORDER

By this Writ Petition, the petitioner has challenged two orders passed by the District Court. The first impugned order is dated 20.6.2014, whereby an application at exhibit 22 filed by the respondent no.1 for bringing on record legal heirs of original respondent no.17 in a pending appeal, was allowed. The second impugned order dated 16.9.2021, dismissed the review application filed by the petitioner, holding that no interference was warranted in the said order dated 20.6.2014, passed on the aforesaid application at exhibit 22.

2. The brief facts leading up to filing of the present writ petition are that inventory proceedings were initiated on the death of Dr. Francisco Antonio Wolfango Silva and his wife Filomena C. Correia e Noronha Wolfango Silva, in the year 1969, bearing Inventory Proceedings no.7/1969. Amongst others, one Eurico Noronha Wolfango Silva as one of sons of the said Dr. Francisco Antonio Wolfango Silva along with another son namely Raul J. Wolfango Silva and his wife Ernestine A. F. Silva were parties. The record shows that that the Inventory Proceedings concluded by an order 12.9.1990.

3. It was claimed that the Inventory Proceedings proceeded ex-parte against Ricardina Wolfango Silva, wife of aforesaid Eurico N. Wolfango Silva, as notice of the auction was allegedly not served despite the fact that the Inventory Proceedings were contested all throughout. On this basis the said Ricardina Wolfango Silva had filed an application for quashing of the Inventory Proceedings subsequent to order dated 2.5.1987. The said application was filed in the year 1992 bearing Civil Misc. Application no.2/1992.

4. By order dated 27.8.1997, the application was rejected on the ground that the Court had become functus officio. The said

order was challenged by way of an Appeal from Order No.13/1998 before this Court. By order dated 15.1.1999, this Court partly allowed the appeal, set aside the aforesaid order dated 27.8.1997 and remanded the matter back to the Inventory Court.

5. Thereafter, the Inventory Court again rejected the said application by an order dated 30.12.2010, as being not maintainable in view of the objection raised against the maintainability of the said application. The respondent no. 1 filed Civil Misc. Appeal bearing no. 15/2011, before the District Court to challenge the aforesaid order dated 30.12.2010. The said appeal is still pending before the District Court. During the pendency of the appeal, the original respondent no. 17 in the appeal, Ernestine A. F. Silva, died. According to the respondent nos.1, 2, 4 and 5(a), the knowledge of death of the said original respondent no.17 was acquired on 20.2.2013, while the said person had expired on 8.1.2013. An application bearing exhibit 21 was filed on behalf of the respondent no.1 before the District Court, seeking to bring on record legal representatives of the said original respondent no.17. It is an admitted position that copy of the death certificate was not available with the said respondent and it was prayed that unknown heirs of the original respondent no.17 may be permitted

to be served by substituted service. This application was moved on 30.3.2013. Thereafter, the said respondent moved an application dated 14.5.2013 at exhibit 22, on the basis that copy of the death certificate was now available along with details of the legal representatives of the original respondent no.17 and that therefore, the said legal representatives may be permitted to be brought on record. It was asserted by the said respondent that there was no delay in moving the application for bringing legal representatives of original respondent no.17 on record and in case the Court found that there was delay, the same may be condoned.

6. By the impugned order dated 20.6.2014, the District Court considered the application at exhibit 22 and allowed the application giving the following reasons: -

6. *Advocate Shi G.D. Kirtani also argued that the application is barred by limitation and that the proceedings abates as against respondent no.17. However, Advocate Shri Furtado pointed out to me the date of death shown in the death | certificate. The said certificate shows that respondent no.17 died on 8.1.2013. Order 22 of C.P.C enables to party to bring heirs on record within a period of 90 days. The appellants had immediately filed an application at Exh.21 on 30.3.2013, which means the application was filed within 90 days. The second application at Exh.22 is dated 14.5.2013. Since previous application was filed by appellants and steps were taken to bring legal heir on record, the second application at Eh.22 cannot be held to have been filed beyond*

the period of limitation. In the first application the appellants have stated the source of knowledge to be on the previous date of hearing which was on 20.2.3013. Even if, this date is considered the application at Exh.22 which was filed on 14.5.2013, cannot be held to be barred by limitation.

