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IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.12 OF 2025

NEETA KAMLAKANT
NAGVENKAR

... Appellant.

Versus

KAMLAKANT ANANDRAO
NAGVENKAR AND 7 ORS.

... Respondents.

Ms. Swati Kamat Wagh, Advocate under Legal Aid Scheme for the Appellant.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Tanisha Mashelkar, Advocate for Respondent No.1.

Mr. Nigel da Costa Frias with Mr. Shane Coutinho, Mr. Savio Misquita, Mr. V. Surlakar and Ms. Maria Fernandes, Advocates for Respondent Nos. 2 to 8.

CORAM: VALMIKI MENEZES, J.

DATED: 12th November, 2025

ORAL ORDER:

1. Registry to waive office objections and register the matter.
2. By this appeal, the Appellant has impugned three orders passed by the Court of the Civil Judge Junior Division at Mapusa in Inventory Proceedings No.574/2019/D.
3. The first order is dated 30.01.2024, which is a recall of minutes of auction proceedings conducted by the Court amongst the heirs to

the estate of Anandrao Nagvenkar. The second order is one passed on 18.06.2024 directing possession of both items i.e. immovable properties which are subject matter of the auction to be handed over to the highest bidder i.e. Respondent Nos. 6 and 7. The third order is one which is dated 03.09.2024 by which Police protection was granted to the Respondents to take over possession of the two assets taken in auction by them and to evict the Appellant from the house which is the asset described under Item No.1 in the Inventory Proceedings.

4. The three main contentions raised by the learned Advocate appearing for the Appellant are the following:

a) That the Inventory Court had given the Appellant, who is the spouse of the heir to the estate of Anandrao Nagvenkar, notice for holding auction for Item Nos. 1 and 2 which was received on 02.02.2023 setting down the auction on 23.02.2023; however, the auction did not take place on at least four dates thereafter, the last two of these dates being 19.10.2023 and 30.11.2023 when the Judge was not presiding on those dates. It was contended that the auction was held on 30.01.2024 in the absence of the Appellant without notifying the Appellant of the specific date fixed for the auction, thereby denying the Appellant the right to bid in the same.

b) It was contended that the Appellant and the Respondent No.1 are married but are estranged since the year 2021, there

being a Domestic Violence case filed by the Appellant against her husband; it was further submitted that since the Appellant has an estranged relationship with her husband, she would have an independent right to bid in the auction and, therefore, a right to receive a notice of auction independent of her husband. It was further contended that denial of this independent notice of auction has resulted in grave prejudice being caused to the Appellant as she was unable to bid and take the two immovable properties put to auction on 30.01.2024.

c) It is further submitted that even after the auction was completed, the Court has not followed the mandatory provisions of the Goa Succession, Special Notaries and Inventory Proceedings Act (Succession Act) since it has proceeded to grant possession of the auction properties to the Respondent Nos. 6 and 7 on an application, without preparing a chart of homologation and the final chart of partition and allotment of the assets. It was contended that it is only after this procedure is completed that the Court would have jurisdiction to specifically allot and grant possession of an auction item and not before completion of the stage. In this count, the Appellant claims that the entire process and the orders passed granting possession and consequential order of granting Police protection to enforce these orders, are vitiated. Reliance was placed on the following Judgments of this Court:

- i. ***Smt. Juliet Alves e Subramaniam v. Mr. Alex Francis Wolfango Alves and Anr; Second Appeal No.107/2016.***
- ii. ***Ranjit Satardekar v. Clotildes Fernandes and Others; 2006 SCC OnLine Bom 1637.***
- iii. ***Helen Carvalho v. Maria Teresa da Cunha and 4 Ors.; Appeal From Order No.23/2006 dated 12/07/2006.***

