

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO. 04 OF 2023**

Candida Conceicao Texeira Freitas,
Around 68 years of age, divorcee, r/o.
Rua da Tuna 144, 1E, 4430-564, Vova
de Gaia, Portugal, Through her duly
constituted Power of Attorney holder,
Maria Lucia Castelino, Around 55
years of age, r/o. F-1, 5th Floor, Karim ... Appellant
Mansion, Behind Pharmacy College,
Panaji, Goa.

Versus

1. Mr. Ganganeli Jose Julio Pereira,
major of age, son of Minguel Alcantara
Francisco Ganganeli Roncon Pereira,
resident of Villa Nova De Gaia,
Portugal.
2. Mrs. Sergia Pereira e Costa, major
of age, r/o. H. No. 824, Benaulim,
Salcete, Goa.
3. Mr. Fidelis D'Costa, r/o. H. No. 824,
Acsona, Benaulim, Salcete, Goa.
4. Mrs. Clarissa Pereira
5. Mr. Carminho Britto
6. Mr. Blaise Britto
7. Mrs. Fausta Furtado e Britto
8. Mr. Bruno Britto
9. Mrs. Ernestina Britto e Menezes
10. Mr. Tarazio Menezes
11. Mrs. Hilda Britto e Barreto

12. Mr. William Barreto ...Respondents
All above mentioned persons r/o.
Devote, Loutolim, Salcete Goa.

Mr. Shivan Desai, Advocate with *Ms. Tahira Menezes and Mr. V. Bhandankar, Advocates for the Appellant.*

Mr. Jatin Ramaiya, Advocate with *Mr. Omkar Thakur, Advocate for the Respondent no.1.*

Mr. M. B. D'Costa, Senior Advocate with *Mr. Rehan Abbasi, Advocate for the Respondent no.2.*

CORAM: M. S. KARNIK, J
DATED: 28th JULY 2023

ORAL JUDGMENT

1. The challenge in this Appeal preferred by the appellant is to an order dated 04.02.2022 passed by the Court of Civil Judge, Senior Division, at Margao, (hereinafter referred to as the '*Inventory Court*' for short) in Regular Inventory Proceeding no.33/2010/I. The Inventory court by the impugned order has allowed the application dated 01.02.2021, filed by the respondent no.2 (head of the family), by which the deletion of the appellant's name as an interested party was prayed for, consequently, the name of the appellant from the array of parties in the Inventory Proceedings came to be deleted.

2. The appellant (wife) and respondent no.1 (husband) married on 14.06.1980. The appellant's mother in law (Lucinda Rebello Pereira) died in 1982. The appellant and respondent no.1 sought their divorce by mutual consent. The divorce was granted by the Court in Portugal on 13.11.1984.

3. The respondent no.1 was born within the territory of Goa pre-liberation. Goa was liberated on 19th December, 1961. The Respondent no.1, though was born within the territory of Goa pre-liberation, has later on acquired Portuguese Nationality. The respondent, prior to acquiring Portuguese Nationality was an Indian citizen of Goan origin. So far as the appellant is concerned, she was born in Portugal and has always been a Portuguese National.

4. To appreciate the controversy involved in this appeal, I need to note the relevant legislation in the context of liberation of Goa. By an amendment dated 27.03.1962 to the Constitution of India, the liberated territories of Goa, Daman and Diu were incorporated within the territories of Goa with the status of Union Territories. On 05.03.1962, '*Goa, Daman and Diu Administration Ordinance*' was issued

and in terms of section 5 of the said ordinance, all laws in force immediately before the appointed date in Goa, Daman and Diu or any part thereof, were to continue to be in force until amended or repealed by a competent legislature. On 27.03.1962, '*Goa, Daman and Diu Administration Act*' was passed. In terms of section 5, all laws in force immediately before the appointed date in Goa, Daman and Diu or any part thereof were to continue to be in force until amended or repealed by a competent legislature. On 28.03.1962, the Citizenship Order was issued. Section 2 of the Citizenship Order contemplates that every person who or either of whose parents or any of whose parents were born before 20th December, 1961 in the territories now comprised in the Union Territory of Goa, Daman and Diu shall be deemed to have become a citizen of India on that day.

5. The inventory proceedings are initiated under the provisions of the Portuguese Civil Code, 1867. So far as Portugal is concerned, the New Civil Code of 1966 came into force in Portugal on 01.06.1967, which contemplates communion of assets.

6. The appellant and the respondent no.1, both Portuguese citizens, married in Portugal, later on divorced in 1984 as per the matrimonial laws prevailing in Portugal.

