

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.16 OF 2020

(1) Ricardo Agnelo Teixeira (since deceased)
de Almeida Queiroz, 69 years and his wife

1A. Wendy Regina Queiroz, aged 17 Years, [Amended vide
daughter of late Ricardo Agnelo Teixeira de order dt.03.02.21]
Almeida Queiroz, Through her next friend,
Vivian Gladys Mendonca, residing at
H.No. B-6 F-1, Sapana Park, Ponda-Goa

(2) Vivian Gladys Mendonca Queiroz
both r/o H.No. B-6
F-1, Sapana Park, Ponda Goa

(3) Maria Gema Teixeira de Ameida Queiroz
& husband Macario Dias (both deceased)

3(a) Amy Rosario Wilma Sophia Dias
Resident of H.N. 320 1st Arvale,
Near Cross Junction, Cortalim, Goa
Through P.O.A. Mr Cleve Fernandes
r/o H.No. 847/C, Santemol, Raia, Goa.

(4) Miguel Mateus Gonsalves (since deceased)
through his legal representatives

4(a) Anastasia Fernandes and her husband

4(b) Anthony Fernandes, both 4(a) & (b)
r/o Flat G-2, B-Wing, Agnelo Colony
Kerant, Caranzalem, Goa

4(c) Camilo Gonsalves and his wife

4(d) Jonita Gonsalves, both 4(c) & (d)

r/o H. No.326, Fonvem, Ribandar, Goa
Appellant No. 4(c) and 4(d) represented
through P.O.A. Mr. Cleve Fernandes,
r/o H.No. 847/C, Santemol, Raia, Goa.

4(e) Bernatte Silva
r/o 167 Figueira Bhat, Goa Velha Tiswadi, Goa

4(f) Tomás Silva (since deceased)
through their legal representatives

4(f)(i) Rossya Silva, r/o 167
Figueira Bhat, Goa Velha, Tiswadi, Goa

4(f)(ii) Agnelo Silva, r/o 167 Figueira Bhat
Goa Velha Tiswadi, Goa

4(f)(iii) Ditosa Fernandes and her husband

4(f)(iv) Adelino Fernandes
both 4(f)(iii) & (iv) residing Opp.
La Paz Hotel, Vasco da Gama, Goa

5. Francisco Xavier Filomena Teixeira
de Almeida Queiroz (since deceased)
through legal representatives

5(a) Colin Peter Wilson Queiroz and his wife

5(b) Swati Colin Queiroz, both 5(a) & (b)
r/o H. N. 207/9 Plot No.2-B, Housing
Board Colony, Altinho Mapuca Bardez, Goa

5(c) Monte Celsa Queiroz e Soares and her
husband

5(d) Ashley Peter Francis Soares,
both 5(c) & (d) r/o H.No.207/9 Plot No.2-B,
Housing Board Colony, Altinho
Mapuca Bardez, Goa.

6. Laetitia Leny Saldanha wife of Francisco Xavier
Filomena Teixeira de Almeida Queiroz,
r/o H.N.207/9 Plot No. 2-B, Housing
Board Colony, Altinho Mapuca Bardez, Goa

7. Emilia Teixeira Almeida Queiroz and husband
Mathew Fernandes (both deceased) through their
legal representatives

7(a) Richard Dennis Fernandes

7(b) Sandra Mesella Fernandes and her husband

7(c) Vinod Ankush Gaude,

Appellants 7(a)(b) & (c) r/o 163, Near Basilica de
Bom Jesus Ella, Old Goa 403402

Appellant 7(c) through P.O.A. Mr. Xavier Alvito
Peter Fialho, H.No. 136, Near Canara Bank, Old
Goa.

... Appellants.

Versus

1. Rajesh Vishram Sawal
son of Vishram Sawal
resident of H.N. 1312, Virdi
Sanquelim, Bicholim

2. Eça Patrício Bernardino Teixeira
de Almeida Queiroz, (since deceased)
through his legal representatives

2(a) Richard Francis de Almeida Queiroz

2(b) Seby Teixeira de Almeida Queiroz
both 2(a) & 2(b) r/o H.No. 163/C,
Near Basilica de Bom Jesus, Ella, Old Goa

2(c) Anita Teixeira de Almeida Queiroz
and her husband

2(d) Bento Joachim D'Souza
Both resident Opp. Borkar General Stores,
Dr. Manuel Sequeira Marg, Britona
Bardez, Goa

