

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 247 OF 2022-F

MARIA DSOUZA ... Petitioner.
VS
CAMILO FERNANDES DSOUZA AND 4
ORS. ...Respondents

Mr. Nigel Costa Frias and Ms. B. Kukalekar, Advocates for the
Petitioner.

Mr. U. R. Timble and Ms. Y. Mandrekar, Advocates for
Respondent No.1.

CORAM: B. P. COLABAWALLA, J
DATED: 5th JANUARY 2023

P.C.

1. The above Writ Petition challenges an order dated 19th April 2022 passed by the District Judge-1, Mapusa, in Regular Civil Appeal No.121/2018. By the said order the Appellate Court was of the opinion that the plaintiffs had not only challenged the Will on the ground that the testator was not in a proper state of mind at the time when the Will was executed, but also on the ground that by the said Will a specific property was bequeathed which could not have been done. The Appellate Court found that PW1 had also stated in his affidavit of evidence that the Will is a nullity because the deceased father of Plaintiff No. 1 and Defendant No.1 had no right to bequeath the entire suit property. The Appellate Court found that there was no

finding given on this aspect and, therefore, framed an additional issue which reads as follows:-

“Whether the Plaintiffs prove that the Will executed on 23.10.2007 is null and void as late Rosario D'Souza could not have bequeathed a specific property by the said Will?”

2. This issue was therefore referred back before the trial Court for a decision and it was directed that if necessary the trial Court could take additional evidence on this issue only if the parties intend to lead evidence in that regard.

3. Having gone through the impugned order, I find that the issue is correctly framed. This issue will have to be decided as it is the core issue to the plaintiff's case. Once it is decided and findings are rendered thereon, as per the order of the Appellate Court, the same will have to be returned to it with the evidence, if any.

4. As mentioned earlier, on going through the impugned order, I find that the issue is correctly framed and the Appellate Court has correctly exercised its jurisdiction under Order 41 Rule 25 of the Code of Civil Procedure 1908. In these circumstances, I do not find that any case is made out for interference with the impugned order.

5. It is now made clear that the learned Civil Judge, Junior Division at Valpoi, shall proceed with the Regular Civil Suit No. 21/2012 as directed in the Appellate Court order and then return to the Appellate Court the evidence and findings, on the issue referred to herein above within a period of 90 days from 15th January 2023. Needless to clarify that contentions of all the parties are expressly kept open on the aforesaid issue.

6. With the above clarification, the Writ Petition is accordingly dismissed. There shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All Concerned will act on the production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2023.01.07 10:33:09 +05'30'