7. The respondent no.1's father-Minguel Alcantara Francisco Pereira, died in 1993. The respondent no.1's mother-Lucinda Rebello Pereira, died in 1982. In 2006, the Inventory Proceedings were initiated of late Mr. Minguel Alcantara Francisco Pereira, by his eldest son, the respondent no.1 herein. During the pendency of the inventory proceedings, the name of the respondent no.1 was removed as the Head of the Family and instead, the Inventory Proceedings proceeded at the instance of respondent no.2, who was appointed as the Head of the Family. Respondent no.2 is the sister of respondent no.1. The Inventory Proceedings were re-registered in the year 2010. The final chart of partition was drawn around January, 2020.

8. Sometime in the year 2020, an application was made by the respondent no.2 to implead the appellant as an interested party to the Inventory Proceedings. The appellant was accordingly impleaded as an interested party

in the proceedings. Later on, in February 2021, by an application dated 01.02.2021, the respondent no.2 sought deletion of the name of the appellant from the Inventory Proceedings. The appellant filed a reply disputing the claim of the respondent no.2 for deletion of her name. By the impugned order, the Inventory Court deleted the name of the appellant from the proceedings.

Submissions of Mr. Shivan Desai, learned counsel for the appellant.

9. The marriage was solemnized between the appellant and respondent no.1 on 14.06.1980 at Portugal. The respondent no.1- husband was born in Goa but later on acquired Portuguese citizenship. The appellant-wife was born in Portugal and is of Portuguese nationality. The appellant as well as respondent no.1 being Portuguese nationals, married as per the laws prevailing in Portugal and also divorced in terms of the laws prevalent in Portugal. A partition deed of communion of assets dated 10.04.1985 was executed and the assets and liabilities are mutually distributed between the appellant and the respondent no.1. In the said deed, it is mentioned that the appellant and the respondent no.1 are governed by the regime of communion of acquired assets. The partition deed discloses that both

the parties agreed that they are governed by the communion of acquired assets. The rights of the appellant which have accrued under statute and in favour of the respondent no.1 during the subsistence of the marriage and till the divorce, cannot be negated. There cannot be an estoppel against law. The respondent no.1 is the legal heir of the estate leavers. The settlement between appellant and respondent no.1 after the divorce was in terms of the laws applicable in Portugal. The partition deed is to be regarded only for the acquired assets in terms of the Portugal laws. The appellant's rights in the estate of the respondent no.1's parents in terms of the personal laws which are very much applicable to the respondent no.1 stand protected.

10. Reliance is placed on Article 3 and Article 17 of the Portuguese Civil Code, 1867. The Portuguese Civil Code, 1867 continues to apply to the respondent no. 1 even after he had applied for Portuguese Citizenship. At the time of liberation of Goa, respondent no.1 being Portuguese subject/citizen in pursuance to the Citizenship Order, the respondent no.1 was deemed to be an Indian citizen of Goan origin. Article 24 of the Portuguese Civil Code, 1867,

substantiates the contention of appellant that merely because respondent no.1 travelled/migrated to Portugal after liberation, the same by itself does not take away the applicability of the Portuguese Civil Code, 1867 to the respondent no.1. As per the provisions of the Portuguese Civil Code, 1867, the Portuguese subjects have to be read as '*Indian Citizen of Goan Origin*' despite their travel or residence in a foreign country.

11. Articles 1 and 2 of Law of Marriage applicable in Goa postulate that the marriage is a contract solemnized between two persons of different sex with the purpose of legitimately constituting a family and is presumed to be perpetual subject to the law of divorce. Article 4 of the Law of Marriage postulates the incapacity/disqualifications to contract marriage. In the instant case, none of the disqualifications are attracted.

12. A reference is made to Article 1108 and Article 1121 of the Portuguese Civil Code, 1867. These provisions entail that the marriage as per the customs of the country consists in the communion of assets between the spouses of all the properties and the communion ends by the dissolution of

the marriage or by separation, in accordance with the law. The Portuguese Civil Code, 1867, being applicable to the respondent no.1, the marriage between the appellant and the respondent no.1 shall attract the concept of communion of assets. Mere solemnization of marriage in Portugal does not mean that the marriage between the appellant and the respondent no.1 was not as per the customs or law as applicable in Goa. It is emphasised that as the respondent no.1 was born in Goa, he always carries his personal laws wherever he is and mere acquiring a citizenship of another country does not take away the right of the Indian citizen of Goan origin to claim the applicability of the personal laws. It is, therefore, that the appellant gets a right to be impleaded as an interested party to the inventory proceedings.

