

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 189 OF 2019**

Mr. Minguel Joao Martins, residing at
Martinsalem Morod, Caranzalem, PO
Caranzalem, Tiswadi Goa.Petitioner.

Versus

1. Mr. Querobino Martins, Flat no.2, 2nd Floor Oliveira Apartment Opposite Police Station Ribandar Panaji-Goa.
2. Smt Mauricia Martins, Near Football Ground Caranzalem, Tiswadi, Goa
3. Mr. Robert Mendonca,
4. Mrs. Fatima Martins e Mendonca, Wife of Mr. Robert Mendonca, Both residing at Donderm, Taleigao, Caranzalem, Tiswadi Goa.
5. Mrs Lavina Martins, Married w/o Querobino Martins, Flat no.2, 2nd Floor, Oliveira, Apartment, Opposite Police station Ribandar Panaji
6. Mr Arvind Carvalho, Valsao, Pale Cansaulim, Mormugao, Goa. Since deceased through (legal heirs)
 - a. Shri Savio Carvalho (major)
 - b. Shri Ciano Carvalho (major)
 - c. Ms. Sonia Carvalho (major)
All residing at Valsao, Pale Cansaulim, Mormugao Goa
7. Mrs Mariquinha Martins e Carvalho, Residet of Valsao-Pale Cansaulim, Mormugao Goa
8. Ralph Dias, Charles Manor, 29th road TPS III, Pali, Bandra Mumbai (since deceased) Through Legal Heirs
 - a. Vadim Dias
 - b. Venessa Dias
 - c. Vivek Dias

All residing at Charles Manor, 29th
Road TPD III, Pali, Bandra Mumbai
400 050

9. Mrs Rosaria Lourdes Martins e Dias,
Charles Manor 29th road TPS III, Pali,
Bandra Mumbai.
10. Mr. Oscar Lopes,
11. Mrs Alice Martins e Lopes, w/o Mr.
Oscar Lopes, Both R/o Noso Lar
Apartments, 2nd Floor, ward 4-A Colva
Salcete, Goa.
12. Mrs Goretti Martins, w/o Minguel
Joao Martins, residing at Martinsalem
Morod, Caranzalem, PO Caranzalem,
Tiswadi Goa.
13. Mr. Fernando Martins,
14. Smt. Rufina Martins, Wife of Mr.
Fernando Martins, Both r/o
Martinsalem Morod, Caranzalem, PO
Caranzalem, Tiswadi Goa.
15. Mr. Antonio Martins,
16. Mrs. Savia Martins, w/o Mr. Antonio
Martins, both residing at Martinsalem
Morod, Caranzalem, Caranzalem,
Tiswadi Goa.
17. Shri Francisco Xavier Martins,
Martinsalem Morod, Caranzalem, P.O.
Caranzalem, Tiswadi-Goa.Respondents.

Mr. C. Padgaonkar and Ms. V. Mahato, Advocate for the
petitioner.

Mr. R. Bras De Sa, Mr. P. Naik, Mr. A. Lanjewar Advocate for the
respondent no.2.

Mr.G. Teles, Advocate for respondent nos.1 and 5

**WITH
WRIT PETITION NO. 192 OF 2019**

Mr. Minguel Joao Martins, residing at
Martinsalem Morod, Caranzalem, PO
Caranzalem, Tiswadi Goa.Petitioner.