5. The appeal has been opposed by the learned Senior Advocate Mr. Sudin Usgaonkar appearing for Respondent No.1 and Mr. Nigel da Costa Frias appearing for Respondent Nos. 2 to 8. The learned Counsel have contended that the procedure provided under Sections 388, 430 and 444 have been fully complied with by the Court. They further contend that under the provisions of Article 1412 of the Portuguese Civil Procedure Code, it is only a direct heir who has a right to a notice of auction and to participate in the auction proceedings and the spouse of the heir does not have an independent right to be notified. It was further argued that even assuming that the relationship of the Respondent No.1 and the Appellant are estranged, it was for the Appellant to place such material on record of the Court and seek specific leave of the Court to allow the Appellant to claim an independent right to participate in the auction, and in the absence of such application or even attempt to seek the Court's legal waiver in terms of those provisions, the Appellant could not now contend that her right to participate in the auction stands independent of her husband's right to participate.

Learned Senior Advocate Mr. Sudin Usgaonkar further sought to distinguish the Judgment rendered by this Court in *Ranjit Satardekar* (supra) by submitting that what was held in that Judgment was that it was only a direct heir who had a right to bid in the auction and the Judgment was rendered on those specific facts of the case before the Court.

6. To appreciate the rival submissions made by the Counsel, it would be advantageous to refer to certain provisions of the Succession Act and the scheme laid down for conduct of auction of assets in inventory proceedings. Section 388 of the Succession Act stipulates that after initial notice of the inventory proceedings is given to the parties to the inventory proceedings, there is no requirement to further notify the parties who have chosen to remain ex-parte or who reside outside the jurisdiction of the Court. Section 388 further stipulates that it is only the parties who reside within the jurisdiction of the Court who shall be given notice of licitation and homologation at their registered address.

7. Section 430 defines licitation to be a family auction in which only the **heirs and the moiety holder spouse** of the estate leaver are allowed to participate. The provision further stipulates that such properties of the inheritance which are not allotted to any particular party are to be put to auction.

In the present case, there are only two immovable assets, the

first, Item No.1, being a house admeasuring about 205 sq. mts. along with the land on which it is situated under Survey No.62/1 E of Village Siolim admeasuring 1103 sq. mts. The second asset i.e. Item No.2 is a land admeasuring about 276 sq. mts. under Survey No.70/6 of Village Siolim. Apart from these assets, there are no other assets which were specifically allotted to any parties, hence under Sub-Section 1 of Section 430, both the assets were put to licitation.

8. Sub-Section 3 of Section 430 requires that each item described in the list of assets shall be put to bid individually and the bid of each party be recorded, while Sub-Section 4 thereof requires that once parties have struck down an asset in the licitation, they cannot resile from it. Sub-Section 5 of Section 430 stipulates that immediately after licitation is completed, the parties who have struck down assets or taken assets in auction are entitled to request the Court to hand over possession of their respective assets, and this shall be subject to the homologation of the partition decision, passed in appeal, if any.

9. Thus, under the scheme of licitation provided under Section 430, once the auction is completed, a party who has taken an asset on auction, would be entitled to apply to the Court for taking possession of that asset and handing over possession of such asset would be subject to the outcome of an appeal, if filed by the parties.

10. Clause (d) of Sub-Section 2 of Section 438 requires the Court to notify unsuccessful bidders to demand within ten days, payment of

owelty amount, if they so desire, unless such amount has been already deposited by the successful bidder. The party who has defaulted in paying the owelty money shall obviously, under the provision of clause (d), forfeit the right to the property as also forfeit the right to bid in a fresh licitation.

11. In the present case, after auction was completed, the successful bidder for both the immovable properties i.e. Respondent Nos. 6 and 7 have deposited the entire owelty amount on 09.02.2024, within nine days of completion of the auction.

12. Section 444 of the Succession Act provides for safeguards to be observed by the Court when interested parties receive the asset which has been successfully taken on bid and allotted to them in the partition, before the order of homologation becomes final. The safeguards provided under Section 444 are that the party taking possession of such asset shall furnish security to the Court, in case of negotiable instruments or shares or securities and in case of immovable properties, shall also undertake to the Court not to transfer or assign such assets without orders of the Court. There are, thus, enough of safeguards provided between the provisions of Section 430 and Section 444 of the Act to secure the interest of the parties who are due to receive the owelty amount or the proceeds of the auction, both until the chart of homologation and final chart of partition is prepared, as also until the appeal against the final partition is disposed of.