13. A reference is also made to Articles 1065, 1066 and 1107 of the Portuguese Civil Code, 1867. Reference is also made to Article 58 of the Law of marriage. These Articles contemplate that marriage under the Portuguese Civil Code, 1867, in a foreign country can be registered in a foreign country and the presumed regime shall be law of communion of assets. The Portuguese Civil Code, 1867 and

the law of marriage contemplates solemnization and registration of marriage in a foreign country. In the instant case, mere fact that the marriage between the appellant and the respondent no.1 had taken place in Portugal and the divorce took place in Portugal, does not by itself exclude the applicability of the principle of communion of assets as per the Portuguese Civil Code, 1867.

14. A reference is then made to Article 1, Article 2 and Article 26 of the Law of Divorce. These Articles postulate that the marriage between the spouses stands dissolved by death or by divorce. The said Articles further 0.42 cmpostulate that upon grant of divorce, the communion comes to an end.

15. As the respondent no.1 was an Indian Citizen of Goan Origin prior to acquiring Portuguese Nationality, the Portuguese Civil Code, 1867, continues to be applicable to him and, therefore, the matrimonial regime prevalent in Goa will equally apply to the appellant enabling her to participate in the inventory proceedings as an interested party.

16. Reliance is placed on the decision of this Court in the case of **Monica Variato vs. Thomas Variato**¹, to contend that merely because marriage had not taken place in Goa, by itself would not mean that the Portuguese Civil Code, 1867, will not apply. The applicability of rules of private international law varies from state to state and same cannot be strictly applied. Reliance is also placed on the decision of this Court in the case of **Daisy Senso vs. Ivorine Danslay Noronha & Ors.**² in support of the contention that mere fact of marriage out of Goa would not exclude the applicability of the Portuguese Civil Code, 1867. Reliance is then placed on the decision of the Supreme Court in the case of **Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira & anr.**³ in support of the contention that the Portuguese Civil Code, 1867, being a special act is applicable to the domiciles of Goa in respect of all properties whether situated in Goa or outside Goa. The Supreme Court held that Portuguese Law may have had a foreign origin but in sum and substance is an Indian Law. In the light of the decisions relied herein above, upon death of the appellant's mother in law, respondent no.1 acquired

1 Letters Patent Appeal No. 31 of 1988 decided on 19.06.2000.

2 2011 SCC OnLine Bom 659

3 (2019) 20 SCC 85

rights by virtue of the principle of communion of assets and that the appellant also acquired 50% interest in respondent no.1's share.

Submissions of Mr. Jatin Ramaiya, learned counsel for the respondent no.1.

17. Learned counsel for the respondent no.1 adopted the arguments of learned counsel for the appellant to the extent that the Inventory Court was not justified in deleting the name of the appellant from the Inventory Proceedings.

Submissions of Mr. M.B.D'Costa, learned senior advocate for the respondent no.2.- Head of the Family

18. The impugned order does not call for any interference. There is no error or perversity with the impugned order. No doubt, the appellant was impleaded as an interested party at the instance of the respondent no.2. The respondent no.2 was under a wrong impression that the appellant was an interested party. This error was sought to be rectified by requesting for her deletion from the inventory proceedings with which she has absolutely no concern.

19. The Portuguese Civil Code, 1867, was extended to Goa on 18th November 1869 and it continued to be in force in Goa after the appointed date, namely 20th December 1961, by virtue of section 4 of “*The Goa Daman and Diu (Administration Ordinance), 1962*”, which came into force on 10th March 1962. The ordinance was repealed by the Goa Daman and Diu Administration Act, 1962. Section 5 of the Act provides for the continuance of existing laws and their adaptation.

20. The relevant provisions of the Portuguese Civil Code, 1867, in force in Goa in respect of marriage, are Articles 1906 to 1239. It is lawful for the spouses to stipulate before their marriage and within the limitations fixed by law whatever they deem fit in respect of their assets. Article 1096 stipulates that such contracts shall not be valid unless they are recorded by way of a public deed. Such an agreement is known as pre-nuptial or ante-nuptial agreement precisely because it is executed before the solemnization of marriage.

21. On acquiring Portuguese nationality, the respondent no. 1 ceases to be an Indian citizen of Goan origin. The

parties are governed by the regime prevalent in Portugal as per the laws applicable in Portugal. The claim of the respondent no. 1 in the inventory proceedings to a share in the property of the estate leavers is in his capacity as the son , a legal heir of the estate leavers. The Portuguese Civil Code, 1867 is not applicable to the appellant. So far the appellant is concerned, she is governed by the matrimonial regime of properties prevalent in Portugal.

22. Reliance is placed upon the decision of the Supreme Court in the case of **Dr. Pradeep Jain & Ors. vs. Union of India & Ors.**⁴ to contend that the Indian Constitution recognizes only one domicile and that India has only one citizenship which is the citizenship of India. In terms of Article 9 of the Constitution of India, dual citizenship is not permissible and having regard to section 9 of the Citizenship Act, the law does not countenance dual nationality or dual citizenship but recognizes only one nationality.