3. Terezinha Martins e Queiroz,
r/o H.No. 163/C Near Basilica Bom Jesus
Ella, Old Goa, Ilhas Goa

4. Luis João Eusébio Teixeira de Almeida Queiroz
and his wife

5. Cynthia Angela Teixeira de Almeida Queiroz
both r/o H.No. 163/C Near Basílica Bom Jesus
Ella, Old Goa

6. Mário Martinho Teixeira de Almeida Queiroz
r/0 H.No. 163/B Near Basilica Bom Jesus
Ella, Old Goa

7. Annie Queiroz
r/o H.No. 163/B Near Basilica Bom Jesus
Ella, Old Goa

8(a) Malcom Teixeira de Almeida Queiroz
and his wife

8(b) Annu Mathew Queiroz
both r/o H. No. 163/B Basilica Bom Jesus
Ella, old Goa

9. Antonio Santa Cruz Teixeira
de Almeida Queiroz (since deceased)
through his legal representatives

9(a). Edwin Teixeira de Almeida Queiroz

9(b). Valankany Teixeira de Almeida Queiroz
both Respondents 9(a) & 9(b)
r/o Bldg. No. A-F103, Dhanlaxmi
Nagar Co-Operative Society Ltd.
Bhatlem, Panaji-Goa

10. Maria Gema Ivone Souza,
r/o Bldg. No. A-F103 Dhanlaxmi
Nagar Co-operative Society Ltd,
Bhatlem, Panaji, Goa.

... Respondents.

Mr M.B. D'Costa, Senior Advocate with Mr Abbasi Rehan Ahmad
Nafees, Advocate for the Appellants.

Mr S.D. Lotlikar, Senior Advocate with Mr Terence Sequeira,
Advocate for Respondent No.1.

Mr Pranav Suryaji Shenvi Kakodkar, Advocate for Respondent
Nos.2(a) to 2(d), 3 to 7, 8(a) & 8(b).

CORAM:	BHARAT P. DESHPANDE, J.
RESERVED ON:	15 June, 2023
PRONOUNCED ON:	20 June, 2023

JUDGMENT:

This is an appeal filed under Section 451(2) of Goa Succession, Special Notaries and Inventory Act, 2012, thereby challenging the impugned order dated 26.11.2019 passed by learned Trial Court in Inventory Proceedings No.39/2006. By the impugned order, learned Trial Court allowed the application for review of it's earlier order dated 07.06.2018 filed by the Third Party/Interested Party/Respondent No.1 herein and allowed the application for intervention.

2. In nutshell, the facts leading to the present impugned order are as under.

3. After the death of Nicolau Rodrigues and his wife Amalia Fernandes, Inventory Proceedings were instituted by the legal heirs which was registered as Inventory Proceedings No.39/2006. During such Inventory Proceedings, it was observed that some of the heirs sold a specific share in the property left by Nicolau Rodrigues and his wife Amalia, to a stranger by name Rajesh Sawal/Respondent No.1 herein. Entire property of the deceased couple is admeasuring 3525 sq. mts. and surveyed under Survey No.153/2 of Ela Village, which is one of the estates as described in the List of Assets submitted in the Inventory Proceedings. A Rectification Deed was also executed thereby adding Clause 13(a) in the original Sale Deed which shows that undivided right equivalent to 670 sq. mts. in the property described in Schedule I of the Sale Deed, which is to the extent of 19% of the property admeasuring 3525 sq. mts., was sold to Respondent No.1.

4. The Appellant Nos.1 and 2 filed a Special Civil Suit No.55/2013 in Panaji Court seeking declaration that the Sale Deed is null and void since by the Sale Deed, some of the heirs sold a specific portion without partition and that the Appellants are having a pre-emption right. Similarly, the Appellants also filed an application in the Inventory Proceedings under Article 1376 of the Portuguese Civil Code claiming right of pre-emption. In the said application, Respondent No.1/Purchaser was served with the notice of the Inventory Court, who then filed reply. Vide order dated 25.09.2014, the inventory Court disposed of the application filed by the Appellants for pre-emption and removal of the Head of the Family thereby specifically directing that the Interested Party to lead evidence or inquiry of pre-

emption with liberty to Rajesh Sawal/Respondent No.1 and other Interested party to lead evidence to contrary.

5. It so happened that on 15.02.2018, Respondent No.1 filed an intervention application stating that he be joined as an interested party as application has been filed for auctioning of the property. Reply was filed by the Head of the Family. In the meantime, another application for claiming pre-emption under the Act of 2012 was filed. On 07.06.2018, Inventory Court dismissed the application for intervention filed by Respondent No.1. Thereafter, review application was filed by Respondent No.1 contending therein that there is error on the face of the record since by order dated 25.09.2014, the Inventory Court has already ordered an inquiry into the issue of pre-emption and notice was issued to the purchaser/Respondent No.1 to participate. This application was allowed by the learned Inventory Court by the impugned order, which is assailed in the present appeal mainly on the ground that there is no power of review available with the Inventory Court under the Act of 2012.