13. Article 1412 of the Portuguese Civil Procedure Code makes the following provisions:

“Article 1412 - How the licitation is done - The licitation is an auction to which only heirs and the moiety partner spouse are admitted, except the cases where, in terms of preceding Articles, the donee or the legatee should also be admitted. It may fall over the properties of the inheritance which are not necessarily to be allotted to any particular party.

Each item shall be put to bid separately, except where all agree to form lots for that purpose, or where there are some which cannot be separated without inconvenience. Different parties, may, by agreement, offer a bid over the same item or lot so that it may be allotted to them in common in the partition.”

14. What Article 1412 provides for is that it is only the direct heirs to the estate of the estate leaver who have a right to be admitted to licitation in the inventory proceedings and the spouse of the direct heir would not have an independent right to participate in the auction. The provision further provides that in case there is a de facto separation of a wife from the husband, and where the wife is a direct heir, as the wife requires consent of the husband to participate in the auction, such consent, if not given by the husband, could be obtained by a legal waiver thereof. On an interpretation of this provision, it is clear that it is only the direct heir to the estate of the estate leaver who has a right to participate in the licitation/auction. A spouse of the heir has no independent right, but however, the wife who is a direct heir may participate in an auction where her husband who is de facto

separated, refuses to grant permission, may obtain such legal waiver by applying to the Court, placing before the Court the circumstances under which legal waiver is sought or obtain orders of legal waiver from the Inventory Court, to enable her to participate and bid independent of the husband in the auction.

15. *Ranjit Satardekar* (supra) was a case where the wife of an heir sought to offer a bid in the auction independent of her husband, who was the actual heir to the estate. On considering the provisions of Article 1412 of the Code, this Court has held that on a correct interpretation, Article 1412 allows only the heirs, and not their spouses, and the moiety holder spouse of the deceased to participate in the licitation. The Judgment further holds that there is no separate right to the heir and to his spouse to participate in the auction.

16. In the present case, it is the Respondent No.1 who is the direct heir to the estate of deceased Anandrao Nagvenkar, i.e. husband of the Appellant. The Appellant, therefore, on the basis of the provisions of Article 1412, has no independent right to bid in the auction. However, considering these provisions, the Appellant could make out a case of de facto separation from her husband before the Inventory Court by placing material for the Court to consider and could have obtained legal waiver from the Court and participated independent of the husband on obtaining such orders. The Appellant had no legal right under Section 430 of the Succession Act to be given a notice of auction unless she had specifically sought legal waiver

under the provisions of Article 1412 of the Portuguese Code of Civil Procedure.

17. In the present case, a perusal of the record and the Roznama of the Inventory Proceedings would show that the Appellant was given notice of the Inventory Proceedings on or about 08.04.2021 when a Wakalatnama was filed by a Lawyer who was common to the Appellant and her husband, the Respondent No.1. At this stage, note must be taken that the Appellant had already filed a Domestic Violence case prior to the execution of a joint Wakalatnama in favour of a Lawyer who represented both parties, on 23.03.2021. Note must also be taken of the fact that the pendency of the Domestic Violence case and the details of the Domestic Violence case were not brought on record before the Inventory Court, save and except a single isolated statement in an application that the Appellant had filed a Domestic Violence case. There is also no material on record by way of any application before the Inventory Court to establish that the Appellant and Respondent No.1 are de facto separated or an application seeking leave of the Court, in those circumstances, to prosecute the Inventory Proceedings by the Appellant, independent of her husband, the Respondent No.1. The Appellant and Respondent No.1 continued to be represented by the common Advocate until 11.01.2020 when the Appellant applied for Legal Aid and to be represented by a separate Advocate. Even at this stage, the Appellant has never raised any objections to the list of assets or to the

valuation of the assets which was completed on 01.11.2022 when a valuation report was filed before the Inventory Court.