Versus

1. Smt Mauricia Martins, Near Football Ground Caranzalem, Tiswadi Goa
2. Mr. Querobino Martins, Flat no.2, 2nd Floor Oliveira Apartment Opposite Police Station Ribandar Panaji-Goa.
3. Mr. Robert Mendonca,
4. Mrs. Fatima Martins e Mendonca, Wife of Mr. Robert Mendonca, Both residing at Donderm, Taleigao, Caranzalem, Tiswadi Goa.
5. Mrs Lavina Martins, Married w/o Querobino Martins, Flat no.2, 2nd Floor Oliveira, Apartment, Opposite Police station Ribandar Panaji
6. Mr Arvind Carvalho, Valsao, Pale Cansaulim, Mormugao, Goa. Since deceased through (legal heirs)
 - a. Shri Savio Carvalho (major)
 - b. Shri Ciano Carvalho (major)
 - c. Ms. Sonia Carvalho (major)
All residing Valsao, Pale Cansaulim, Mormugao Goa
7. Mrs Mariquinha Martins e Carvalho, Resident of Valsao-Pale Cansaulim, Mormugao Goa
8. Ralph Dias, Charles Manor, 29th road TPS III, Pali, Bandra Mumbai (since deceased) Through Legal Heirs
 - a. Vadim Dias
 - b. Venessa Dias
 - c. Vivek Dias
All residing at Charles Manor, 29th Road TPD III, Pali, Bandra Mumbai 400 050
9. Mrs Rosaria Lourdes Martins e Dias, Charles Manor 29th road TPS III, Pali, Bandra Mumbai.
10. Mr. Oscar Lopes,
11. Mrs Alice Martins e Lopes, w/o Mr.

Oscar Lopes, Both R/o Noso Lar Apartments, 2nd Floor, ward 4-A Colva Salcete, Goa.

12. Mrs Goretti Martins, w/o Minguel Joao Martins, residing at Martinsalem Morod, Caranzalem, PO Caranzalem, Tiswadi Goa.
13. Mr. Fernando Martins,
14. Smt. Rufina Martins, Wife of Mr. Fernando Martins, Both r/o Martinsalem Morod, Caranzalem, PO Caranzalem, Tiswadi Goa.
15. Mr. Antonio Martins,
16. Mrs. Savia Martins, w/o Mr. Antonio Martins, both residing at Martinsalem Morod, Caranzalem, Caranzalem, Tiswadi Goa.
17. Shri Francisco Xavier Martins, Martinsalem Morod, Caranzalem, P.O. Caranzalem, Tiswadi-Goa.Respondents.

Mr. C. Padgaonkar and Ms. V. Mahato, Advocate for the petitioner.

Mr. R. Bras De Sa, Mr. P. Naik, Mr. A. Lanjewar Advocate for the respondent no.1.

Mr. G. Teles, Advocate for respondent nos.2 and 5

CORAM: PRAKASH D. NAIK, J

DATED: 12th OCTOBER 2023

JUDGMENT

1. Petitioners in both the petitions have challenged the judgment dated 28.9.2018 passed by District Judge-1, North Goa, Panaji in Misc. Civil Appeal No.50/2016 and Misc. Civil Appeal No. 45/2016 whereby order dated 5.3.2016 passed by Ad-hoc Additional Senior Civil Judge, Panaji was set aside and matter was remanded back to

the trial Court with a direction to hold an inquiry as to who is to be appointed as Cabeça de Casal and to proceed with the matter in terms of law.

2. Inventory proceedings were initiated before the Court of Civil Judge Senior Division vide Inventory Proceedings No.12/2008/B by Caetano Francisco Xavier. Three applications for appointment of Cabeça de Casal were filed by three different interested parties vide Exhs. 117, 118 and 119. Interested party no.1 Mauricia Martins is widow of deceased Cabeça de Casa. She preferred application vide Exh.117. Interested Party no. 2 Querobino Martins filed an application for appointing him as Cabeça de Casal being eldest living son of the deceased estate leaver and claiming that he was living with the deceased estate leaver. His application was at Exh. 118. Interested party no. 10 Minguel Joao Martins (Petitioner) also filed application vide Exh.119 claiming that he continued to be in possession of the estate even before the death of estate leaver and that he was residing with deceased.

3. Learned Ad-hoc Civil Judge Senior Division “B” Court Panaji vide order dated 5.3.2016 held that documentary evidence produced by interested party no.10 prima facie establishes that he was residing with the parents during life time in the ancestral house and he was managing the properties and it will be fit to appoint interested party no.10 Minguel Joao Martins as Cabeça de Casa.

