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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 196 OF 2024

1. Mr. Ignatius Francis D'Souza,
Son of late Peter Japheth D'Souza,
Age 72 years, married, retired.
2. Mrs. Catherine Sequeira,
Wife of Petitioner N.1,
Age 70 years, occupation housewife,
Both residing at 403, Sunjoy View,
Amboli, Andheri (W),
Mumbai-400058.

**... Petitioners/
original
Applicants
/Decree
Holders**

Versus

1. Mr. Michael Sylester D'Souza,
Son of late Peter Japheth D'Souza,
Major of age, married,
Occupation business
2. Mrs. Ana Maria Joanita Mascarenhas,
Wife of Mr. Michael Sylester D'Souza,
Major of age, occupation housewife,
Both residing at House No. 65/1,
Bondir Vaddo, P.O. Anjuna,
Bardez, Goa.

**...Respondents/
Original Opp./
Judgment
Debtors**

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. ***Cidalia Ana Lobo***, Advocate for the Petitioners.

Mr. Nigel Da Costa Frias, Advocate for the Respondents.

CORAM : **VALMIKI MENEZES, J.**
DATED : **12TH MARCH, 2025.**

ORAL JUDGMENT:

1. Heard learned Advocates for the parties.
2. Rule.
3. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Counsel for the parties, the matter is finally heard and disposed of. Learned Advocate Ms. Cidalia Ana Lobo waives service on behalf of Petitioners and learned Advocate Mr. Nigel Da Costa Frias, waives service for Respondents.
4. This petition takes exception to order dated 16.07.2022, passed by the Civil Judge Senior Division 'A' Court Mapusa in Regular Execution Application No. 12/2020/C/A, to enforce the Judgment and Chart of Partition dated 13.03.2020, under Section 467 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. The Execution Proceedings were taken up to execute Judgment in Inventory Proceeding No. 21/2015/C, in which the estate of late Antonio Jose D'Souza, late Conceicao D'Souza, late Peter Japheth de Souza

and late Luiza M. L. D'Souza who are grandparents was allotted to the Petitioners and Respondents.

5. In the Inventory Proceeding, Item No. 3 which was described as half right in the immovable property known as “Bondirwada”, totally admeasuring 1200 sq. mtrs surveyed

under 391/2 of village Anjuna, Bardez, Goa wherein there exists residential house bearing H. No. 65/1,↑

was taken in auction by the Petitioners; in the same auction, the Respondents

took Item Nos. 1(Immovable Property admeasuring 975 sq. mtrs and surveyed under No. 401/2 of village Anjuna, Bardez,

Goa) and Item No. 2(Immovable property known as

“Bondirwada”, admeasuring 300 sq. mts. surveyed under No.

384/9 of village Anjuna, Bardez, Goa).

6. In the Execution Application, which was opposed by Respondent No.1, the Deed of Confirmation of Partition dated 25.05.1982 between late Mr. Peter Japheth de Souza (son of Antonio Joao De Souza) and his wife Ms. Luiza D'souza (parents of the Petitioner and the Respondent herein) of the first part, and John Francis De Souza and Nicholas Martin De Souza of the second part, was placed before the Executing

Court to prove that property which formed Item No. 3, (which was exclusively surveyed under Cadastral No. 193) was allotted to Ana De Souza (widow of late ~~Rosario~~ ^{Jose} De Souza) and Julia De Souza(widow of ~~Jose~~ ^{Rosario} De Souza); The Northern part

and Item No. 2(Immovable property known as “Bondirwada”, admeasuring 300 sq. mts. surveyed under No. 384/9 of village Anjuna, Bardez, Goa)

Correction carried out as per order dated 27.03.2025.

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under Cadastral No. 192 known as “Cainsua” was allotted to Julia D’Souza and Rosario D’Souza. The Partition Deed was executed in the year 1982, and it confirms the partition that took place in 1943 as stated in clause 1 of the Deed. Clause 1 of the Deed refers to property under Cadastral No. 192 which corresponds to Northern part of Survey No. 391/2 while, Cadastral No. 193 corresponds to Southern part of the Survey No. 391/2 allotted to Ana and Jose D’Souza the present

Correction carried out as per order dated 27.03.2025.

Inventory Proceeding was conducted. The Respondent No. 1 had filed a counter dated 25.10.2021 along with memo of documents dated 20.11.2021 to the production of documents by the Petitioner.

7. All these documents were before the Executing Court which was vested with the powers to consider these documents and determine the correct location of the property allotted in the Inventory Proceeding. Instead of considering these documents, the Executing Court has at paragraph No. 10 of its order proceeded on a technicality and rejected the relief in respect of the half right in the Survey No. 392/2 along with the house standing therein. The Executing Court has erroneously concluded that this relief cannot be granted, since the property has not been partitioned and half right of the estate leaver is still not determined. This finding is contrary to the aforementioned two documents which are part of the record and find no reference in the impugned order. Had these documents being considered in the manner referred to above, the Executing Court would arrive at no other conclusion than, that the

property, Item No. 3 allotted to the Petitioners in auction in the Inventory Proceeding, in fact corresponds to the Southern portion of Survey No 391/2, which corresponds to old Cadastral No. 193 as referred to in the partition deed (clause 1) and the cadastral plan produced on record. The finding is therefore clearly perverse. Accordingly, the impugned order to the extent that it rejects the claim of the Petitioners in so far as Item No. 3 is concerned stands reversed.

8. It is also made clear that Item No. 3 corresponds to the immovable property known as “Bandirwada”, totally admeasuring 1200 sq. mtrs surveyed under 391/2 of village Anjuna, Bardez, Goa and Executing Court shall now execute the Chart of Partition/Judgment and Final Decree dated 13.03.2020 by enforcing/recovering possession of the area under Cadastral No. 193 with the house, corresponding to the Southern portion of Survey No. 391/2 along with the residential house bearing No. 65/1 standing therein and hand over the possession of the same to the Petitioner. It is further clarified that the house bearing No. 65/1 shown in survey no. 391/2 is shown in the partition deed along the line running East-West between Cadastral No.193 and 192 and the portion of the house on its South i.e. in Cadastral No. 193, possession of which shall be handed over in execution of the Decree by the Executing Court to the Petitioners.

9. The Executing court shall now proceed to execute the Judgment and order dated 13.03.2020, in so far as Item No. 3 in the aforementioned manner and complete the execution within 3 months of this order.

10. Rule is made absolute in the above terms.

VALMIKI MENEZES, J.