6. Heard the learned Senior Counsel Mr M.B. D'Costa along with Mr Abbasi Rehan Ahmad Nafees for the Appellants, learned Senior Counsel Mr S.D. Lotlikar along with Mr Terence Sequeira for Respondent No.1 and learned Advocate Mr Pranav Suryaji Shenvi Kakodkar for Respondent Nos.2(a) to 2(d), 3 to 7, 8(a) & 8(b).

7. It is the contention of the learned Senior Counsel Mr D'Costa that first of all, the legal heir is not entitled to sell a specific portion of undivided property, and therefore, such sale deed is null and void. He then submitted that Appellants have raised the claim of pre-emption and that the Inventory Court has already ordered an inquiry. However, for that purpose, the

Purchaser need not be joined as interested party unless his right over the portion mentioned in the Sale Deed is confirmed by the Court. He submitted that the learned Trial Court committed error in allowing the application in joining the Purchaser as interested party. He would submit that at the most, the Purchaser could have been joined as Third Party only with regard to the inquiry in connection with the right of pre-emption.

8. The learned Senior Counsel Mr D'Costa further submitted that there is no power of review available with the Inventory Court as the Act of 2012 specifically says that Inventory is not a Suit and that the same has to be decided summarily. He then submitted that the power of review as found in Section 448 (B) is restricted to the eventualities as disclosed therein.

9. The learned Senior Counsel Mr Lotlikar while supporting the order passed by the learned Inventory Court, pointed out that earlier order dated 25.09.2014 is final and the same was never challenged by the Appellants. By this order, the learned Inventory Court directed for conducting an inquiry in connection with right of pre-emption, and therefore, notice was issued to the Purchaser who was also permitted to lead evidence. He invited attention to said order passed by the Inventory Court dated 25.09.2014 and claimed that even validity of the Sale Deed together with Deed of Rectification is required to be decided in such inquiry.

10. Learned Senior Counsel Mr Lotlikar, therefore, submitted that when an application was filed by Respondent No.1 to intervene, learned Inventory Court without considering its earlier order, rejected it, and therefore, review was filed only to correct the record and the mistake. He submitted that such review is only procedural and Inventory Court being a

Civil Court is having inherent powers to review and correct its own earlier orders. He placed reliance on the following decision:-

- i. ***Kapra Mazdoor Ekta Union vs. Birla Cotton Spinning and Weaving Mills Ltd and Another***¹.

11. The short question which requires consideration in the present Appeal is whether the impugned order requires any interference.

12. Vide order dated 25.09.2014, the learned Inventory Court considered two applications, one filed by the Interested Party Mr. Ricardo/Appellant No.1 herein, for pre-emption (Exhibit 21). and another application at Exhibit 22 for removal of Cabeza de Casal/Head of the Family. While deciding these applications, learned Inventory Court observed that the cause for filing application for pre-emption under Article 1376 of the Portuguese Civil Code is in connection with execution of Sale Deed dated 22.08.2013 by Cabeza de Casal Mr. Eça Patrício Bernadino Texeira de Almeida Queiroz/Respondent No.2 herein along with his wife and other interested parties, in favour of Mr. Rajesh Sawal/Respondent No.1 herein thereby selling part of the estate of the deceased, along with the Deed of Rectification dated 06.12.2013. It is also observed that replies to the pre-emption application are also filed by Respondent No.1 and 2 herein. Accordingly, learned Inventory Court observed that as the application for pre-emption was instituted prior in time as against the Special Civil Suit No.55/2013, involving the same subject matter, the said civil suit needs to be stayed. The learned Inventory Court further observed that as per Article 2177 of the Portuguese Civil Code, a co-owner cannot dispose of specific

¹ (2005) 13 SCC 777

portion of a common undivided property. Accordingly, the operative order reads thus:-

“ORDER

The interested party Ricardo Queiroz is hereby directed to lead evidence on the inquiry of pre-emption under Article 1376 with liberty to Shri Rajesh Sawal and the other Interested Parties to lead evidence to the contrary.

The Cabeça de Casal Mr. Eça Patricio Bernardino Teixeira de Almeida Queiroz, is hereby removed from the post of Cabeça de Casal in terms of Article 1439 read with Article 2085 of the Portuguese Civil Code.

The Interested Party Mr. Ricardo Agnelo Queiroz is hereby appointed as Cabeça de Casal. Mr. Ricardo Agnelo Queiroz is directed to swear statement on oath within seven days.

Special Civil Suit No.55/2013/A is hereby ordered to be stayed as the subject matter thereof is substantially and directly in issue in these proceedings. Concerned clerk to issue letter to the Learned Senior Civil Judge, ‘A’ Court, Panaji accordingly.

