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IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO.19 OF 2023
WITH
CIVIL APPLICATION NO.74 OF 2023
IN
APPEAL FROM ORDER NO.19 OF 2023**

NARAYAN G. PARAB ... Appellant.

Versus

PUNDALIK SADASHIV
PARAB AND 10 ORS. ... Respondents.

Mr Shivan Desai with Ms Maria Viegas and Ms Tahira Menezes, Advocates for the Appellant.

Ms Barbara Andrade with Ms Sonadevi Nishad, Advocates for Respondents No.2 and 3.

CORAM: PRAKASH D. NAIK, J.

DATED: 1st November, 2023

ORAL ORDER:

1. This appeal is preferred under Section 451 (2) of Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. The Appellant is aggrieved by order dated 05.05.2022 passed by the learned Civil Judge Junior Division at Pernem in Regular Inventory Proceedings No.39/2014.

2. The Appellant is interested party No.7 in the Inventory Proceedings No.39/2014 initiated by the wife of Respondent No.4. She was originally appointed as Head of Family in the said Inventory Proceedings and continued to be so until her demise in 2019. Thereafter, Respondent No.4 was appointed as the new Head of Family vide order dated 28.09.2021. The Inventory Proceedings were initiated to distribute assets of late Mr. Ghanashyam Vithal Parab and his wife late Mrs. Pushpavati Ghanashyam Parab. The Respondents No.1 to 3 filed intervention application in the Inventory Proceedings to be impleaded as interested parties claiming that their ancestors were party to a gift deed executed in the year 1930 in respect of one of the properties listed in the list of assets in the Inventory Proceedings. They have filed a Regular Civil Suit No.21/2018 against all the interested parties in the Inventory Proceedings for demarcation.

3. The Appellant and Respondent No.4 filed reply objecting to the intervention application filed by Respondents No.1 to 3 disputing their claims and entitlement to the suit property.

4. Vide order dated 05.05.2022, the learned Civil Judge allowed the application filed by Respondents No.1 to 3 and directed a summary inquiry for the parties to ascertain whether interveners are required or not to be admitted as interested parties in the Inventory

Proceedings and allowed the interveners to file their respective affidavits.

5. Learned Advocate for the Appellant submitted that the Respondents are not legal heirs of Ghanashyam Parab. The party has to be an heir for claiming right to inheritance. The interveners were not concerned with the proceedings. The interveners cannot scuttle the Inventory Proceedings. The vendee has to be from estate leaver. The Court ought not to have directed summary inquiry to ascertain whether the interveners are required as interested parties. The interveners are not even remotely related to the Appellant. The Regular Inventory Proceedings were at the stage of report. The interveners attempt is to delay the proceedings. The Court ignored the reply filed by the Appellant. The suit is filed by the interveners for relief that the Petitioner No.1 be declared as owners of 1/16th part of the suit property and Petitioners No.2, 3 and Defendants No.11 to 14 be declared as owners of remaining 1/16th part of the suit property. Intervenors are not legal heirs of Ghanashyam Parab. The party has to be heir or claiming right of inheritance. Section 375 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 provides procedure for presentation of petition for inventory proceedings. The petition has to be presented by interested party. The 'interested party' means heir, moiety holder of the deceased, the executor in a will where there are minor interdicted or absent heirs or legatees and the persons who have the right to usufruct of a part of

inheritance without specifying its value or the thing, and also the executor.

6. Mr Desai has relied upon the decision of this Court in the case of *Zacarias Durate Dornigos Pereira vs. Camilo Inacio Evaristo Pereira*¹, another decision of this Court in the case of *Sheela Rodrigues and Anr. vs. Lourencinha Ana D'Cruz Rodrigues Fernandes*² and *Ethel Lourdes D'Souza Lobo vs. Lucio Neville Jude De Souza and Ors.*³.

7. Learned Advocate for the Respondents Ms Barbara Andrade submitted that no fault can be found with the impugned order. There is no legal impediment for allowing the said application for intervention. Section 395 of Goa Inventory Proceedings provides that any person may at any stage of the inventory proceedings, may apply that he may be impleaded as interested party, legatee or creditor. The suit property originally belonged to Shri Vitol Narana Porobo Virnorcar @ Vittal Narayan Virnodkar. Vide Deed of Declaration, Gifts and Express Acceptance dated 02.09.1930, Vitol Porobo and his wife Rucminim Bai gifted to late Pundalica Porobo Virnorcar 1/16th part in property and to Vishnu Porobo Virnorcar another 1/16th part in suit property. Pundalica was owner and in possession and enjoyment of 1/16th part of suit property and late Vishnu Porobo

¹ 1984 SCC OnLine Bom 59

² AIR 2000 Bom 97

³ 2022 SCC OnLine SC 1251

Virnorcar was owner in possession 1/16th part of property. Pundalica expired leaving behind Sadashiv Parab married to Smt Saraswati Parab. Both expired leaving behind Pundalik Sadashiv Parab who is intervenor No.1 married to Smt. Shalini Pundalik Parab. Shalini expired on 09.09.2015. Grandson of Pundalica Porobo Virnorcar who is Pundalik Sadashiv Parab has inherited 1/16th part of property.

8. Late Vishnu Xencora Porobo Virnorcar expired on 31.03.1955, leaving behind three sons (1) Shri Kaeshav Vishnu Parab married to Sundari Keshav Parab, (2) Krishna Vishnu Parab married to Chandrabhaga Krishna Parab, (3) Jagdev @ Jagdevrao Vishnu Parab married to Bhagirathi Jagdev @ Jagdevrao Porobo Virnorcar. Both expired issueless.