18. Thereafter, though no independent right was claimed by the Appellant, the Court notified the Appellant of conduct of an auction by notice dated 02.02.2023 setting down the auction to be conducted on 23.02.2023. On 23.02.2023, the Advocate for the Appellant was present and submitted to the Court that no documents were received by the Appellant with regard to the assets or valuation and the matter then was fixed on 21.03.2023 when the other interested parties sought time to file their reply to the application of the Appellant. Thereafter, on 15.06.2023, 17.08.2023 and 14.09.2023, the Roznama records that none were present for the interested party No.2 (Respondent No.1 husband) though he was present on 17.08.2023, and the Advocate for the Appellant was present on 14.09.2023, on which date the matter was notified for auction on 19.10.2023. However, on two successive dates i.e. 19.10.2023 and 30.11.2023, the Court was not presiding, after which on 30.01.2023, the next date of hearing, the auction was conducted and the minutes of auction were drawn up. On 30.01.2024, the Appellant was not present nor was her Advocate present and the auction was conducted in the absence of the Appellant. Note must be taken of the fact that on both dates that the Judge did not preside i.e. on 19.10.2023 and 30.11.2023, the Roznama records that the next date which is 30.01.2024 was for auction. In other words, right from 14.09.2023 till 30.01.2024, the Roznama is consistent in recording

that the dates which were given, whether due to the absence of the Presiding Officer or otherwise, were set down for auction to take place.

19. Considering these facts, there can be no manner of doubt that on every date of hearing from 14.09.2023 when the Advocate for the Appellant was present and was notified of the next date fixed for auction until the auction was held, the Roznama specified that each of the adjourned dates was for conducting the auction. Apart from the fact that the Appellant had no independent right to participate in the auction, and had at no point of time applied to participate in the auction independently, even though notified, she chose not to remain present on the appointed date for auction i.e. 30.01.2024 on which date the auction was completed. In these circumstances, there can be absolutely no fault found in the entire process followed by the Inventory Court both in terms of Section 430 and in terms of Section 388 of the Succession Act. This is apart from the fact that the Appellant had no independent right to bid in the auction and in the circumstance that there is no material or application on record to claim such independent right on the basis of de facto separation from her husband in terms of Article 1412 of the Portuguese Code of Civil Procedure. The auction necessarily, therefore, must be held to be conducted properly and cannot be set aside.

20. Sub-Section 5 of Section 430 of the Succession Act confers a right on a successful bidder in an auction to apply for taking

possession of the immovable property taken in auction. Such application was filed on 09.02.2024, along with the deposit of the auction purchase amount. The second impugned order which is dated 18.06.2024 directs that the successful bidder i.e. the Respondent Nos. 6 and 7 be put in possession of the two properties taken in auction; Appellant resides in the dwelling house which is situated in Item No.1. This order has been passed in complete compliance of the provisions of Sub-Section 5 of Section 430, in that the owelty amount has been secured by deposit in the Court and all that would be left now is for the Court to direct the Respondent Nos. 6 and 7 to give an undertaking that they will not transfer or alienate or create third-party rights, which would be subject to the decision in appeal. Such undertaking can be made good by being filed in the Inventory Court prior to actual handing over of possession, which was deferred by the interim orders of this Court.

21. In *Helen Carvalho* (supra) cited by the Appellant, an heir to the estate was served with the initial notice on filing the inventory proceeding but was not given a fresh notice of auction, pursuant to which an auction was conducted in her absence. It is in those circumstances that this Court held that merely because the initial notice was served and the heir participated in the proceedings, the necessity to issue an auction notice could not be waived. The ratio of that Judgment is quite different and totally inapplicable in the present case, as the notice of auction, though not a matter of right to the

spouse of the heir, in this case, was in fact given to the spouse. Yet she did not choose to participate in the auction on the appointed date.