7. *Advocate Shri Kirtani submitted that parties who are before the Court of Inventory Proceedings can only be impleaded in an appeal arising from Orders passed by the Inventory Court. As rightly argued by Advocate Shri A. P. Furtado after the death of the Estate Lever an inventory proceedings is initiated by any one or some of the legal heirs. The Estate Lever is shown as deceased in the said Inventory proceedings. Thereafter the names of the legal heirs are listed by the Cabeça de Casal. In case any party is omitted to be listed, the concerned party files an application for intervention. If any Orders are passed in the said inventory proceedings all the legal heirs of the deceased are required to be made parties in appeal. Since inventory proceedings is initiated by one or some of the legal heirs the cause title of the inventory proceedings does not show the names of all the legal heirs. In fact it is more advisable to implead all the legal heirs in appeal. At time it is also possible that parties who are not impleaded in the inventory proceedings but if they are the actual legal heirs of the deceased an appeal can be filed by them. Even in such case their name will not be shown in the cause title before the Trial Court. I therefore, pass :-*

ORDER

Application is allowed.

7. The petitioner filed an application for review on 15.7.2014 before the District Court, contending that there was an error

apparent on the face of the record and that the application for bringing on record legal representatives ought not to have been allowed. It was claimed that when the question in the pending appeal pertains to the very maintainability of the application filed before the Inventory Court, allowing the application for bringing the legal representatives on record (Exhibit 22) would act as a bar on the petitioner in raising objection with regards to the very maintainability.

8. By the impugned order dated 16.9.2021, the District Court dismissed the review application, observing that there was no error apparent on the face of the record

9. Mr. Noronha, learned Counsel appearing for the petitioner submitted that a perusal of the impugned order dated 16.9.2021 would show that the review application was not considered in the correct perspective at all and that it was dismissed by simply quoting paragraph 7 of the order of the District Court of which review was sought. There was non-application of mind on the part of the District Court in considering the ground raised in the review application and since there was an apparent error on the face of the record, the said impugned order dated 16.9.2021 deserved to be set aside. In so far as the impugned order dated

20.6.2014 is concerned, the learned Counsel submitted that the District Court proceeded erroneously on the basis that Code of Civil Procedure, 1908 (CPC), applied to the appellate proceedings pending before the said Court. It was submitted that a proper appreciation of Portuguese Civil Code applicable in the State of Goa and the subsequently enacted Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, would show that provisions of the CPC would not apply. On this basis, it was submitted that period of limitation of 90 days and proceeding under Order 22 of the CPC on the part of the District Court was entirely misplaced, thereby demonstrating that there was an error of jurisdiction committed by the District Court, while passing the impugned order dated 20.6.2014.

10. It was submitted that the Portuguese Code of Civil Procedure, 1939, particularly Article 154 pertaining to general Rule as to the judicial time limit would apply, thereby showing that the limitation for moving such an application before the District Court was only 5 days, which the District Court completely failed to appreciate while passing the impugned order. A serious challenge was raised to the impugned orders on the basis that only the Portuguese Code of Civil Procedure, 1939, would apply, for the

reason that Section 458 of the aforesaid Act of 2012, specifically provided that the CPC would not apply to the Inventory Proceedings. It was also submitted that if the impugned orders were sustained, it would sabotage the ground available to the petitioner to challenge the very maintainability of the appeal filed by the respondent nos.1 to 5 before the District court, which is pending consideration. On this basis, it was submitted that the impugned orders deserve to be set aside.

11. Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for respondent nos. 1, 2, 4 and 5(a), on the other hand, submitted that there was no substance in the contentions raised on behalf of the petitioner. It was submitted that the predecessor of the said respondents and now the respondents were struggling for adjudication of their rights on merits for a long period of time. It was submitted that a proper appreciation of the provisions of the Act of 2012, particularly Sections 451, 458 and 460 thereof would show that the appeal filed by the said respondents is an Appeal from Order under Section 104 of the CPC and that in such a pending appeal, the procedure contemplated under the CPC for bringing on record legal heirs would certainly apply. Reliance was also placed on a Full Bench judgment of this Court dated

22.12.2015 passed ***in MCA No. 926 of 2013 Mrs. Bharti Parkar Vs Mr. Vilas Mahadev Pilankar and others***, to contend that even before the Act of 2012 came into force in December, 2016, the Full Bench of this Court had laid down that an appeal in the nature of the appeal filed by the respondent nos. 1 to 5 before the District Court had to be treated as an Appeal from Order under Section 104 of the CPC and that the procedural regime of the CPC would apply. It was further submitted that the apprehension raised on behalf of the petitioner that the objection regarding maintainability of the appeal before the District Court would not be available to the petitioner in view of the impugned orders, was a misplaced apprehension and that therefore, the Writ Petition deserved to be dismissed.

12. Heard learned Counsel for the rival parties and perused the material on record.

13. The controversy in the present case is raised primarily on the ground that according to the petitioner, the District Court could not have passed the impugned order dated 20.6.2014 to permit the legal representatives of the original respondent no. 17 in the appeal pending before the District Court, to be brought on record by recourse to provisions of the CPC. In this context it

would be appropriate to refer to the relevant provisions of the Act of 2012, which read as follows:-

Section 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).*

Section 458-Summary proceeding-

Inventory proceeding shall be summary proceeding and shall not be governed by the Code of Civil Procedure, 1908(5 of 1908), unless specifically provided for.

Section 460-Repeal and Savings:

- (1) *On and from the date of coming into force of this Act, all provisions of the law in force at present corresponding to any of the provisions of this Act shall stand repealed.*
- (2) *Notwithstanding such repeal,*
 - (a) *anything duly done or suffered or any right, privilege, obligation or liability acquired, accrued or incurred or any penalty, forfeiture or punishment incurred under any law so repealed shall be deemed to have been done, suffered, acquired, accrued or incurred, as the case may be, under the corresponding provisions of this Act.*
 - (b) *any fee, duty, charges, fine, etc. payable under any law so repealed or any books, forms, etc. in use of under any law so repealed shall, to the*

extent permissible and expedient, continue to be payable or used, as the case may be, till new fees, duties, charges, fines, books, forms, etc. are prescribed or fixed, as the case may be, under the provisions of this Act.

- (3) *All proceedings pending under the repealed laws before any court in the State of Goa, as on the date of the coming into force of this Act, shall be continued in terms of the procedure provided in this Act.*

14. There can be no dispute about the fact that before enactment of the Act of 2012, it being brought into force in December, 2016, the Portuguese Civil Code was applicable to the proceedings with which the parties are concerned. Perusal of Section 460(3) of the Act of 2012, quoted above, shows that all the proceedings pending under the repealed laws in the State of Goa shall continue in terms of the procedure provided under the said Act of 2012. It is relevant that under sub-section (1) of Section 460 of the Act of 2012, it is specifically stated that from the date the Act comes into force, all provisions of the laws in force at the relevant time corresponding to any of the provisions of the said Act shall stand repealed. It becomes clear that since the appeal filed by the respondent nos.1 to 5, arising from order passed by the Inventory Court, was pending when the Act of 2012 came into force, the procedure contemplated under the said Act would apply. Section

458 of the Act of 2012 states that the Inventory Proceedings shall be summary proceedings and that they shall not be governed by CPC, unless specifically provided. It is significant that Section 451(2) of the Act of 2012, specifically provides that an appeal shall lie from an order in an Inventory Proceedings and that such an appeal shall be deemed to be an appeal under Section 104 of CPC. This Court is of the firm opinion that the appeal filed by the respondent nos. 1 to 5 before the District Court, which is pending, is an appeal under Section 104 of CPC as per Section 451(2) of the Act of 2012. It is equally significant that even before the Act of 2012 was brought into force in December, 2016, in the aforesaid Full Bench Judgment dated 22.12.2015 passed in case of ***Mrs. Bharti Parkar Vs Mr. Vilas Mahadev Pilankar and others***(supra), it was held as follows: -