4. Order dated 5.3.2016 was challenged by Mr. Querobino Martins by preferring Misc. Civil Appeal No. 50/2016 and also by Mauricia Martins by preferring Misc. Civil Appeal No. 45/2016.

5. Vide separate judgments dated 28.9.2018 learned District Judge allowed the appeals and set aside the order 5.3.2016. Matter was remanded back to the trial Court with a direction to hold an inquiry as to who is to be appointed as Cabeça de Casal and to proceed with the matter in terms of law. In the light of two separate judgments petitioner has filed two separate petitions challenging impugned judgments by invoking writ jurisdiction of this Court under Article 227 of the Constitution of India.

6. Learned Advocate Mr. Padgaonkar appearing for the petitioner submitted that impugned judgments passed in two different appeals are contrary to law. No case was made out to set aside the judgment of the trial Court and remand the proceeding back to the said Court for fresh consideration. There was no infirmity in the order dated 5.3.2016 passed by Court below. Inventory Proceedings were instituted upon death of Jose Francisco Martins and Umeliana Martins. Mr. Caetano Francisco Martins was appointed as Cabeça de Casal. He expired on 25.8.2015. On the death of Mr. Caetano Francisco Martins three applications were filed for appointment of Cabeça de Casal. The appellate Court has failed to exercise jurisdiction vested in it within parameters of Section 96 read with

Order 41 Rule 31 of CPC. It has failed to consider the findings of facts arrived at by Inventory Court. The appellate Court has committed an error while coming to a conclusion that it was incumbent to hold an inquiry in the matter and brushed aside the mandate of Section 376 of the Goa Succession Special Notaries and Inventory Proceedings Act, 2012(hereinafter referred to as “Goa Succession Inventory Act”) which gives discretionary power to the inventory Court to hold an inquiry into the matter upon considering the petition and the documents accompanying it. Documentary evidence produced by the petitioner indicated that he was in possession of the properties of estate leaver even before his death. Appellate Court erred while coming to the conclusion that there was no corresponding provision to Article 1374 under the Special Notaries and Inventory Proceedings Act and hence Article 1374 would not stand repealed by the new Act of 2012. There was no provision for appointment of daughter in law as an administrator in the inventory proceedings. Sons of estate leaver would have preference over other heirs. Application made by Mauricia Martins could not have been entertained. The trial Court has observed that various objections were raised by interested party against each others. Interested party have voluminous evidence in respect of earlier litigation pending with respect to inherited properties. Other documents relied in support of their claim of possession of some of the properties of the estate leaver. Reference

was made by the all the interested parties to the Civil Suit and other proceedings filed by them. It was further observed that at the time of appointment of Cabeça de Casal the question of the possession of property cannot be looked into. It is admitted that interested party no.10 was appointed as Court receiver in execution suit no. 9/1956. Allegations of mismanagement, fraud etc. were made against the interested party no.10. However, no conclusive proof to corroborate the allegations were produced. Interested party no.2 was not residing in the ancestral house along with parents during their life time for the reason of his employment. The trial Court has rightly held that documentary evidence produced by party no. 10 prima facie establishes that he was residing along with parents during their life time in their ancestral house and that he was managing properties, hence it will be fit to appoint interested party no. 10 Minguel Joao Martins (petitioner) as Cabeça de Casal under the Goa Succession Inventory Act. It is submitted that trial Court has considered voluminous documents and was satisfied while giving aforesaid finding which did not warrant interference. Legal notice dated 3.6.2010 was sent on behalf of Caetano Martins and Querobino Martins to the petitioner and others claiming that there exist properties mentioned therein left behind upon the death of their parent and also stating that after the death of their mother petitioner has been in possession and behalf of the other co-owners of the

properties mentioned therein and have been enjoying fruits and benefits arriving there from to the exclusion of other co-owners. Said notice itself indicate that petitioner was in possession of the properties. The question of further hearing any inquiry did not arise as after perusal of the voluminous documents, the trial Court gave a finding that the petitioner was in possession of properties and he will have to be appointed as Cabeça de Casal.