Juliet Alves (supra) was a case where the final chart of homologation was set aside by this Court on a concession made by the Respondents and the matter remanded back for drawing up a fresh chart of homologation. The Judgment can by no means be cited as a precedent and does not decide any point of law.

22. The order of Police protection dated 03.09.2024 is only a consequence of the resistance put up by the Appellant in handing over possession and does not call for interference as such. The submissions of the Appellant that there could be no handing over possession directed by the Inventory Court until the chart of homologation and the final chart of partition is prepared must, therefore, be rejected.

23. It was further contended by the Appellant that the entire exercise of conducting the auction amongst the heirs of the estate leaver with no bid offered by the Respondent No.1, husband of the Appellant, was a collusive exercise to defraud the Appellant and to divest her of her rights to the share in the estate. Having perused the entire record of the Inventory Proceedings and the Memo of Appeal, there is absolutely no averment made in an application or in the memo of appeal stating in what manner the parties colluded in having a date fixed for auction and in what manner they colluded in keeping the auction price much below the market value. It is a matter of record,

on perusal of the minutes of the auction proceedings that the only bid offered was by the Respondent Nos. 6 and 7 which was Rs.30,50,000/- for Item No.1 and Rs.5,00,000/- for Item No.2. This bid was against the upset value set out for these properties in the valuation report respectively or Item No.1 and Rs.3,45,000/- for Item No.2. In the absence of any objection having been raised to the valuation of these items, and in the absence of any further bid being raised by the other parties, the auction had to be struck down when the highest bid which was the one offered by Respondent Nos. 6 and 7 was raised. Respondent No.1 bid for Item No.1 for Rs.30,00,000/- against which the Respondent Nos. 6 and 7 raised the bid to Rs.30,50,000/-.

24. When the licitation, which essentially is an auction held amongst the heirs, does not throw up any further bids, the highest price offered must be accepted as the market value, on the basis of which, the stamp duties would be paid, and collected by the Court on behalf of the State. There can be no manner of doubting that the contention now raised of collusion and fraud being played by the parties on the Appellant does not have any basis and has been raised without pleading any supporting facts. It is a well settled principle of law that where collusion and fraud are alleged, there must be detailed pleadings stating the manner in which the acts of the party to the amount to fraud, such that the orders of the Court would stand vitiated by such fraud. The memo of appeal and the record of the

Inventory Proceedings are completely devoid of any such allegations. I, therefore, reject the contention that the orders passed by the Inventory Court are vitiated by acts of collusion and fraud.

25. For the reasons stated above, the appeal is dismissed. Interim relief granted by orders dated 27.09.2024 in the Appeal From Order and 04.10.2024 in MCA No. 2409/2025(F) stand vacated.

26. At this stage, learned Advocate Ms. Swati Kamat Wagh for the Appellant prays for continuation of the interim relief under orders dated 27.09.2024 and 04.10.2024 not to dispossess the Appellant from the house in Item No.1. The oral application is opposed by the Respondents submitting that the interim relief could be granted only if the Appellant gives an undertaking to this Court that she would vacate the house in Item No.1 within four weeks from today.

27. Considering that an interim relief was operating throughout this appeal till today, the Respondents shall not dispossess the Appellant from the house standing in property under Survey No.62/1 E of Village Siolim nor shall the Inventory Court take coercive steps for a period of four weeks from today subject to the Appellant giving an undertaking to this Court in writing that she would vacate the house within a period of four weeks from today i.e. by 10.12.2025. It is made clear that apart from the undertakings, the Inventory Court is at liberty to proceed to further stages of the inventory, including handing over possession of asset under Item No.2 to the successful

bidder Respondent Nos. 6 and 7. The Inventory Court shall complete the Inventory Proceedings and pass its final decree, preferably within a period of three months from today.

VALMIKI MENEZES, J.