

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.550/2022

Mr Sahadev Savlo @ Savlaram
Redkar, son of Late Savlo @ Savlaram
Redkar, aged 60 years, married,
Indian National, R/o H.No. 106,
Talwada, Querim, Pernem, Goa.

... PETITIONER

Versus

1. Mrs Muctabai @ Geeta Ulhas
Patekar, widow of Late Ulhas Patekar,
Aged 57 years, housework, Indian
National, R/o H.No.270, Infront of
Bank of India Lane, Govt. primary
School, Vodlem Bhat, Taleigao,
Tiswadi-Goa.

2. Mr Rohan Ulhas Patekar, son of
Late Ulhas Patekar, Aged 35 years,
self employed, Indian National,
R/o H.No.270, in front of Bank
of India Lane, Govt. primary
School, Vodlem Bhat, Taleigao,
Tiswadi-Goa.

3. Mr Vinod Ulhas Patekar, son of
Late Ulhas Patekar, Aged 36 years,
business, Indian National, R/o
H.No.270, Infront of Bank of India
Lane, Govt. primary School, Vodlem
Bhat, Taleigao, Tiswadi-Goa.

4. Ms Branca Alvares, major in age,
resident of Talwada, Querim, Pernem
- Goa.

5. Ms Aida Carmo Vaz, major in age,
resident of Talwada, Querim, Pernem
- Goa.

6. Mr Valgo Carmo Vaz Garat, major in
age, resident of Talwada, Querim,
Pernem -Goa.

7. Ms Chadrakala Radhakrishna
Talker (expired)

a) Mr Raman Radhakrishna Talkar,
major in age,

b) Mr Baban Radhakrishna Talker,
major in age,

c) Mr Babu Radhakrishna Talker,
major in age, All residents of Talwada,
Querim, Pernem - Goa.

8. Salvo Raghunath Redkar (expired)

a) Ms Samira Pradeep Kanoji, major
in age,

b) Mr Pradeep Arjun Kanoji, major in
age

c) Ms Kalindi Savlaram Redkar, major
in age,

d) Mr Baburao Arjun Kanoji, major in
age,

e) Ms Asha Shridhar Vast, major in age,

f) Ms Shrinita Shridhar Vast, major in age,

g) Ms Leena Shridhar Vast, major in age, All residents of Talwada, Querim, Pernem - Goa.

9. Mahadev Trimbak Talker (expired)

a) Mr Shrikant Trimbak Talkar, major in age,

b) Mr Ramdas Trimbak Talkar, major in age

Both residents of House No. 109, Talwada, Querim, Pernem-Goa.

10. Mr Trimbak Dasharath Talkar
Resident of House No. 111, Talwada, Querim, Pernem - Goa.

11. Mr Shrawan Dasharath Talkar,
major in age,

12. Mr Anand Dasharath Talkar,
major in age,

Both residents of House No. 110, Talwada, Querim, Pernem - Goa.

13. Mr Vrajesh Anandrao Kerkar,
major in age, resident of Talwada, Querim, Pernem - Goa.

14. Ms Anjel Alex Mascarenhas
(expired)

a) Mr Serafin Mascarenhas, major in age, resident of Talwada, Querim, Pernem - Goa.

15. Mr Dasharath Trimbak Talkar, major in age, resident of Talwada, Querim, Pernem - Goa.

16. Mr Tukaram Nana @ Raghunath Bhiva Redkar, major in age,

17. Mr Subhash Tukaram Redkar, major in age,

Both resident of Talwada, Querim, Pernem – Goa.

18. Mr Prakash Tukaram Redkar, major in age, Resident of House No. 108, Talwada, Querim, Pernem - Goa.

19. Ms Manjiri Madan Talkar, major in age, Resident of House No. 112, Talwada, Querim, Pernem - Goa.

20. Ms Sulochana Talkar, major in age,

21. Ms Kalpana Talkar, major in age,

Both resident of Talwada, Querim, Pernem - Goa.

22. Mr Arjun Kanoji, major in age, resident of Talwada, Querim, Pernem - Goa.

23. Mr Tukaram M Gawandi (expired)

a) Mr Ajit Gawandi, major in age, Resident of Talwada, Pernem - Goa.

... RESPONDENTS

Mr Salil Saudagar, Advocate for the Petitioner.

Mr A. D. Bhobe with Ms A. Fernandes, Advocates for the Respondents No.1 to 3.