32. *In that view of the matter, we answer the question referred to herein above, as under:*

- (I) A First Appeal would lie in terms of Section 96 of the Indian C.P.C. read with the provisions of the Civil Courts Act against a final Judgment homologating the partition in the inventory proceedings and thereafter a right of Second Appeal would follow in terms of Section 100 of Indian C.P.C.*
- (II) All other orders passed in the inventory proceedings can be challenged by filing an*

Appeal from Order in terms of Section 104 of the Civil Procedural Code.

(III) The orders, which have not been challenged earlier and affect the final decision in the inventory proceedings under clauses(c), (d) and (e) of Article 1435 of the Port. C.P.C. can be challenged along with the final Judgment homologating the inventory proceedings.

(IV) The Court fee payable in filing inventory proceedings is a Fixed Court Fee, payable in proceedings for declaration of rights under the Court Fees Act. The same Court fees shall be payable on the appeal preferred against Judgments/Orders in such Inventory Proceedings.

15. In this backdrop, this Court is unable to agree with the contention raised on behalf of the petitioner that since the appeal arises out of an Inventory Proceeding and the Act of 2012 does not provide for any procedure for bringing on record legal representatives of a deceased party, there is no alternative but to have recourse to Article 154 of the Portuguese Code of Civil Procedure,1939. Accepting the said arguments would militate against the provisions of Act of 2012. It is made clear that this observation is made in the context that this Court is considering correctness of an order passed by the District Court (Appellate Court) in an application filed for bringing on record legal representatives in an Appeal from Order filed by the respondent

nos.1 to 5, which is necessarily to be treated as an appeal under Section 104 of the CPC, as per Section 451(2) of the Act of 2012. This Court is of the opinion that the learned Senior Counsel appearing for the respondent nos.1, 2, 4 and 5(a) is justified in contending that when the procedural regime governing the pending appeal is Section 104 of the CPC, as per Section 451(2) of the Act of 2012, there can be no impediment in resorting to Order 22 of the CPC on the question of bringing on record legal representatives of a deceased respondent in the pending appeal, by applying the Limitation Act in that context. Once the aforesaid conclusion is reached, the inevitable fall out is that the contention raised on behalf of the petitioner cannot be accepted.

16. A perusal of the impugned order dated 20.6.2014, would show that the District Court indeed took into consideration the contents of the first application at exhibit 21 filed on behalf of respondent no.1, when copy of the death certificate of the original respondent no.17 in the appeal was not available and thereafter, the said Court took into consideration the contents of the application at exhibit 22, wherein the respondent no.2 had placed on record copy of the death certificate along with details of the legal representatives of the said deceased original respondent

no.17. On a proper application of mind, the District Court allowed the application at exhibit 22 in the manner quoted above. This Court does not find any error attributable to the District Court in that regard.

17. In so far as the impugned order dated 16.9.2021 is concerned, although the order appears to be cryptic, but the conclusion is correct that the petitioner failed to demonstrate any error apparent on the face of the record of the order dated 20.6.2014, passed by the District Court.

18. In view of the above, it is found that there is no merit in the present Writ Petition. In so far as the apprehension of the petitioner that the impact of the impugned orders would be that such orders would act as a bar on the petitioner to raise objection to the very maintainability of the appeal filed by the respondent nos.1 to 5 before the District Court, an appropriate observation is warranted.

19. In view of the above, the Writ Petition is dismissed. It is made clear that dismissal of the present Writ Petition and confirmation of the impugned orders, shall not act as a bar on the petitioner in pursuing his objection raised before the District

Court regarding maintainability of the appeal filed by the respondent nos.1 to 5.

MANISH PITALE J.