

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.195 OF 2020

1. Mrs. Ana Rosalina Rodrigues
Alias Anna Rosalina Rodrigues,
75 years, through her constituted attorney,
Mr. George Fernandes.

2. Mrs. Sabina Maria Santana Fernandes,
70 years, through her constituted attorney
Mr. George Fernandes.

3. Mr. George Fernandes (deceased through LR's)
71 years, Indian National,
All the above residing at house no. 297
Bamon Vaddo, Candolim, Bardez, Goa

3(a) Mr. Santana George Fernandes
Son of late Mr. George Santan Fernandes,
aged 40 years, Bachelor (unmarried),
Indian national, service,

3(b) Ms. Nancy George Fernandes,
D/o of late Mr. George Santan Fernandes,
aged 47 years, Unmarried, Service.

3(c) Ms. Veronica George Fernandes,
D/o of late Mr. George Santan Fernandes,
aged 45 years, 39 years, unmarried, Service,

All residing at R/o Merwanji Building No. 3,
Room No. 53/B, 2nd Floor, Opposite K.E.M
Hospital, Aai Mai Merwanji Street, Parel,
Mumbai 400012, Presently residing at
Ganeshwadi Utkarsh CHS A wing, 705,
7th Floor, Sriram tekdi Near Tata housing
Development, Kalachowki,
Mumbai 400033

4. Mrs. Piedade Rocha, Major in age,

resident of Parel, Mumbai, through
her constituted attorney Mr. George
Fernandes

5. Mrs. Matilda Cardozo alias Mathilda
Cardozo, Major in age, r/o Nala Supara,
Thane, Maharashtra, through her constituted
attorney Mr. George Fernandes

6. Mr. Bernard Rodrigues, Major in age,

7. Mrs. Fiona Rodrigues, Major in age,
Both r/o: Vikroli, Mumbai, Maharashtra,
Through their constituted attorney
Mr. George Fernandes

8. Mr. Bosco Rodrigues, r/o: Parel,
Mumbai, through his constituted
attorney Mr. George Fernandes

9. Mr. Percival Francis Cardoz,
alias MR. Perceval Francis Cardoz,
Aged 21 years, resident of A/202,
Palm link CHS, near little flower English
High School, Samelpada, Nala, Sopara (W)
District, Palghar, 401203 through his
constituted attorney Mr. George Fernandes

10. Ms. Louiza Manuel Rocha, Age 33 years,

11. Ms. Anna Manuel Rocha, Age 27 years,
Both Resident of Ganeshwadi, Utkarsha CHS,
A wing, 304, 3rd Floor, Shriram Tekdi,
near Tata Housing Development, Kalachowki,
Mumbai, 400033, Through their constituted
attorney Mr. George Fernandes ... PETITIONERS

Versus

1. Mrs. Girgolina Eslinda Dias,
Major in age, Arc of Hope Home for the aged,
Mudda Vaddo, Candolim, Bardez, Goa

2. Shri Francis Dias, c/o John Kaitan
Dias, r/o; Mathura Prasad Co-op Housing
Society, 7th Floor, Pitambar Lane, Behind
Paradise Cinema Theatre, Mahim,
Mumbai-16

... RESPONDENTS

Mr. J. Abreu Lobo for the Petitioners.

Mr. J. Mulgaonkar for the Respondents.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 02nd November, 2023

ORAL ORDER

1. Heard Mr. Lobo for the Petitioners and Mr. Mulgaonkar for the Respondents.
2. The short question which is raised in the present petition is the rejection of objections filed by the Petitioners in connection with examination of Mr. Arvind Dessai as a Power of Attorney Holder of Respondent no. 2. Mr. Lobo submits that Mr. Arvind Dessai was already examined by Respondent no. 2 in this matter and there is no question of examining the same witness as a Power of Attorney Holder.
3. Mr. Mulgaonkar submits that earlier Mr. Arvind Dessai was examined as a Valuer and not as a Power of Attorney Holder of the party.
4. On perusal of the objections raised by the Petitioner and the

orders passed by both the Courts below, one thing is clear that all these aspects could be considered when the witness stepped into the witness box though as Power of Attorney Holder of Respondent no.

2. The Petitioner says that liberty to cross examine the witness and even raising tenability of such evidence including the affidavit at the time of arguing Inventory Proceedings, be kept open.

5. The objections were raised even before the witness stepped into the witness box. Thus the question of deciding such objections has to be looked into only when the witness stepped into the box by tendering his affidavit in evidence or deposed orally on oath. The Petitioners are at liberty to cross examine the witness including his earlier testimony recorded by Trial Court though claimed as an expert/valuer. The objections can be then decided by the Trial Court considering the evidence adduced by the witness including cross examination at an appropriate stage. In view of the above observations, the Trial Court is directed to allow the said witness to step into the witness box by filing his affidavit in evidence and allowing the Petitioners to cross examine him including his earlier deposition and question raised in the objections of tenability of his evidence at the appropriate stage, could be decided.

6. It is made clear that this Court is not going into the facts of the matter on merit. All contentions raised by the Petitioner in this petition as well as objections to the affidavit of the said witness are

kept open. Learned Trial Court shall decide such objections at the appropriate stage. Trial Court shall make an endeavour to dispose of such inventory proceedings as expeditiously as possible. Parties shall bear its own costs. The petition stands disposed of in the above terms.

BHARAT P. DESHPANDE, J.