CORAM: M. S. SONAK, J.

DATED: 10th NOVEMBER 2023

ORAL JUDGMENT:

1. Heard Mr Salil Saudagar for the Petitioner and Mr A. D. Bhobe for Respondents No.1, 2 and 3.
2. Learned counsel for the parties state that the petitioner and the first, second and third respondents are the real contesting parties in this matter. They agree for the final disposal of this petition at this stage. Hence, Rule. The Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.
3. The challenge in this petition is to the Tribunal's order dated 17.09.2019 by which the Tribunal set aside the Deputy Collector's order dated 16.10.2018 and further directed that the petitioner's application for partition shall be kept in abeyance until the question of title is decided by the competent civil court.

4. The Tribunal has relied on the Proviso to Section 61(2) of the Land Revenue Code which states that where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit.

5. Mr Saudagar points out that in this case partition was applied based upon the orders made in inventory proceedings to which even the first, second and third respondents were parties. He points out that to date no steps have been taken by the first, second and third respondents to either challenge the orders made by the inventory court or to institute any other proceedings like a civil suit, etc. to question the said orders. He submits that merely saying that there is a title dispute is not sufficient to invoke the Proviso to Section 61(2) of the Land Revenue Code. Further, he says that this Proviso will not apply because the partition was sought based upon orders made by the civil court/inventory court in the inventory proceedings.

6. Mr Bhobe disputes the above propositions. In any case, he submits that the Deputy Collector, in his impugned order dated 16.10.2018 proceeded on the erroneous basis that the first, second and third respondents had either not filed any reply opposing the partition or without adverting to such reply. He submitted that this is evident from the perusal of the impugned order dated 16.10.2018. He submitted that if this court interferes with the

Tribunal's impugned order then, the result would be that the Deputy Collector's order dated 16.10.2018, which was made ex-facie in violation of principles of natural justice and fair play, would revive. He submits that jurisdiction under Article 227 of the Constitution may therefore not be exercised in these circumstances.

7. Admittedly, the first, second and third respondents had filed their reply opposing the partition. However, if the Deputy Collector's impugned order dated 16.10.2018 (page 96 of the paper book) is perused, the Deputy Collector had recorded that there was no objection from the other co-holders to the grant of partition. This is obviously incorrect because the first, second and third respondents had filed their replies opposing the partition. Accordingly, a case is made out to interfere with the Deputy Collector's order dated 16.10.2018 for failure of natural justice. However, this case is made out not based upon the reasoning recorded by the Tribunal in its impugned order dated 17.09.2019.

8. The Tribunal has proceeded on the basis that once some dispute about title is raised, the Proviso to Section 61(2) of the Land Revenue Code automatically kicks in. The Tribunal has failed to appreciate several relevant aspects before taking this view. Since the matter is proposed to be remanded to the Deputy Collector for fresh consideration, it will not be appropriate for this Court, at this stage, to make any further observations. However,

the reasoning of the Tribunal is not approved, particularly because most of the contentions now put forth by Mr Saudagar have either not been considered or not been considered in their proper perspective. The Tribunal's order for keeping the partition application in abeyance warrants interference and is hereby set aside.

9. Accordingly, the Tribunal's order is set aside. But at the same time, even the Deputy Collector's order dated 16.10.2018 is also set aside. The matter is now remanded before the Deputy Collector.

10. The parties to now appear before the Deputy Collector on 30.11.2023 at 11.00 a.m. and file an authenticated copy of this order. The Deputy Collector must issue notices to the other respondents about the further dates in the proceedings.

11. The Deputy Collector must decide petitioner's application for partition in accordance with law and on its own merits. In doing so, the Deputy Collector must also decide upon the first, second and third respondents' objections inter alia based upon the Proviso to Section 61(2) of the Land Revenue Code. All contentions of all parties in this regard are explicitly kept open. The Deputy Collector must decide the matter after complying with the principles of natural justice and fair play and further, must pass a reasoned order dealing with all contentions of all parties.

12. The Deputy Collector must dispose of the proceedings within six months from the date of completion of service upon all the respondents pursuant to this remand order. All parties must co-operate with the Deputy Collector for disposal of the proceedings within the time now indicated.

13. The Rule is made absolute in the above terms.

14. There shall be no order for costs.

SUCHITRA
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M. S. SONAK, J.