

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.10 OF 2018

1. Luciano Rodrigues,
son of late Paul Rodrigues
R/o 2nd Arvlem, Cortalim, Goa.
2. Mrs Elvira Crasto e Rodrigues
Widow of late Mr Luis Rodrigues (Deceased)
House wife, major in age, Amendment
R/o Pali village, Pereira wadi, carried out as
30th road, T.P.S., 3, per order
Bandra, Mumbai-50 dt.24.11.18.
3. Mrs. Elizabeth Rodrigues
Major of age
d/o Late Luis Rodrigues
4. Mr. Rishi Godfrey Bhundoo
Major of age
Both r/o Bali Village
Pereira Wadi, 30th Road,
T.P.S. III, Bandra,
Mumbai 400 050
5. Mrs. Maria Francisca Alves e
Rodrigues,
Widow of late Mr. Sebastiao
Xavier Rodrigues, House wife,
Major in age, R/o Diego B,
Flat no.1 Shirley Rajan Road
Bandra-Mumbai-50
6. Mr Peter Luis Rodrigues
major of age
s/o Late Xavier Rodrigues
7. Mr. Russel Adrian Rodrigues
major of Age
s/o Late Xavier Rodrigues

8. Mr. Alfred Rodrigues
major of Age
s/o Late Xavier Rodrigues
All r/o 'DIAGO' 'B'
1st floor, Flat no.101,
Near Rizvi College,
Shirley Rajan Road,
Bandra, Mumbai 400 050
9. Mrs. Maria Felicidade Rodrigues e
Fernandes, Major of age
d/o of late Paul Rodrigues
10. Mr. John Jerome Simon Fernandes
Major of Age
Both r/o 16-2-17, Bhawani
Nagar, Marol-Maroshi Road,
Andheri(E), Mumbai 400 050

...Appellants

Versus

1. Mrs Joanna Rodrigues
Widow of Anthony Rodrigues
Major of age, r/o H no.407,
2nd Arvale Cortalim, Goa.
2. Mrs. Eliza Rodrigues e Pereira
3. Mr. John Leonard Pereira,
Both major, r/o H.No.874/1,
Zamboll, Cortalim Goa.
4. Mr. Paul Rodrigues
5. Sybil Rodrigues,
Both major, r/o H.No.407,
2nd Arvale, Cortalim Goa.
6. Mrs. Liberata Rodrigues e
Fernandes,
7. Mr. Caetano Cesar Fernandes
Both major, r/o 'TARANCAN',

A4/304, 3rd Floor, Pleasant Park,
Off Mira Bhayandar Road,
Meera Road (E) 401 107.

... Respondents

Mr Joaquim Godinho, Advocate for the Appellants.

None for the Respondents.

CORAM: M. S. KARNIK, J.

DATED : 12th July 2023

ORAL JUDGMENT:

1. Heard learned counsel for the appellants.
2. The records indicate that the respondents are duly served. The order dated 01.12.2022 records that advocate Ms D. Fatarpekar had appeared on behalf of respondents No.1, 2, 3, 4, 6 and 7. This Court passed the following order on 01.12.2022:-

'Ms. Fatarpekar, learned Counsel, states that she has filed an application wherein it is stated that the papers are already returned and taken back by the said respondents to enable them to make appropriate arrangement to represent themselves in the present proceedings thereby appointing an Advocate as a matter of last chance.

2. The parties are put to notice that the matter will be taken up on 12 January, 2023.'

3. Thereafter, on 27.06.2023, the following order came to be passed:-

'1.None for Respondent Nos.1, 2, 3, 4, 6 and 7. The order dated 01.12.2022 records that Ms D. Fatarpekar appears on behalf of the said Respondents. Only by way of indulgence, list the matter on 04.07.2023. The Advocate for the

Appellant to inform Ms D. Fatarpekar the next date of hearing.'

4. Learned counsel for the appellants submitted that due notice was given to Ms Fatarpekar. It was informed by learned advocate for the respondents that the file has been returned to the respondents. It is submitted that notice by Whatsapp was also given to the concerned advocate by the appellants. The Appeal from Order is of the year 2018. The inventory proceedings are of the year 2006. I therefore am left with no alternative but to proceed with the hearing in the absence of the respondents.

5. With the assistance of the learned counsel for the appellants, I have gone through the impugned order dated 14.02.2014. The appeal memo, roznama, paper-book of the proceedings before the Inventory Court is also perused. Since there was no representation on behalf of the respondents, I had to proceed with the matter without the benefit of any assistance on behalf of the respondents.

