



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.241 OF 2023

Stella Balan @ Stella Balan,
w/o. Deepak Balan, 66 years of age,
r/o. Sterling Plot No.17,
6/16, Bhawani Nagar, Marol,
Andheri(East), Mumbai – 400059.

.....Petitioner

V/s.

1. Mr. Theodoro Luciano Fernandes,
Major in age, r/o Siolim, Bardez, Goa.

2. Mrs. Blanche Fernandes,
w/o Ciprian Fernandes,
Major of age, housewife,

3. Mr. Ciprian Fernandes
Major of age,
Both r/o Golders Green,
Flat no. 101, 1st Floor IC Colony,
Holy Cross Extension Road,
Borivali West Mumbai.

4. Mrs. Rosy D' Souza @
Rosie D,Souza e Khambatta
w/o Tehmul Rustonjee Khambatta,
Major in age, and her son,

5. Mr. Savio Khambatta,
s/o Tehmul Rustonjee Khambatta,
Major in age,
Both resident of C/403,
Building "M", New M.H.B. Colony,
Borvali(West) Mumbai 400091.

6. Mrs. Annie D' Souza Britto
@ Santana Britto,
w/o Cipriano Britto,
Major of age

7. Mr. Cipriano alias Maxie Britto,
Major in age
Both r/o A-1-204, Sawc Sankal,
Phase 2- Khandakpada,

Kalyan, West. Pin Code 421301.

8. Miss. Felicity D' Souza,
Major of age, and

9. Eudora D' Souza
Major in age, and

10. Mrs. Olinda Fernnades e D' Souza,
Major in age,
w/o John D' Souza
all three are the resident of
both r/o B-103, EC-51,
Sai Suman, next to Evershine Amusement
Park, Evershine City, Vasai East, Thane,
Maharashtra.

11. Mr. Deepak Balan,
Major of age, married,
resident of Sterling Plot no. 17,
6/16, Bhawani Nagar, Marol,
Andheri (East)
Mumbai 400 059

.....Respondents

Mr. S.D. Lotlikar, Senior Counsel with Mr. Anthony D'Silva,
Advocate for the Petitioner.

Ms Asha Desai with Ms. Natasha Volvoikar, Advocate for
Respondent Nos.1, 2 and 3.

Mr. M. Reis, Advocate for Respondent Nos.7 to 11.

CORAM:

BHARAT P. DESHPANDE, J

DATED:

25th July, 2024.

ORAL JUDGMENT:

1. Rule. Rule made returnable with the consent of the parties.

2. Heard Mr. S.D. Lotlikar, learned Senior Counsel with Mr.
Anthony D'Silva, learned Counsel for the Petitioner, Ms Asha Desai

with Ms. Natasha Volvoikar, learned Counsel for Respondent Nos.1, 2 and 3 and Mr. M. Reis, learned Counsel for Respondent Nos.7 to 11.

3. The challenge in the present petition is to the impugned order dated 07/01/2023 passed by the First Appellate Court in Misc. Civil Appeal No.66 of 2015.

4. Mr. Lotlikar submits that various grounds have been raised in the present petition challenging the impugned order, which according to him is perverse on many aspects. He submits that Appellant No.3 by name Ciprian Fernandes in Misc. Civil Appeal No.66 of 2015 expired on 25/04/2021 during the pendency of the said appeal whereas the appeal was decided on 07/01/2023. He submits that the fact of the death of Ciprian Fernandes was not brought to the notice of the Appellate Authority and even his legal heirs are not brought on record.

5. Mr. Lotlikar would further submits that though the inventory proceedings were dismissed for non appearance by the Inventory Court somewhere in the year 2010-2011, the same was restored by giving no objection by other interested parties. He submits that there is a specific order passed by the Inventory Court to restore the

said inventory on 14/03/2012 on the basis of no objection given by the other interested party.

6. Mr. Lotlikar would further submit that the notice for licitation and auction was given to the interested party who resides within jurisdiction of the concerned Court and even time was sought by such interested party to file reply to such application for licitation.

7. Mr. Lotlikar, while inviting attention of this Court to the specific observation of the First Appellate Court and more particularly paragraph 24, would submit that such findings are perverse to the record itself since the inventory proceedings were restored by a specific order passed by the Inventory Court.

8. Ms. Desai for Respondent Nos.1 to 3 would submit that there is no question of abatement of appeal since one of the legal heirs of Ciprian Fernandes is already party Respondent in the said appeal. She submits that appeal has been decided on other grounds which require no interference since the notice was not issued to the concerned interested parties before conducting auction. She relied on the following decisions:

**1. P Iswari Bai v/s. Anjani Bail and Anr.
[2011 LawSuit (SC) 470]**

2. Mahabir Prasad v/s. Jage Ram [1971 LawSuit(SC) 13]

9. The record clearly goes to show that the arguments were advanced before the learned First Appellate Court in Misc. Civil Appeal No.66 of 2015 and thereafter the learned First Appellate Court observed that records and proceedings of the Inventory Courts are required to verify the contentions raised by the respective parties.

10. The records further show that the matter was kept for judgment directly after the records and proceedings were received on 20/01/2022.

11. Mr. Lollikar submits that no opportunity was given to the Petitioners to address the Court once the records and proceedings have been received and more particularly to point out that there was restoration of the inventory proceedings in the year 2012 by a specific order and on the basis of no objection given by the other interested parties. Accordingly, the observations of the learned First Appellate Court in paragraph 24 are clearly perverse to the record maintained by the Inventory Court.

12. Mr. Lotlikar submits that the interested parties were invited and raised objection to licitation is also supported by the records

however such aspect have not been appropriately considered by the First Appellate Court and more specifically after receipt of records from the trial Court.

13. The question of death of Ciprian Fernandes and bringing of legal heirs, will have to be decided on the basis of facts and circumstances of the case since it has been claimed that one of the legal heirs of the said Ciprian Fernandes was the moiety holder and was not representing the estate.

14. The proceedings before the trial Court are inventory proceedings wherein it is clear that the provisions of CPC are not applicable in a strict sense. Thus the decisions cited by learned Counsel Ms. Desai for showing the aspect of the presence of one of the legal heirs qua the abatement, would not be helpful. Both these decisions are in respect of the civil proceedings and the application of the Civil Procedure Code. The inventory proceedings are admittedly governed by a Special Act. The question of abatement of the entire appeal or otherwise will have to be gone into by the First Appellate Court when admittedly decision was passed after the death of Ciprian Fernandes who was Appellant No.3 in the said proceedings.

15. Even otherwise, certain observations of the First Appellate Court are clearly beyond the records. An opportunity ought to have been given to the parties to address the Court on receipt of the records and proceedings of the Inventory Court. Thus this is a fit case for quashing and setting aside the order of the First Appellate Authority and remanding the matter to it for fresh decision.

16. It is made clear that this Court has not gone into other grounds raised in the present petition. The contentions of the parties are kept open to be decided by the First Appellate Authority on merits as well as on the question of abatement of the entire appeal.

17. The First Appellate Authority to decide such appeal as expeditiously as possible and preferably within a period three months from the date of receipt of the order of this Court.

18. Accordingly, the impugned order dated 07/01/2023 in Misc. Civil Appeal No. 66/2015 is quashed and set aside. The said Misc. Civil Appeal is restored to the file of the learned First Appellate Court with directions to give an opportunity to both the parties of hearing on the question of abatement as well as on merit and to decide it within a period of three months from the date of receipt of copy of this order.

19. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.