4 (1984) 3 SCC 654

CONSIDERATION

23. Heard learned counsel for the parties. With the assistance of the learned counsel, I have perused the appeal memo, the paper book and the impugned order.

24. To appreciate the rival contentions, it would be pertinent to set out the relevant provisions of the Portuguese Civil Code, 1867, relied by learned counsel for the parties, which read thus :

The Portuguese Civil Code, 1867 -

Article 3 - Scope of civil law - If the rights and duties are confined to mutual relations amongst the citizens themselves as private persons or between citizens and the State in matters of property or of purely individual rights, these rights, and obligations constitute the civil capacity of citizens, they are known as civil rights and obligations and are regulated by the private law contained in the Civil Code with the exception of matters which are regulated by special law.

Article 17 - Applicability of the Portuguese Civil Code to Portuguese citizens only - Only Portuguese citizens may enjoy to the full extent all the rights which the civil law recognizes and secures.

Article 24 - Law governing civil acts of the Portuguese in foreign country - The

Portuguese subjects who travel or reside in a foreign country, remain subject to Portuguese laws concerning their civil capacity, their status and their immovable property situated in the kingdom, in respect of acts which will produce effects therein: however, the external form of the acts shall be governed by the law of the country, where they are celebrated, except in cases where the law expressly provides to the contrary.

Article 1107 - Presumed regime of assets for marriage celebrated abroad -

Where the marriage is contracted in a foreign country between a Portuguese (male) and a foreigner (female), or between a foreigner (male) and a Portuguese (female) and where the contracting parties have not declared nor stipulated anything in respect of their assets, it shall be deemed that they are married as per the general law of the country of the male spouse, without prejudice to what is laid down in this Code in respect of immovable assets.

Article 1108 - Concept of communion of matrimonial estate - The marriage as per

the custom of the country consists in the communion between the spouses of all their assets, present and future, not excluded by law.

Article 1065 - Marriage of Portuguese in foreign country - The marriage contracted between Portuguese in a foreign country, shall not produce civil effects in this country, in case it is not contracted in conformity with the Portuguese law; except what is provided in the second part of Article 24 in respect of the formal validity of the contract.

□ Substituted by Art.58(2) onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

□ Also see Art.245 of Code of Civil Registration, 1912.

Article 1066 - Marriage abroad when one of the spouses is Portuguese - The marriage contracted in a foreign country, between Portuguese (male) and foreigner (female) or between foreigner (male) and Portuguese (female), shall have civil effects in this country, provided that the conditions required by the Portuguese law are satisfied as regards the Portuguese spouse. Substituted by Arts.58(1) & 59 onwards of Decree No.1 of 25/12/1910 (Law of Civil Marriage).

Article 1096 - Ante-nuptial conventions principle of freedom - It is lawful for the spouses to stipulate, before the solemnisation of the marriage and within the bounds of law, whatever they think fit in respect of their assets.

Article 1121 - End of the communion of Matrimonial estate - The communion ends by the dissolution of the marriage or by separation, in accordance with the law.

□ Communion also ends with annulment or declaration of nullity under Art.69 of Law of Divorce dated 03/11/1910;

Absence - Art.82 of Portuguese Civil Procedure Code of 1939 and declaration of insolvency Arts.1361 and 1364 of Portuguese Civil Procedure Code of 1939.

□ In case of divorce by mutual consent, Art.1476 provides that the effects shall be retroactive to the date of provisional divorce.

Law of Marriage

Article 1 - Contractual nature and purpose of Marriage The marriage is a contract solemnized between two persons of difference sex with the purpose of legitimately constituting a family.

Article 2 - Civil nature, presumption of perpetuity and dissolution by divorce - Such contract is purely civil and is presumed to be perpetual, without prejudice to its dissolution by way of divorce as per the provisions of the Decree, with the force of law, dated 3rd November, 1910.

Article 4 - Absolute Impediments : The following shall not contract marriage:
(1) Relatives by consanguinity or affinity in

a direct line, although the marriage, which is the cause of affinity, has been dissolved;

(2) Legitimate or illegitimate brothers and sisters by full-blood or consanguineous or uterine;

(3) Those males below the age of eighteen years, and females below the age of sixteen years;

(4) Those under disability due to insanity, declared by judgment become final for want of appeal, or notorious; as well as those divorced on the ground of contagious disease found incurable or of an incurable disease involving sexual aberration.

(5) Any spouse who has been convicted of committing, or abetting the commission of, or of the attempt to commit murder of the other spouse, with any other person convicted of committing or abetting the commission of the same offence.

