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**IN THE HIGH COURT OF BOMBAY AT GOA**

**CIVIL APPLICATION (REVIEW) NO. 1 OF 2020**

DR. RAJENDRA TAMBA & ANOTHER ... APPLICANTS

Versus

MRS. RITA ALIAS ANJALI VIJAY  
TALAULIKAR & 4 OTHERS ... RESPONDENTS

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Mr. F.E. Noronha, Advocate for the Applicants.

Mr. Charlton Menezes D'Souza, Advocate for Respondent  
Nos. 2 and 3.

**CORAM:** BHARAT P. DESHPANDE, J.

**RESERVED ON:** 10<sup>th</sup> JULY 2024

**PRONOUNCED ON:** 18<sup>th</sup> JULY 2024

**ORDER:**

1. Heard Mr. Noronha for the Applicants and Mr. D'Souza for  
Respondent Nos. 2 and 3.

2. By way of the present Application, the Applicants are  
seeking review of the order dated 18.09.2019 passed in Appeal  
From Order No. 45 of 2019. By the said order, the Appeal filed,  
thereby challenging the order passed by the Senior Civil Judge  
dated 09.07.2019 was considered proper and legal and  
accordingly, the Appeal was dismissed.

3. Mr. Noronha would submit that while deciding the Appeal, this Court failed to consider the relevant provisions of the Portuguese Civil Code and the judgments cited while arguing the matter. He would submit that there is an error on the face of the record since this Court completely failed to consider the effect of the provisions of Article 2177 and Article 1766, which corresponds to Section 219 of the Goa Succession, Special Notaries and Inventory Proceeding Act of 2012. He submits that the three decisions of the Portuguese Supreme Court and the High Court cited by the Applicants were not properly appreciated resulting in dismissal of the Appeal. Accordingly, he would submit that there is a need to review the order passed by this Court and to allow the said Appeal.

4. Per contra Mr. D'Souza would submit that first of all, the scope of review is limited and the contentions raised by the Applicant are certainly not coming within the scope of review. He would submit that at the most, the Applicants, if feeling aggrieved, would have challenged the decision before the higher Court.

5. In order to appreciate the contentions raised in the present Review Application, it is necessary to note that it relates to the inventory proceedings and execution of the Will by Shrimati

Manohar Tamba, the widow of Dr. Manohar Tamba, during the pendency of the inventory proceedings.

6. An Application was filed before the Inventory Court raising preliminary objections to the execution of the Will by Shrimati Manohar Tamba. The learned Inventory Court considered such an Application and partly allowed it by observing that inquiry is necessary and the effect and operation of such Will have to be decided during the pendency of the inventory. This order of Trial Court was challenged in an Appeal wherein this Court did not interfere with the order, which is challenged in Review.

7. The inventory proceedings were initiated upon the death of Dr. Manohar Krishna Porobo Tamba. Shrimati Manohar Tamba is the widow of the deceased. Though she was the moiety holder and was entitled to be appointed as a Head of the Family, Applicant No. 1 being the eldest son was appointed as the Head of the Family since the widow due to her old age and ill health was unable to perform such duties. The statement on oath as well as the list of assets were presented by the Applicants. Objections were raised to such a list of assets by the interested parties, however, during the pendency of the inventory proceedings, the widow Shrimati Manohar Tamba executed a Will dated 11.02.2015, bequeathing her disposal quota in favour of Respondent No. 3. Such document

was brought on record when objections were raised to the list of assets. The Applicants challenged the Will by filing an Application at Exhibit-25 seeking a direction from the Inventory Court that the validity of the Will needs to be decided as a preliminary question of law. It was contended that the Will was executed in violation of the provisions of law and therefore, it has to be declared as null and void. The Respondents opposed the said Application. The Inventory Court though allowed the said Application, fixed the matter for inquiry on the validity of the Will, which was challenged by the Applicants before this Court in Appeal From Order No. 45 of 2019.

8. While considering the various provisions of the Portuguese Civil Code and the decisions cited by the Applicants, it has been clearly observed that the Will in question refers to the disposal quota of the widow and not any specific portion and therefore, the decision as well as the provisions will not be of any help.

9. Mr. Noronha, while relying upon the provisions of Article 1766 and Article 2177 would submit that even after the death of one of the spouses, the property remains in communion till it is partitioned amongst the heirs. He would submit that till the partition, is done, the surviving spouse is not entitled to bequeath her disposal quota, which amounts to disposition for a specific

portion as by that time, the surviving spouse is considered to be entitled to 50% of the share.

**10.** Mr. Noronha submits that there is specific prohibition for disposition when the marriage is in communion. He would submit that even during the lifetime, consent of the other spouse is required for the purpose of disposition of the property of the other spouse by either mode. Accordingly, he would submit that even after the death of one of the spouse, the surviving spouse need the consent of other co-owners for the disposition of the disposal quota. He submits that it is purely a question of law and therefore, this Court, committed an error on the face of it while considering this aspect.

**11.** First of all, the observations of this Court in order dated 18.09.2019 would clearly go to show that the provisions of Article 1766 have been quoted along with Section 219 of the Act of 2012, which are found in paragraphs 9 and 10. The provisions of Article 2177 are also discussed specifically in paragraph 12 wherein it is found that both these Articles refer to the disposition of a “specific part”. The three decisions cited by Mr. Noronha were also discussed in detail in paragraph nos. 11, 12 and 13 and it was observed clearly that the above decisions also refer to the disposition of specific quota.

**12.** A perusal of the Will executed by the widow would clearly go to show that it is not disposition of a specific portion of the property, but it is restricted to her disposal quota. Thus, the observations of this Court in the impugned judgment cannot be faulted with or to say having an error on the face of it. In fact, there is no error on the face of the record, which requires to be entertained in a Review Application.

**13.** Besides, the learned Inventory Court partly allowed the objections raised by the Applicants, however, kept the matter for inquiry. Thus, the fact remains that the question which has been raised by the Applicants in connection with the Will or its validity will remain, subject to the inquiry in question.

**14.** For all the above reasons, the contentions in the Review Application are devoid of merits and accordingly, the same stands dismissed.

**BHARAT P. DESHPANDE, J.**