9. Said Keshav Vishnu Parab and Smt. Sundari Keshav Parab, expired leaving behind three sons (1) Shri Shankar Keshav Parab married to Smt. Prabhavati Shankar Parab. Both have expired on 02.03.2012 and 16.10.2016 respectively, leaving behind Shri Damodar Shankar Parab and Shri Dinanath Shankar Parab, (2) Shri Yeshwant Keshav Parab married to Smt. Chandrawati Yeshwant Parab. The said Yeshwant K. Parab, expired on 02.10.2003, leaving behind her widower Shri Pandurang Keshav Parab. The death certificate of Shalini P. Parab, Vishnu Porob, Shankar Parab, Prabhavati Parab, Yeshwant Parab, Kamlawati Parab, Crishna Vishnu Parab, Chandrabhaga Krishna Parab, Jagdevrao Vishnu Parab, Ghanashyam Vithal Parab, Pushpavati G. Parab are relied upon.

10. Said Krishna Parab and his wife Smt. Chandrabhaga Krishna Parab, expired respectively on 23.04.1965 and 06.02.1977 respectively leaving behind their son Shri Sanjay Prabhudesai, married to Smt. Sulakshanidevi Sanjay Prabhudesai, who are the interveners Nos. 2 and 3. The intervener Nos. 1 to 3 are exclusively the co-owners in possession of the suit property being inherited the said property from late Pundalica Xencora Porobo Virnorcar and late Vishnu Porobo Virnorcar, which is listed as item No. II, in the list of Assets dated 12.04.2018 (exhibit-28), in the above inventory proceedings. Birth certificates of Pundalica Sadashiva Porobo, Damodar Shankar Parab, Dinanath Parab, are relied upon.

11. Ms Andrade relied on decision of this Court in the case of *Jacinto Da Silva vs. Maria Filomena Da Silva*⁴.

12. The learned Judge has ordered summary inquiry. There is no reason to scuttle the inquiry. No interference is called for in the impugned order. Regular Civil Suit No.21/2018 is filed by the Respondents against the Applicant for declaration and the same is pending before the Inventory Court for reply. The subject matter of the suit is the property surveyed under Survey No.64/0.

13. The learned Judge vide order dated 05.05.2022 allowed the application and directed that the matter be fixed for summary inquiry

⁴ 2015 SCC OnLine Bom 6476

to ascertain whether the intervener is required or not as one of the interested parties in the proceedings. The order is cryptic. It does not assign any reason for issuing such directions. The order reflects non-application of mind. Although the learned Judge has directed summary inquiry, the question is whether the interveners could be permitted to intervene in these proceedings.

14. The Supreme Court in the case of *Ethel Lourdes D'Souza Lobo vs. Lucio Neville Jude De Souza and Ors.* (supra), has observed that unlike partition suits, Inventory Proceedings under the Code are not adversarial. The proceedings are initiated upon the death of person governed by the Code, and that event is reported to the Court. The *Cabeca de Casal* (administrator or head of the household) is appointed by the Court, from amongst senior members of the family, to manage the properties of the deceased. When the proceedings culminate after the apportionment of shares, there is no decree. The *Cabeca de Casal* is enjoined to report all items of the deceased's estate – if there are bequests in testamentary instruments, their description. Owelty is awarded to a member in proceedings of partition for equalization of the shares on an excessive allotment.

15. In the case of *Sheila Rodrigues and Anr.* (supra), it is observed that in inventory proceedings sometimes, there may be number of heirs of the deceased person and at times there may be only one. The person who approaches the Court claiming right to the estate left behind by the deceased seeks the approval of the Court for

recognition of his right to such estate. The applicant approaches the Court to get declaration of his ownership right to the estate left behind by the deceased person. The criteria to decide whether the proceedings are of the nature of the suit or not need not necessarily be that the parties should litigate against each other.

16. In *Zacarias Pereira vs. Camilo Pereira* (supra), it is observed that Inventory proceedings are not suit and they are distinct and separate proceedings from suit. In Inventory proceedings, all are only interested parties and either they are heirs or legal representatives or beneficiaries under gift or legatees under will.

17. In the case of *Jacinto vs. Maria Da Silva* (supra), it is observed that Article 1375 of Portuguese Civil Procedure Code provide that any person who wants to be made a party can be admitted as an interested party subject to showing their interest to such estate.

18. The impugned order indicates that the Court has decided to hold summary inquiry to ascertain whether the intervener is required or not as one of the interested parties. However, the question that arises for consideration is whether such inquiry is necessary to be conducted. The Respondent intervener has not made out any case for intervention in the present proceedings. The interveners have no relation with the interested parties who initiated the Inventory Proceedings. The possession of the property listed in the list of assets is with the owner. The learned Judge has passed the order

mechanically. The Respondents have filed suit and they can pursue their remedy. Section 14 of the Act provides partition by inventory. It relates to partition of inheritance. Section 15 provides for partition by Deed. Section 16 relates to inheritance to be indivisible till partition is effected. Section 19 relates to Right of co-heirs or moiety holder to demand partition of inheritance. Section 20 refers to partition of assets of joint family. The learned Judge had decided to conduct summary inquiry and directed intervener to file Affidavit. The issues which are subject matter of suit are sought to be adjudicated by inquiry. The impugned order is required to be set aside.

ORDER

- i. Appeal from Order No.19/2023 is allowed.
- ii. Impugned order dated 05.05.2022 passed by Civil Judge Junior Division at Pernem in Regular Inventory Proceedings No.39/2014 is set aside.
- iii. Civil Application No.74/2023 also stands disposed off.

PRAKASH D. NAIK, J.

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