(6) Those joined by another marriage, not yet dissolved.

Article 58 - Marriage Outside Goa:- The marriage of Portuguese in a foreign country shall be governed by following provisions:-

Paragraph No: 1. Where only one of the contracting parties is Portuguese, the marriage may take place as per the procedure prevailing in the country where it is solemnized.

Paragraph No: 2. Where both the contracting parties are Portuguese, they may contract marriage in the manner prescribed by the National law before the

diplomatic or consular agent of Portugal, manner that may be legally required in the country where it is solemnized, if not consistent with the principles of the Portuguese Public Law.

Law of Divorce

Article 1 - stipulates that the marriage stands dissolved by death of one of the spouses or by divorce.

Article 2 - contemplates that the divorce by judgment has the same effect as dissolution by death.

Article 26 - stipulates that grant of divorce results in separation of property between spouses and each of them acquired full ownership and free ownership of property belonging to them and may deal with the freely and in any manner. There is also a sole paragraph which stipulates that separation and division of the property between the spouses can be made amicably by way of public deed by way of inventory or by way of general law.

25. Section 4 is the relevant provision of Goa, Daman and Diu (Administration Ordinance), 1962, which came into force on 10.03.1962, reads thus :

“Section 4 of the Ordinance - All laws in force immediately before the appointed day in Goa Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority.”

26. Section 5 of the Goa, Daman & Diu Administration Act 1962, which repealed the ordinance of 1962, reads thus :

“Section 5 of the Act - All laws in force immediately before the appointed day in Goa Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority”.

27. Thus, the Portuguese Civil Code, 1867 and several other laws continued to be in force after Goa Daman Diu became part of the Union of India. In terms of the Portuguese Civil Code, 1867, it is lawful for the spouses to stipulate before their marriage and within the limitations fixed by law whatever they deem fit in respect of their assets. Article 1096 stipulates that such contracts shall not be valid unless they are recorded by way of a public deed. Such an agreement is known as pre-nuptial or ante-nuptial agreement precisely because it is executed before the solemnization of marriage. Thus, the law gives to the betrothed freedom of choice, namely, to choose the rules and regulations governing the ownership and management

of property of married persons or of the spouses as between themselves and third parties. A matrimonial regime is a system of rules and regulations governing the ownership and management of property of married persons or of the spouses as between themselves and third parties. What is important and needs to be underlined is that under the relevant law, marriage has a consequence on the ownership of the properties of the future spouses.

28. The Portuguese Civil Code, 1867, in force in Goa proposes broadly for four types of regimes of matrimonial properties, (1) General community of assets or properties; (2) Community of acquired assets or properties; (3) Complete separation of assets; and (4) Dotal regime.

29. The regime of general community of assets or properties is that, by default, in the absence of ante-nuptial agreement, the parties are deemed to have opted for the regime of general community of assets, unless the marriage is hit by the impediments set out in Article 1058. As per the custom of the country, marriage brings about a general community of assets; all the assets of the couple, present or future, not expressly excluded by law, shall belong to

both the spouses in common. Expressly excluded by law are, for instance, assets gifted or bequeathed to one of the spouses on the condition that these shall not be held in common with the other spouse as reflected from Article 1109(2). General community of assets ends by dissolution of the marriage or by separation, in accordance with the law (Article 1121).

30. The second is the regime of simple community of acquired properties provided for by Article 1125. Where spouses declare that they wish to marry with simple community of acquired properties, the assets which each of the spouses owns at the time of the marriage, or which he/she gets thereafter by inheritance or any other gratuitous title or any personal prior right, shall be deemed and governed by the law governing personal or exclusive assets, when the marriage is celebrated in accordance with the custom of the country. (Article 1130).

31. The spouses opting for simple community of acquired assets shall before their marriage draw up an inventory, either in the ante-nuptial agreement or in any other public deed or document, of the assets which they bring into the

conjugal society, failing which the assets shall be deemed acquired assets (Article 1131). The regime of simple community of acquired properties ends by dissolution of the marriage or by separation.

32. The third regime provided by law is the regime of complete separation of assets. Each of the spouses continue to be the exclusive owner of all the belongings to him/her and he/she may dispose of freely the respective assets, subject to certain restrictions provided in the law (Article 1127).