7. Mr. Padgaonkar had relied upon decision of this Court in ***Joseph Lourenco and other Vs. Fr. Rosarinho E Lourenco and other***,¹ and submitted that in the said decision it was observed that there was no need for making any elaborate inquiry by leading evidence. Claimant had produced documents.

8. Learned Advocate Mr. Bras Desa and Mr. G. Teles appearing for respective respondents submitted that the appellate Court had remanded the matter back to the trial Court for reconsidering issue by assigning cogent reasons. Notice relied upon by the petitioner was not sent on behalf of respondent no.1. Petitioner has not shown as to how the order passed by the Appellate Court is perverse. The dispute relates to possession of the petitioner. The appellate Court had observed that possession is crucial aspect and party in possession of properties will have to be appointed as Cabeça de Casal at least in respect of those properties. It is also observed that findings of the trial Court that an inquiry under this provision can be held only after

¹ 1997(1)Bom CR176

list of assets is filed by Cabeça de Casal and it is premature to hold such inquiry at this stage cannot be accepted as inquiry regarding who is in possession of the properties would have to be held to decide the eligibility of a party for appointment of the Cabeça de Casal. Appellate Court referred to Article 1374 of the Portuguese Civil Code and observed that provision makes it manifest that it is incumbent to hold an inquiry when the competency of the party to be a Cabeça de Casal is in question. Sub-section 1 of Section 460 lays down that on and from the date of coming into force of this Act, all provisions of the laws in force at present corresponding to any of the provisions of this Act shall stand repealed. It is submitted that no provision has been pointed out under the aforesaid Act which corresponds to Article 1374. Hence, Article 1374 would not stand repealed by new Act of 2012. Section 376 of the Act provides that when an inventory petition is filed, the Court may hold an inquiry to decide who shall hold the office of the head of family even after enactment of new Act an inquiry is contemplated.

9. Issue relates to appointment of Cabeça de Casal in the Inventory Proceedings no.12/2008/B. Applications were preferred by three interested parties. Interested parties produced documents. Interested party nos. 1 and 2 had indicated that they have no objection for appointment of either of them as Cabeça de Casal. They strongly opposed appointment of interested party no.10

(Petitioner) as Cabeça de Casal. The trial Court has observed that at the time of appointment of Cabeça de Casal the question of possession of properties cannot be looked into. It is also observed that interested party no.10 was appointed as court receiver in execution suit no.9/1996 and allegations of mismanagement, fraud etc are made against party no. 10 while acting as Court receiver. The Court however, recorded that no conclusive proof supporting allegations were produced. The trial Court then referred to Article 2068 of the Portuguese Civil Code as the provision which deals with condition for appointment of Cabeça de Casal. It was held that documentary evidence produced by interested party no.10, prima facie establishes that he was residing with the parent during their life time in the ancestral house and managing the properties and hence it will be fit to appoint him as Cabeça de Casal. The Appellate Court, however found fault with the order of the trial Court. The appellate Court observed that possession is a crucial aspect which determines the appointment of Cabeça de Casal. The appellate Court noticed that it would be necessary to hold an inquiry when competency of the party to be appointed as Cabeça de Casal is in question. The appellate Court remanded the matter back to the trial Court to hold an inquiry on who is to be appointed as Cabeça de Casal.