Pending the inquiry and final adjudication of the right of pre-emption and the validity of the Deed of Sale dated 22.08.2013 of Book-1 registration no. PNJ-BK-1-02395-2013 CD number PNJD25 dated 11.09.2013 and Deed of Rectification dated 06.12.2013 registered under Book No.1 registration no. PNJ-BK1-03231-2013 CD no. PNJD26 dated 09.12.2013, Shri Rajesh Sawal, his family members, heirs, assignees, agents, executors or any other persons acting through or under him, are hereby restrained from dispossessing or alienating the subject matter of the Sale Deed and Deed of Rectification till further Orders of this Court.”

13. Thus, it is very clear from the order dated 25.09.2014 that an inquiry was ordered by the Inventory Court to decide the right of pre-emption and also validity of the Sale Deed dated 22.08.2013 along with Deed of Rectification dated 06.12.2013. Similarly, Inventory Court specifically

directed that Special Civil Suit No.55/2013 needs to be stayed, which was specifically instituted in connection with the same subject matter.

14. It so happened that thereafter, Respondent No.1 filed an application at Exhibit 75 with permission to intervene in the Inventory Proceedings as Intervenor. This application was decided by the learned Inventory Court vide order dated 07.06.2018. While deciding such application, interestingly, there is no reference to the earlier order passed by the same Court dated 25.09.2014. The learned Inventory Court after discussing the matter, rejected the application for intervention. This order dated 07.06.2018 was sought to be reviewed by an application filed by Respondent No.1 on the ground that such intervention was earlier allowed in the year 2014 and an inquiry was ordered to decide the aspect of right of pre-emption as well as validity of the Sale Deed and the Deed of Rectification.

15. In the light of above facts, the impugned order was passed on 26.11.2019 wherein the learned Inventory Court considered it's own order dated 25.09.2014 which became final and binding on the parties for want of any appeal against it.

16. The main contention raised in the present appeal is that there is no provision for review of it's own order in the Act of 2012. No doubt, the entire Act is silent about the powers of review except the one found in Section 448-B.

17. However, in the peculiar circumstances of the matter in hand, it is clear that the impugned order cannot be considered as purely a review order as it only clarifies the earlier order passed in the year 2014 which became final.

18. The learned Senior Counsel Mr D'Costa vehemently submitted that Respondent No.1 cannot be impleaded as interested party. First of all, such connotation is not required to be considered at this stage for the simple reason that the order passed on 25.09.2014 clearly goes to show that only on the application filed by the Appellant claiming right of pre-emption, notice was issued to Respondent No.1. Accordingly, the Inventory Court invited Respondent No.1 to take part in the inquiry to decide the right of pre-emption as well as validity of the Sale Deed and the Deed of Rectification. Thus, impleading Respondent No.1 in the Inventory Proceedings vide order dated 25.09.2014, is not prima facie as an interested party but as a third party. It is true that only after proving validity of the Sale Deed and the Deed of Rectification and denial of right of pre-emption raised by the Appellants, Respondent No.1/Purchaser could be considered as an interested party, having right in the said property of the estate leaver.

19. The intention of the Inventory Court was clear by directing inquiry to be conducted into the right of pre-emption and deciding validity of the Sale Deed and the Deed of Rectification. Admittedly, such inquiry is not conducted till date. Similarly, the Special Civil Suit No.55/2013 though ordered to be stayed, continued to be taken up till date, as disclosed by both the learned Senior Counsels.

20. In the case of *Kapra Mazdoor Ekta Union* (supra), the Apex Court observed in para no.19 that the court or quasi-judicial authority having jurisdiction to adjudicate on merit, proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. However, procedural review belongs to a different category. In

such a review, the court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so, commits procedural illegality which goes to the root of the matter and invalidates the proceeding itself and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority under mistaken impression could be reviewed under the power of procedural review.

21. In the present matter, by rejecting the application of intervention on 07.06.2018, is clearly contrary to the earlier order passed by the same Court dated 25.09.2014. By rejecting the application of intervention, the earlier order dated 25.09.2014 permitting Respondent No.1/Purchaser to take part in the inquiry in connection with right of pre-emption and validity of the Sale Deed and the Deed of Rectification, was virtually made inoperative. Thus, vide order dated 07.06.2018, the Inventory Court virtually prohibited Respondent No.1/Purchaser from taking part in the Inventory Proceedings and more particularly, in the so-called inquiry. Thus, the Inventory Court was unable to conduct any inquiry in absence of the Purchaser. This procedural irregularity has been corrected by the order in question in the present appeal.

22. The principle as laid down in the case of *Kapra Mazdoor Ekta Union* (supra), is therefore, fully applicable to the matter in hand. The impugned order is only dealing with procedural review and not adjudicating any specific right. Thus, to my mind, the impugned order is not suffering from any illegality. Accordingly, the appeal fails and hence the order.

23. The Appeal stands rejected. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.