33. The fourth is the dotal regime where the betrothed declare in the ante-nuptial agreement that they wish to marry under the dotal regime. The future wife may endow herself with her assets or be endowed by the parents or by other persons provided that all the interested parties intervene in the agreement personally or through their duly authorized persons, (Article 1134-1165). On dissolution of marriage or on separation, the endowment shall be restituted to the wife or to her heirs together with any other assets which rightly belong to her (Article 1156). Article 1105 is a provision of law as regards matrimonial

properties, that the law expressly prohibits after the solemnization of marriage, any revocation or change in the matrimonial regime. The matrimonial regime is thus immutable. This provision is intended to curb frauds by one of the spouses or both the spouses. For example, where the spouses are married under the regime of complete separation of assets and the owner of the assets incurs a debt (Article 1129), if the parties in the meantime are allowed to change the regime of assets as regime of community of assets, the creditor will not be able to attach the assets of the respective spouses. The other spouse may frustrate the attachment by claiming that the assets are common and not liable to attachment for the individual debt of one of the spouses only. The provisions of the Portuguese Civil Code enacted in 1867 continues to be in force in Goa.

34. So far as Portugal is concerned, in 1966, a new Civil Code was enacted. It was enacted in Portugal after Goa became a part of India. A reference to page 76 of the paper book which is a certificate of marriage of the parties, both Portuguese nationals, residents of Portugal, indicate that they celebrated their marriage on the 14th day of June 1980, without pre-nuptial agreement. Thus, the parties got

married in Portugal, as Portuguese citizens, after the Civil Code, 1966 had come into force in Portugal on 01.06.1967. The said marriage was dissolved by mutual consent on the 13th of November 1984. On 10th April, 1985, upon divorce, the parties executed a partition deed. The parties declared that they were married under the regime of community of acquired assets. They declared that they wished to partition the common assets of the couple (page 45 of the paper book), and they further stated that the assets and liabilities to be partitioned are only those recorded in the deed; the asset is adjudicated to the first party and the second party acknowledges having received the owelty money. Thus, all the common assets of the couple were partitioned. It is necessary at this juncture to make a reference to Article 1717 of the Civil Code, 1966 in force in Portugal, which lays down that in the absence of any ante-nuptial agreement or in case of revocation, invalidity or inefficacy of the agreement, the marriage shall be deemed to be under the regime of community of acquired assets. Further, Article 1722 provides that the assets which have come to them after their marriage by succession or gift are considered personal assets of the spouses.

35. It is here that the learned counsel for the appellant strenuously urged that the divorce though may be under the Portugal law, but the respondent no.1 is not precluded from claiming the applicability of the personal law prevalent in Goa i.e. the place of his birth which he carried with him whenever he resides notwithstanding the acquisition of citizenship of another country/Nation. On the other hand, it is the contention of learned Senior Advocate for the respondent no.2 that in the Portuguese Civil Code, 1867 in force in Goa, Article 1130 is more or less similar to Article 1722 of the Civil Code, 1966 in force in Portugal. Consequently, according to learned Senior Advocate for respondent no.2, the appellant-wife who is a Portuguese national has no right to the assets which have come to the share of her husband by succession. According to him only the respondent no.1 has share in the succession and this has been recognized in accordance with the law of succession in force in Goa. I find force in the contention of the learned Senior Advocate for the respondent no.2. As can be seen from the aforementioned Articles, matrimonial regimes are set out by the rules and regulations governing the ownership and management of property of married

persons or spouses as between themselves and third parties.

36. The present Inventory Proceeding was instituted on 21.02.2006 numbered as Inventory No.14/2006/II. Subsequently, in view of change in jurisdiction, it was renumbered Inventory Proceeding No. 33/2010/B. Respondent no. 1 being the eldest son, was appointed Head of the Family. On 11.01.2006, respondent no.1 executed in Goa a General Power of Attorney appointing Tarazio Menezes as Attorney who intervened in the inventory throughout without any objection from any party whatsoever including the appellant-wife. The respondent no.1 was discharged as Head of Family by order dated 14.03.2008. The respondent no.2, the daughter of the estate leaver was appointed Head of the Family.

37. Under a mistaken belief that the appellant and respondent no.1 were married under the regime of community of assets, the appellant was impleaded at the instance of respondent no.2 almost 16 years after the inventory was initiated. The appellant was impleaded in the inventory only in 2020, 16 years after respondent no.1 had

initiated the inventory which, according to the learned senior counsel for the respondent no.2, happened by reason of a mistaken belief aforementioned. Realizing this, the respondent no.2 filed an application for deletion of the name of the appellant stating thus:

- a) she had obtained their marriage certificate through the net on 17.11. 2020 after which she realized that Ganganeli got married after the 1966 Civil Code came into force in Portugal, without ante-nuptial agreement at page 76.
- (b) their marriage was governed by the provisions of the Civil Code of 1966.
- (c) that they got married in Portugal in 1980 and
- (d) they got divorced in 1984, at page 77
- (e) At page 81 the divorced spouses partition their common assets page 81
- (f) At any rate, the estate leaver Miguel died in 1993 after they were divorced.
- (g) that the assets inherited by Ganganeli, the ex-husband, from his parents were personal properties of Ganganeli and not community assets."