10. In the facts of this case, I do not find any infirmity in the order passed by the Appellate Court.

11. Section 376 of the Goa Succession Inventory Act reads as follows:-

“Order of appointment of head of the family.— (1) When the petition is duly filed, the court may hold an inquiry to decide who shall hold the office of head of the family and shall upon considering the petition and documents accompanying it, appoint a person as the head of family and notify him to take oath that he shall discharge his duties diligently and faithfully and make a declaration stating:—

(i) the name and status of the estate leaver, date on which and the place where he died;

(ii) the name, status, age and capacity of the heirs, testamentary or legal, without excluding those who are known to have been conceived and the degree of kinship of the legal heirs;

(iii) whether the estate leaver has left a will or a gift and, if so, the head of the family shall produce the original or a certified copy of the will or of the gift deed;

(iv) whether the estate leaver was married and, whether there was an ante-nuptial agreement and if so, he shall produce a certified copy of the agreement;

the family council. The court may accept or reject the proposed names;

(vi) whether there are assets to be collated and give the names of the conferees. The head of the family shall also give the names and addresses of the legatees and of the creditors;

(vii) what are the assets of inheritance.

(2) At the time of the head of the family makes the declaration, he shall produce the certified copy of the renunciation deed if any, and such other document as may be relevant to the case.

(3) Where the head of the family makes a reference to any document in his declaration, he

shall, whenever possible, give particulars in respect of date of the original document, place where drawn or registered and the number of registration with book number and page.

(4) The declaration of the head of the family may be made by affidavit, copies of which shall be supplied to all the interested parties and may be accompanied by a list of assets and by documents.”

12. Section 460 of the Act reads as follows:-

“Repeal and Savings.—

(1) On and from the date of coming into force of this Act, all provisions of the laws 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.”

13. Section 376 of the Act provides that when a petition is filed for appointment of head of the family the Court may hold an inquiry to decide who shall hold the office of head of the family and shall upon considering petition and documents accompanying it, appoint a person as head of family.

14. The Court of Ad-hoc Addl. Senior Civil Judge had observed that it was submitted before him that interested party no.10 cannot be appointed as Cabeça de Casal as he has mismanaged the property and even sold and created third party interest in the properties and will not be fit and proper person to administer property. The Court recorded that various objections are raised by the interested parties against each other. Voluminous evidence in respect of earlier litigation pending with respect to the inherited properties is given. Documents were relied in support of their claim of possession of some of the properties of the estate leaver is given. However, Court held that it is not necessary to go into details of such documents at this Stage. It was further observed that at the time of appointment of Cabeça de Casal, the question of possession of the property cannot be looked into. While deciding application Court has to follow Article 2068 of Portuguese Civil Code which specifically deals with conditions for appointment of Cabeça de Casal. The serious allegations made by parties against each other cannot be decided summarily. It will be apt to keep the issues open to be agitated at

appropriate stage. No inquiry is contemplated under Article 2068 of the Code. The inquiry under Article 2070 can be held after list of assets is filed. The Court took into consideration the documents produced by interested party no.10 and appointed him as Cabeça de Casal.

15. Article 2068 of Portuguese Civil Code 1867 explains who is administrator Cabeça de Casal. Article 2070 of the said Code relates to assets which were in possession of co-heirs.

16. Section 460 of Goa Succession Special Notaries and Inventory Proceeding Act, 2012 provides that on and from the date of coming into force of the Act, all provisions of the laws in force at present corresponding to any of the provisions of the Act shall stand repealed. Sub-section(3) provides that all proceedings pending under repeal laws before any Court in the State of Goa, as on the date of coming into force of this Act, shall be continued in terms of procedure provided in this Act.

17. There was serious dispute about possession of interested party no.10 in respect of the properties of the deceased estate leaver. There were allegations about his misconduct in connection with estate of the deceased. The inventory Court did not take into consideration Section 376 of the Goa Succession Special Notaries and Inventory Proceeding Act 2012. Considering Section 460 of the Act of 2012, it is apparent that the said Act also contemplates inquiry to decide head of

the family. The Appellant Court has considered these aspects while remanding the matter to trial Court. Hence, no interference is required in the said order.

ORDER

(i) Writ Petitions No. 189 of 2019 and 192 of 2019 are dismissed and stand disposed of.

PRAKASH D NAIK, J.

VINITA VIKAS
NAIK

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