6. The order impugned in this petition is passed by the Adhoc District Judge (First Appellate Court). The Appeal was filed before the First Appellate Court by the present respondents-interested parties against the order dated 17.08.2011 passed by the Civil Judge Senior Division at Vasco Da Gama (Inventory Court) in Inventory Proceedings No.13/2006/A. By the order impugned before the First Appellate Court, the objection of the interested parties vide

application dated 12.08.2011 at Exhibit 77, to the chart of partition, has been dismissed. By the impugned final order dated 17.08.2011 passed by the Inventory Court, the Inventory Proceedings instituted for the partition of the assets left behind by the deceased/Inventariados has been disposed of by dismissing the objection raised to the Schedule of partition by interested party nos.1, 4 to 7 in terms of the order on Exhibit 77. The immovable properties described in the proceedings at Exhibit D-51 are allotted as per shares in the Final Schedule of Partition dated 08.08.2011 at Exhibit 76.

7. The Appeal was filed before the First Appellate Court, South Goa, by the interested parties on the ground that the order of the Inventory Court is in breach of the principles of natural justice and that the same has been made without disposing of the application filed by the interested parties, objecting to the list of assets and also for deletion of ancestral house, general stores and two rooms on lease.

8. The Appellate Court was of the view that without resolving the dispute raised by the interested parties to the list of assets which the interested parties wanted to be deleted, the Inventory Court proceeded to appoint an appraiser by taking into consideration only the application filed by the respondent No.1 suggesting the name of the appraiser. It is also observed that valuation report submitted by the appraiser appointed was without consent or agreement

of any of the interested parties which was directly accepted by the Inventory Court on 08.11.2010 and the description of the assets is ordered by taking into consideration the application filed by the appellant herein to that effect on 20.11.2010. The Appellate Court was of the view that the very appointment of appraiser in the present matter does not appear to be in accordance with the provision of Article 2089, which provides for appointment of appraiser by agreement amongst the parties, when the properties of Inventory amongst the majors are being appraised and in case of disagreement between the heirs, the matter of selection of appraiser is given to the Court under this provision, but it should not be from amongst those proposed by the heirs.

9. In my opinion the impugned order calls for interference. An application dated 20.11.2010 referred to in paragraph 8 above was filed on behalf of the present appellants, which the interested parties, i.e. the present respondents, gave a no objection for allowing the application. It is then seen from the records that the appellants had moved an application that the valuer had not valued the house bearing No.405, a general store and two rooms situated in the property bearing Survey No.250/3 of village Cortalim in the valuation report submitted by the valuer which is the property the interested parties wanted deletion of. It was prayed that it is necessary to value the above mentioned assets as it forms part of the improvements carried out by the interested parties. A note is recorded by the interested parties

that the newly constructed house, general store and two rooms does not form part of the assets and those are improvements carried out by the interested parties and the said items should be deleted. However, later, on 01.03.2011, there appears to be no objection to the valuation made by the Commissioner/valuer in respect of the immovable property which the interested parties wanted to delete. There is a memo of auction which records that the interested parties participated in the auction and even bid for the property, i.e. 'Thona Pashya Bhat' which the interested parties wanted to be deleted earlier. It is also material to note that on 20.11.2010, there was an application filed by the appellants praying that the immovable property at item no.1 be included in description of assets. To this application there was no objection by the other side pursuant to which the valuation was made.

10. Prior thereto, an inquiry was being conducted into the objection raised by the interested parties by the Inventory Court. Roznama dated 17.11.2009 records that '*Inspite of several opportunities inquiry is not conducted, hence inquiry is closed*'. There is no application made for setting aside the order dated 17.11.2009. Thus, the records show that the interested parties participated in the auction and even gave their no objection to the valuation report.

11. In this light of the matter, in my opinion, the Appellate Court was not justified in interfering with the order passed by

the Inventory Court. The objection raised by the interested parties loses relevance in view of the subsequent events and in view of their no objections later on reflected hereinabove. The impugned order is set aside.

12. The Inventory Court may proceed with the matter. In order to give a fair opportunity to the respondents, the earlier auctions held are set aside. It is open for the Inventory Court to order a fresh auction for the concerned parties to participate. The Inventory Court to accordingly proceed.

13. Considering that the inventory proceedings are pending since 2006, the Inventory Court is requested to expedite the proceedings.

14. The Appeal is allowed. There shall be no order as to cost.

M. S. KARNIK, J.

MARIA SUZANA
REBELLO

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SUZANA REBELLO
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