38. Learned counsel for the appellant placed much reliance on the declaration dated 21.12.2021, which is at page 84 of the paper book. It is pertinent to note that such a declaration is made on 21.02.2021 much after the initiation of the Inventory proceedings. The declaration was made before an Advocate. The declaration records that the

Apostile only certifies the signature, the capacity of the signatory and the seal/stamp it bears. It does not certify the contents of the document for which it was issued. It is the contention of the learned Senior Advocate that the reply which is dated 17.02.2021, at page 83 of the paper book, was filed by the appellant making several false statements as under :

(a) that the declaration was a public document and

(b) that the document was executed before the Regional Prosecutor General of Porto Portugal.

39. It is then necessary to make a reference to the declaration at page 85, which certifies that the parties are citizens of Portugal. It is never in dispute that they are both Portuguese citizens at the time of marriage and divorce. I am inclined to agree with the submission of the learned Senior Advocate for the respondent no.2, that the declaration made by the appellant and respondent no.1 is self serving and, therefore, can be of no assistance to the appellant's case.

40. It is necessary to make a reference to the relevant provisions of the Civil Code, 1966 applicable in Portugal, which reads thus :

Article 31 - (Determination of personal law)

1. The personal law is the law of the nationality of the individual
2. Juridical acts executed in the country of the habitual residence of the declarant in accordance with the law of that country are, however, recognized in Portugal, provided the latter is considered competent.

Article 52

- (1) Save what is provided in the following Article, the relations between spouses shall be governed by their common national law.
- (2) When the spouses do not have the same nationality, the law of their habitual common residence, shall be applicable, and, in its absence, the law of the country with which their family life is most intimately connected.

Article 53

1. The essence and effect of ante-nuptial agreements, and of the regime of assets, legal or conventional, are determined by the national law of the betrothed at the time of celebration of the marriage.
2. Where the betrothed do not have the same nationality, the law of their common habitual residence at the time of their marriage is applicable, and, in its absence, the law of the first

conjugal residence.

3. If the law applicable is foreign, and one of the betrothed has his habitual residence in Portuguese territory, one of the regimes contemplated by this law, may be agreed upon.

Article 54

1. The spouses are allowed to modify the regime of assets, legal or conventional, if it is so allowed by the competent law under Article 52.

2. The new agreement shall not under any circumstances have retrospective effect to the prejudice of third parties.”

41. The Inventory Proceedings in respect of the estate leavers are governed by the Portuguese Civil Code, 1867. The right to succeed to the property of the estate leavers, so far as the respondent no.1 is concerned, is based on the law of succession and therefore respondent no.1, though a Portuguese national was rightly impleaded as an interested party in the Inventory Proceedings. The appellant as well as the respondent no. 1 having married in terms of the law applicable in Portugal and also divorced in terms thereof, they will be governed by the law of matrimonial regime of properties as applicable in Portugal. There is nothing in the Civil Code, 1966 in force in Portugal nor in the provisions of the Portuguese Civil Code, 1867 in force in Goa which provides that a couple can be governed by two independent

and inconsistent regimes of matrimonial properties. There is no matrimonial agreement between the parties stipulating that the location of their assets of any one of them would determine their matrimonial regime. In any case, I find that there is no specific provision under the law in force in Portugal or even under the law in force in Goa that the location of the assets would determine the matrimonial regime.

42. Learned counsel for the appellant was at pains to point out that at the relevant time of liberation, in view of the Citizenship Order of 1962, the respondent no.1 continued to be a citizen of India by virtue of section 2 of the order and, therefore, the matrimonial regime applicable would be as per the Portuguese Civil Code, 1867. It is pertinent to note that it is only after the appellant was impleaded as a party to Inventory Proceedings, and that too so many years after the couple divorced according to the matrimonial regime of properties in Portugal, that a declaration was made in the year 2021 about the parties being governed by the community of assets as far as their properties in Goa are concerned. I have no hesitation in

refusing to place reliance on such a declaration which is not only belated, but as discussed earlier, a self serving one.

43. It is not in dispute that upon divorce on 10.04.1985, the appellant as well as the respondent no.1 partitioned "*communion assets of the couple*" and from the document it is seen that apart from the fact that the appellant and respondent no.1 are Portuguese nationals, it is further declared that they are married to each other under the regime of communion of assets.

