

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO. 12/2019
WITH
CIVIL APPLICATION NO. 47/2019

1. MRS. MARIA NANDA SALES e DIAS,
wife of Rabindra Dias, daughter of late Luis
Gonzaga Sales, aged about 64years, resident of
House No. 566/A, Dr. Pires Colony, Block —
B, Cujira, SANTACRUZ, Goa-403005

2. MR. RABINDRA DIAS,
son of late Emerciano Dias, aged about 65
years, residing at House No. 566/A, Dr. Pires
Colony, Block —B, Cujira,
SANTACRUZ, Goa-403005

... Appellants.

Versus

1. ORLANDO SALES
son of Luis Gonzaga Sales,
aged about 66years,
resident of House No. 33 or
House No.9/11/2
Dr. Dada Vaidya Road, PANAJI,
Goa-403001

2. MRS. MARIA DELIA P.S. SALES e
MORENAS
wife of Raymond Morenas,
aged about 65years,
daughter of late Luis Gonzaga Sales,
resident of Models Estate 1, 2-G4,
CARANZALEM, Goa-403002

3. MR. RAYMOND LS. MORENAS
Son of late Walter Morenas
aged about 69 years,
resident of Models Estate 1, 2-G4,
CARANZALEM, Goa-403002

4. MR. RUNDSTEDT BARROS

son of late Rui Antonio Barros,
husband of Mrs. Lynette Barros,
aged about 63 years,
Represented by his attorney
Mr. Mauricio Colaco, respondent No.7
resident of House No. 51,
VELIM, Salcete-Goa 403723

5. MRS. LYNETTE BARROS

daughter of Dr. Jaime Vilanova Barretto,
aged about 56 years,
Represented by her attorney
Mr. Mauricio Colaco, respondent No.7,
Resident of House No. 51,
VELIM, Salcete-Goa 403723

6. MRS. CYNTHIA BARROS e COLACO

wife of Mr. Mauricio Colaco, daughter of late
Rui Barros,
aged about 61 years,
Represented by her attorney
Mr. Mauricio Colaco, respondent No.7,
Resident of House No. 51,
VELIM, Salcete-Goa 403723

7. MR. MAURICIO COLACO,

son of late Conceicao Colaco,
aged about 77 years, Resident of House No.
563, Pimplafoll,
AMBELIM, Salcete-Goa 403723

8. MR. ROBIN BARROS

son of Rui Antonio Barros husband of Mrs.
Blossom Barros, aged about 61 years,
Represented by his attorney Mr. Mauricio
Colaco, respondent No.7, Resident of House
No. 51, VELIM, Salcete-Goa 403723

9. MRS. BLOSSOM BARROS,

daughter of Lanastro Viegas, aged about 52
years, Represented by her attorney Mr.

Mauricio Colaco, respondent No.7,
Resident of House No. 51,
VELIM, Salcete-Goa 403723

... Respondents.

Mr F.E. Noronha, with Ms Ninoshka Dias, Advocates for the Appellants.

Mr Tarshish Leo Pereira, Advocate for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 18th August 2023

ORAL JUDGMENT :

1. Heard Mr F.E. Noronha, who appears along with Ms Ninoshka Dias for the Appellants and Mr T. Pereira for the Respondents.
2. Admit. With the consent of and at the request of the learned Counsel for the parties, the Appeal is taken up for immediate disposal.
3. Appellant No.1, in terms of the impugned order dated 28/11/2018, has been appointed as the Special Head of the Family under Section 250 of The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (said Act) in respect of the immovable properties enlisted under item Nos. 11 and 12 of the list of assets, respectively. This list of assets is dated 29/3/2017 at pages 40 to 49 of the paper book
4. The Appellants' grievance is that the impugned order does not appoint the Appellant as the Special Head of the Family in respect of the contents of the house situated in the immovable property at item No.12. Mr Noronha points out that even the contents of the house have been listed under item Nos. 13 to 51 of the list of assets.

5. The Appellants' grievance is also that the Appellant is not appointed as the Special Head of the Family in respect of the locker in the Goa Urban Cooperative Bank Ltd., Cuncolim branch, listed at item No.10 of the list of assets. Mr Noronha submits that the key and consequently the control over the said locker is with the Appellant and, therefore, it is only appropriate that the Appellant should be appointed as the Special Head of the Family in respect of this locker and its contents, as well. He submits that the contents of the locker are listed at item Nos. 52 to 74.

6. Mr Pereira, learned Counsel for the Respondents submits that the Respondents will have no serious objection about the Appellant being appointed as the Special Head of the Family in respect of the contents of the house situated in item No.12. He, however, submits that usual terms and conditions should apply to the appointment.

7. Mr Pereira submits that though the locker key is with the Appellant, it would be appropriate if suitable directions are issued to the Appellant to deposit such locker key with the Court instead of insisting upon appointment as the Special Head of Family.

8. Section 250 of the said Act provides that the co-heirs who, on the date of the opening of the inheritance, were in possession of certain properties of the inheritance and so also the heirs who have to restitute gifted properties to the estate, shall be deemed heads of the family in respect of such properties. Accordingly, the inventory Court has appointed the Appellant as the Special Head of the Family in respect of item Nos. 11 and 12. While doing so, the inventory Court should have appointed the Appellant also as the Special Head of the Family in respect of the contents of the house situated in item

No.12 because the principles which apply to the Appellant's appointment as the Special Head of the Family in respect of items No.11 and 12, will also apply to the contents of the house situated in item No.12 at least in the peculiar facts of the present case. Such an appointment will, no doubt, have to abide by the usual terms and conditions.

9. Accordingly, the impugned order is modified and the Appellant is appointed as the Special Head of the Family even in respect of the contents of the house in item No.12, on usual terms and conditions.

10. In so far as item No.10 i.e. the locker in the Goa Urban Cooperative Bank Ltd. is concerned, again, the Appellant is appointed as the Special Head of the Family in respect of the said locker and the contents of the locker. Such an appointment shall be subject to usual terms and conditions including, in particular, the condition that the Appellant shall not, without the leave of the inventory Court, open the locker. If the Appellant applies for leave to open the locker and the inventory Court considers grant of such a leave, then, the inventory Court must ensure that the opening of the locker is in presence of the Court official (Bailiff, etc.) and the Respondents. The impugned order is modified to this extent, as well.

11. The Appeal and the Civil Application are disposed of by modifying the impugned order in the above terms.

12. There shall be no order for costs.

M. S. SONAK, J.