



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.35 OF 2024

1. Shri Augustin Pinto

Aged 69 years,

2. Smt. Fatima Fernandes e Pinto

Aged 63, Housewife

Both Indian Nationals &

R/o. House No.130, Morodwado

Piedade, Diwar, Tiswadi Taluka,

Goa.

... Appellants.

Versus

1. Mrs. Maria Caetano Dsouza (Deceased)

2. Mr. Joao Xavier Pinto (Deceased)

A. Jenifer Fernandes,

B. John Dominic Fernandes

All Resident of House No. 560/1,

Behind Rosary Church,

Caranzalem, Dona-Paula,

Goa 403 002

3. Mrs. Linda Ubelina Pereira,

R/o Flat No. 3, 1st Floor,

Carl Centre, opp. Annapurna Hotel,

Ella, Old Goa 403 402

4. Libya Natty Pereira,

5. Arlindo Sequeira

Both R/o House No. 73
Col Vaddo, P. O. Corlim, Goa
403110

6. Lavinda Pereira

7. Raylon Fernandes
Both R/o House No.4, Bella Vista Ward,
Corlim – Goa 403110

8. Lenny Noah Pereira

9. Malaika Rebello
Both R/o Flat No. 3, 1st Floor,
Carl Centre, opp. Annapurna Hotel,
Ella, Old Goa 403 402

10. John Salvador Pinto

11. Jostina Maria Caetana Pinto
Both R/o H. No. 130/1, Morod Vaddo,
Diwar, Tiswadi
North – Goa 403 403

... Respondents.

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Ms. Gautami Kamat, Advocate for Respondent No.10.

CORAM: VALMIKI MENEZES, J.

DATED: 1st August, 2025

ORAL JUDGMENT:

1. By this First Appeal, the Appellants have impugned the Final Chart of Partition dated 09.03.2023 and a Judgment and Decree of

the same date passed by the Court of the Civil Judge Senior Division at Panaji in Inventory Proceeding No.3/1987/A. The main grounds raised in the First Appeal are that the Trial Court ought not to have proceeded to put the four immovable properties which form the subject matter of the Inventory Proceeding to auction without first attempting to partition the same by metes and bounds. The contention raised is based on the provisions of Section 412 and Section 426 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. It was contended that the auction of the four properties, even though the Appellants were present during the same, is vitiated by the fact that the Trial Court has not passed any orders on the application at Exhibit 139 filed by the Appellants, who are Interested Party No.5 in the Inventory Proceedings. This application was for seeking partition by metes and bounds of the four immovable properties which form part of the List of Assets belonging to the estate of the deceased Joao Xavier Pinto and Maria Caetano Dsouza.

2. The point for determination that arises in this Appeal is whether the impugned Judgment and Decree and Final Chart of Partition dated 09.03.2023 has been passed by the Civil Court in contravention of the provisions of Section 412 and 426 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

3. The facts which would be relevant to the decision on the point for determination raised above are the following:

- a) Inventory Proceeding No.3/1987/A was instituted for the allotment of the estate of Joao Xavier Pinto and Maria Caetano Dsouza, who respectively passed away in the year 1990 and in the year 1983. They have left as heirs five children namely Agostinho, John, Lenny, Lavinda and Libiya. The Appellant No.1 represents the group comprising Agostinho, one of the sons of the deceased Estate Leavers.
- b) During the course of the Inventory Proceedings, the Appellants filed an application at Exhibit D-139 wherein they sought appointment of a Commissioner by the Court, to partition the immovable properties, listed at Item Nos. 19, 20, 21 and 22 of the List of Assets. There appears to be some confusion about the item numbers of these properties, however, the aforementioned four item numbers correspond to the original properties bearing Item Nos. 11, 12, 13 and 14, on the first list of properties drawn up by the Court. This application was filed on 08.04.2015. Prior to this application, the record reveals that the Court had already fixed an auction of these four properties, which was adjourned from time to time. On 01.10.2018, an application came to be filed by some of the remaining heirs seeking an auction of the aforementioned properties, which was opposed by the Appellants. By the order of 16.03.2021, the Inventory Court dismissed the Appellants objections to holding an auction

and the Trial Court fixed the auction on 17.01.2023.

c) The order dated 16.03.2021 came to be impugned in an Appeal from Order bearing No. AO(F) 455/2022. This Appeal from Order was filed by the present Appellants, in which they filed an application dated 21.01.2023, personally signed by them, seeking withdrawal of the Appeal from Order. There was no leave sought from the Court whilst withdrawing this Appeal from Order to challenge this order in a First Appeal, if the Final Decree in the Inventory Proceeding was decided against them. Orders came to be passed on the application for withdrawal of the Appeal from Order by this Court on 13.02.2023, wherein at paragraph 2 thereof, this Court has specifically recorded that the Appellants wish to unconditionally withdraw the Appeal. Accordingly, the Appeal was dismissed as withdrawn without reserving any right or granting leave to the Appellants to challenge the order dated 16.03.2021 in a First Appeal. The order, therefore, attained finality and the challenge to the auction, which was primarily on the ground that the four properties subject to the auction were partible and could be partitioned by metes and bounds, became final. This is the very same ground raised in the present First Appeal.

d) The Inventory Court thereafter held an auction on

17.01.2023 wherein the four properties were taken in auction by some other interested parties and the owelty amounts appear to have been deposited with the Inventory Court after the auction concluded. Necessary stamp duties were also paid, as recorded by the Civil Court and the Final Decree was drawn up along with a Chart of Partition which is now challenged in this First Appeal.

4. Considering that the ground now raised before me is the very same ground which was raised in AO(F) No.455/2022 in challenge to the order directing auction, the challenge to the Final Decree and partition cannot be sustained on the very same ground which was withdrawn earlier. On this count alone, the point for determination will have to be held against the Appellants. The First Appeal would be required to be dismissed on that ground alone.

5. Section 412 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 provides for, where the inheritance comprises, amongst other assets, of divisible immovable properties other than residential houses, a party may, after the final list, apply for division of these properties by metes and bounds. In the present case, the property which comprises Item No.11, is an immovable property with a house standing thereon. The exception carved out in Section 412 to a party applying for division by metes and bounds is where a property comprises of a residential house. Item No.11, therefore, could not be subject to partition by metes and bounds, as there is an

embargo to such a partition under Section 412. It is only the other three properties i.e. Item Nos.12, 13 and 14 which could be subject to such a division, which right was given up when the Appeal from Order challenging the order dated 16.03.2021 putting the properties to auction was withdrawn unconditionally.

6. In that view of the matter, the present Appeal is dismissed. No order as to costs.

7. Decree to be drawn up by the Registry of this Court.

VALMIKI MENEZES, J.