44. It may be that the respondent no.2-Head of the Family, made an application in the year 2020 for impleading the appellant as an interested party to the Inventory Proceedings. In any case, at the highest, the appellant can only claim a share in the property which comes to the share of the respondent no.1. The interest of the respondent no.1 is duly represented in the Inventory Proceedings and, in fact, it is the respondent no.1 who had initiated the Inventory Proceedings. The appellant was never a citizen of India. The Portuguese Civil Code, 1867 is applicable to an Indian citizen of Goan origin. At the time of liberation of Goa, the respondent no.1 was an Indian Citizen of Goan

origin and the Portuguese Civil Code, 1867 was applicable to him. However, post the acquiring of Portugal nationality, the respondent no.1 married the appellant as per the laws in existence in Portugal and even the divorce was thereunder. The matrimonial regime that was applicable in Portugal and what was accepted by the appellant as well as the respondent no.1 was the community of assets. The partition deed makes this even more clear. The respondent no.1 being the eldest son of the estate leaver, even though a Portuguese national, has a share in the property of the estate leaver by succession and hence, impleaded as an interested party in the Inventory proceedings. The appellant was born in Portugal and even her marriage was solemnized with the respondent no.1 who by then was a Portuguese citizen in terms of the matrimonial laws as applicable in Portugal. The regime applicable to the parties in Portugal was community of acquired assets and as per that regime, the partition deed executed in the year 1985 was acted upon.

45. The share of the respondent no.1 will be determined in the Inventory Proceedings. If at all the appellant has any claim, the same can be only against the respondent no.1

which cannot be the subject matter of the present Inventory Proceedings initiated under the Portuguese Civil Code, 1867. In the facts of the present case, it is only the respondent no.1 who can claim inheritance in the property of the estate leavers and not the appellant considering the appellant is governed by the matrimonial regime of properties as per the law in Portugal.

46. Coming to the decisions relied upon by the learned counsel for the appellant. In **Monica Variato vs. Thomas Variato** (supra) the parties were married under the Special Marriage Act at Mumbai. They presented a petition for divorce by mutual consent under section 36 of the Law of Divorce as applicable in the State of Goa. After order granting provisional divorce for separation of one year was made in terms of Article 39 of the Law of Divorce, since the parties had married under the Special Marriage Act, the trial court had observed that the proper course for the parties was to have applied for divorce under the Special Marriage Act to the Court having jurisdiction. This court was of the opinion that the parties being of Goan origin, irrespective of the fact that one of the party was residing in Mumbai, he would still be governed by the Portuguese Law

of Divorce applicable to the State of Goa. This court held that under the Indian Law the domicile of the husband would be the domicile of the wife. In the facts of that case, this court held that the civil court exercising jurisdiction in divorce matters in the State of Goa, will hear and decide the petition. In the present case, admittedly, neither the appellant nor respondent no.1 are Indian citizens and hence the decision in **Monica Variato vs. Thomas Variato** (supra) is distinguishable on facts.

47. So far as the decision of this court in **Daisy Senso vs. Ivorine Danslay Noronha & Ors.** (supra) relied upon by the learned counsel for the appellant is concerned, the same is again distinguishable on facts. Both the parties were Indian citizens but married out of Goa. This Court held that the fact remains that parties were Indian nationals and in those circumstances rendered the decision. The decision of this court in **Daisy Senso vs. Ivorine Danslay Noronha & Ors.** (supra) does not support the case of the appellant in any manner whatsoever.

48. Even as regards the decisions of the Supreme Court in the case of **Jose Paulo Coutinho vs. Maria Luiza**

Valentina Pereira (supra), the decision was in the contextual facts of that case where the properties of a Goan domicile were situated outside Goa and in that context it was held that the Portuguese Civil Code, 1867 will apply. It is therefore in an entirely different fact situation where the parties admittedly were of Goan domicile that the controversy was considered by the Hon'ble Supreme Court and answered accordingly.

49. In my opinion, there is no reason to interfere with the order passed by the trial court.

50. The appeal is dismissed. No order as to costs.

51. It needs to be clarified that I have only gone into the question raised in the present Appeal from Order and the other appeals viz First Appeal no. 11/2023 and First Appeal No.13/2022, are detagged to be decided on its own merits.

52. It is necessary to mention that the learned Senior Advocate suggested that the word 'communion' used should be 'community', and the word "communion" be replaced with "community"; whereas the learned counsel for the appellant suggested that the official translation of the

Portuguese Civil Code, 1867 uses the word “communion” and not “community”, and the word “community” may be replaced with the word “communion”. Having regard to the controversy involved, I have used the words interchangeably as I find nothing much will turn on this aspect for the final outcome.

53. I would be failing in my duty if I do not place on record my appreciation for the valuable assistance rendered by learned Senior Advocate Shri D’Costa and Shri Desai in making erudite submissions while placing the issue involved in this Appeal for my consideration.

M. S. KARNIK, J

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
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