

The petitioner had filed an application for intervention and for being impleaded as an interested party in the aforesaid inventory proceedings.

3. The said inventory proceedings were initiated by the respondent. It was contended that while the respondent claimed to be adopted son of one Kashiram Sadu Mhamal and Gopiki(Chimnen) Kashiram Mhamal, he suppressed the fact that the wife of the petitioner was the daughter of the aforesaid two persons. The respondent claimed that he was adopted by the said persons and that he had the right to initiate the inventory proceedings.

4. The aforesaid application was resisted on behalf of the respondent. The Court of Civil Judge, Junior Division, Pernem dismissed the application filed by the petitioner by observing that he had failed to show that the wife of the petitioner Ganga Kashiram Mhamal was the daughter of the aforesaid Kashiram Sadu Mhamal and Gopiki (Chimnen) Kashiram Mhamal. Aggrieved by the said order, the petitioner filed an appeal before the District Court, which was dismissed by the impugned order dated 13.11.2018 and the review application filed on behalf of the petitioner was also dismissed by the said Court on 26.8.2019.

5. Mr. Kakodkar, learned Counsel appearing for the petitioner submitted that the Court of Civil Judge, Junior Division, ought to have considered the application filed by the petitioner for intervention and for being impleaded as an interested party in the said inventory proceedings under Section 395 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012. It was submitted that under the said provision, an inquiry is contemplated by giving an opportunity to the parties to lead evidence, if any, before passing an appropriate order on such an application. It was submitted that the said Court completely failed to appreciate the scope of the said provision, while dismissing the application of the petitioner by a cryptic order. The District Court also failed to appreciate the said aspect of the matter while dismissing the appeal and review application. On this basis, it was submitted that matter ought to be remitted to the Court of Civil Judge, Junior Division, for holding a proper inquiry in terms of Section 395 of the aforesaid Act. Mr. Kakodkar, learned Counsel placed reliance on the judgment of this Court in the case of ***Conceicao Dais, Vs. Terezinha Dias and others, 2019 SCC online Bom 689***, in support of his contentions.

6. On the other hand, Mr. Thali, learned Counsel appearing for the respondent submitted that the documents sought to be produced on behalf of the petitioner in support of the application for intervention/impleadment could not be said to even *prima facie* support the contentions raised on behalf of the petitioner. It was submitted that in the village concerned the surname "Mhamal" was common and that the documents on which reliance was placed on behalf of the petitioner were inappropriate. It was further submitted that inquiry under Section 395 of the aforesaid Act is contemplated after the application for intervention /impleadment is granted. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

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

8. Before considering the rival contentions raised on behalf of the parties, it would be appropriate to refer to Section 395 of the aforesaid Act, which reads as under:-

395. Application to be declared interested party, legatee or creditor and to be made party to the proceeding. -

(1) Any person may, at any stage of the Inventory proceeding, apply that he may be impleaded as interested party, legatee or creditor. Such application shall be

accompanied by documents and a list of witnesses relied upon.

(2) The vendee of a share in an undivided inheritance may at any stage of the inventory proceeding, before the licitation takes place, apply that he may be impleaded as interested party and such application shall be accompanied by documents and a list of witnesses relied upon.

(3) The head of the family and the parties may give their say along with documents and list of witnesses to be relied upon. After recording evidence, if any, and hearing the parties, the Court shall pass appropriate orders, including on the validity of the sale of the share.

9. A bare perusal of the above quoted provision would show that when an application, in the nature of the application filed on behalf of the petitioner in the present case, is preferred in the inventory proceedings, the concerned Court is expected to give an opportunity to the head of the family in the inventory proceedings to contest such an application. It is then provided that after giving an opportunity to the parties for leading evidence and after hearing the parties, the Court shall pass appropriate order, including on the validity of the sale of share. This Court is of the opinion that aforesaid provision clearly contemplates an inquiry to be conducted by the Court when such an application for

intervention or impleadment is filed by a person claiming to be an interested party in the inventory proceedings.

10. In the case of ***Conceicao Dais, Vs. Terezinha Dias and others*** (supra), this Court referred to Section 395 of the aforesaid Act and found that such an inquiry is indeed contemplated and that in the said case it was found that there was no reference to the said provision and the procedure had not been followed. Consequently, the order was set aside and the matter was remitted to the Court concerned for a decision afresh.

11. In the present case, it is undisputed that while filing the application for intervention, the petitioner had placed on record certain documents in support of his claim that his wife was the daughter of the said Kashiram Sadu Mhamal and Gopiki(Chimnen) Kashiram Mhamal. This assertion on the part of the petitioner was contested by the respondent. At this stage itself, the Court of Civil Judge, Junior Division, was expected to conduct an inquiry as contemplated under Section 395 of the aforesaid Act. Instead, the said Court dismissed the application by a cryptic order. The reasoning is found only in para 6 of the order dated 6.10.2016, which reads thus:-

*“Since the intervener has failed to show that late
Ganga Kashiram Mhamal alias Laximi*

Purushottam Dabholkar is the daughter of deceased nos.1 and 2, the said application deserves to be dismissed."

12. The District Court while considering the appeal and review application filed by the petitioner also did not advert to Section 395 of the aforesaid Act and the inquiry contemplated under the said provisions, while dismissing the appeal and the review application.

13. Considering the mandate of Section 395 of the aforesaid Act, this Court is unable to agree with the contention raised on behalf of the respondent that an inquiry is contemplated after the application for intervention /impleadment is granted. A bare perusal of Section 395 of the aforesaid Act, particularly subsection 3 thereof, would show that the documents and evidence that may be led by the parties are to be considered by the Court while passing an order on the application for intervention or impleadment itself. It is evident from the admitted facts that in the present case, no such exercise was carried out by the Civil Judge, Junior Division, while dismissing the application filed on behalf of the petitioner. Therefore, the petitioner has succeeded in making out a case for remanding the matter back to the said Court.

14. In view of the above, the Writ Petition is allowed. The order passed by the Court of Civil Judge, Junior Division dated 6.10.2016, which merged into the order of the District Court dated 13.11.2018, is quashed and set aside. The impugned orders dated 13.11.2018 and 26.8.2019 passed by the District Court are also quashed and set aside. Consequently, the matter is remitted to the Court of Civil Judge, Junior Division, Pernem, for considering the application (Exh. 14) for intervention filed on behalf of the petitioner, afresh upon following the mandate of Section 395 of the aforesaid Act. Needless to say, all the contentions of the rival parties are kept open.

MANISH PITALE J.