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**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 148 OF 2026**

1. Mrs. Shirley Braz,  
63 years of age,  
Widow of Blasio Antonio Braz,
  2. Mrs. Karen Rufina Braz,  
Daughter of Blasio Antonio Braz,  
34 years of age,
  3. Miss Kelly Ann Braz,  
Daughter of Blasio Antonio Braz,  
21 years of age, unmarried,  
All residents of H. No. 277,  
Batty Wado, Orlim, Salcete, Goa.
  4. Mr. Santos Eugenio Vaz,  
Son of Agostinho Vaz,  
40 years of age,  
R/o H. No. 277, Batty Wado,  
Orlim, Salcete, Goa.
- ... Petitioners

Versus

1. Mr. Belchior Joseph Luisianho Braz,  
Son of late Francisquinho Braz,  
75 years of age, and his wife,
2. Mrs. Isabelita Braz,

Wife of Belchior Joseph Luisianho Braz,  
70 years of age,  
Both residents of Batty Wado,  
Orlim, Salcete, Goa.

3. Mr. Pedro Joao Costa,  
Son of Mathew Santana Costa,  
74 years of age,  
Both residents of Pequeno Madel,  
Margao, Salcete, Goa.
4. Mr. Santos Eugenio Vaz  
(Transposed vide order dated 13.12.2024)  
Son of Agostinho Vaz,  
40 years of age,
5. Miss Kim Tina Braz,  
Daughter of Blasio Antonio Braz,  
32 years of age, married,  
And her husband.
6. Mr. Stewart Anthony Fernandes,  
Son of Pedro Agostinho Fernandes,  
34 years of age,  
All residents of H. No. 277,  
Batty Wado,  
Orlim, Salcete, Goa.

... Respondents

Mr. R. G. Ramani, Senior Advocate with Mr. Pranav Shenvi  
Kakodkar and Mr. Raj Ramani, Advocates for the Petitioners.

Ms. Swati Kamat Wagh, Advocate for Respondent Nos. 1 and  
2.

**CORAM:- VALMIKI MENEZES, J.**

**DATED :- 27<sup>th</sup> FEBRUARY, 2026**

**ORAL JUDGMENT:**

1. Registry to waive office objections and register the matter.
2. Heard learned Advocates for the parties.
3. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Ms. Swati Kamat Wagh waives service for Respondent Nos. 1 and 2.
4. This petition impugns order dated 25.09.2024 passed by the Civil Judge Senior Division at Margao in Inventory Proceeding No. 65/2005/III. By the impugned order, the Civil Court has dismissed an application at Exhibit 98 dated 12.03.2024 filed by the interested party Shirley Braz and other heirs of late Blasio Antonio Braz seeking to take on record the Gift Deed dated 24.08.2006, executed by late Francisquinho Benedito Braz and late Rosa Elma Braz and her husband Pedro Joao Costa. The petition also impugns Judgment dated 20.12.2024, passed by the District Court, South Goa in Misc. Civil Appeal No. 46/2024, upholding order dated 25.09.2024, passed by the Inventory Court.

5. Inventory Proceeding No. 65/2005/III was executed on the demise of late Ritinha Braz, who passed away on 05.05.1983, at the relevant time, left as moiety to her estate, her husband Francisquinho Benedito Braz and three children Belchior Braz (Respondent No. 1), Antonio Blazio Braz and Rosa Elma Braz, who is married to Pedro Joao Costa (Respondent No. 3). It is not in dispute that the only immovable property which was listed in the Inventory Proceeding and described as Item No. 1, is the property with a residential house thereon under Survey No. 55/4 of village Orlim.

6. Whilst the inventory was pending, the husband of Ritinha Braz, Francisquinho Benedito Braz expired on 23.11.2006, and the Inventory Proceeding continued to allot or partition the estate on the death of Ritinha Braz and Francisquinho Benedito Braz.

The daughter Rosa Elma Braz expired on 31.03.2019, while son Blasio Antonio Braz, passed away on 02.01.2013, during the pendency of the Inventory Proceeding, who was succeeded by his wife, his children who are Petitioner No. 1 (wife) and Petitioner Nos. 2 to 4 and Respondent Nos. 5 and 6 (children and other spouses).

7. It is also not in dispute that the Will dated 26.10.1987 came to be executed by Francisquinho Benedito Braz, after his wife

Ritinha passed away, wherein he has bequeathed his disposal share in the entire estate to his son Blasio Antonio Braz (through whom the Petitioners and Respondent Nos. 5 and 6 claim to be successors). The second Will came to be executed on 01.08.2001 by the daughter Rosa Elma Braz again in favour of Blasio Antonio Braz, bequeathing her disposal share in the estate to the said Blasio Antonio Braz; corresponding Will ratifying Rosa's Will has also been made by her husband Pedro Joao Costa, who is alive. Rosa Elma Braz expired on 31.03.2019.

8. Learned Counsel for the respective parties have placed before me the order dated 24.11.2025, passed by the very same Inventory Court by which the Wills dated 26.10.1987 and one dated 01.08.2001 are taken on record by the Trial Court and to be considered for the ultimate allotment or the partition in the Inventory Proceeding, in the ultimate decision to allot or partition the estate of Retinha Braz and Francisquinho Benedito Braz.

9. Gift Deed dated 24.08.2006 is executed by Francisquinho Benedito Braz, after the death of Retinha Braz, in which Rosa Elma Braz and her husband Pedro Joao Costa are also donors. In this Gift Deed dated 24.08.2006, Francisquinho Benedito Braz has gifted his entire disposable quota in their estate to Blasio Antonio Braz, through whom, and on his demise the

Petitioner Nos. 5 and 6, are claiming their right in the estate. In the same Gift Deed Rosa and her husband have gifted their share in the Item No. 1 i.e. the only immovable property, which is subject matter of the Inventory Proceeding in favour of the Blasio Antonio Braz. It is this application (Exhibit- 98) to take on record this Gift Deed that is being rejected by the Trial Court.

10. The sole reason assigned by the Trial Court for rejecting the application is that the Gift Deed is of the year 2006 and was sought to be produced belatedly in the Inventory Proceeding, which was listed for drawing the Final List of Assets; the Trial Court opined that there was a delay in placing Gift Deed on record, hence rejected the application, and has now proceeded with the Inventory Proceedings in the absence of the Gift Deed made by the estate leaver and his daughter Rosa Elma Braz.

11. What is most important to take note of in this case is that there is only one asset listed in the Inventory Proceeding which is Item No.1. It is this asset i.e. subject matter of the two Wills and the Gift Deed. Considering this situation, it could be incumbent on the Inventory Court, in the absence of any challenge laid by any of the parties to the Inventory Proceedings to the three documents, to give effect to the transactions contained in it. If the two Wills or the Gift Deed in favour of the Blasio Antonio Braz is taken into consideration,

the majority undivided share in the sole asset, would be inherited by Blasio Antonio Braz. It was in the light of this fact that the Trial Court had to consider the application which is rejected by way of the impugned order, rather than proceeding on considerations which were extraneous to the Inventory Proceeding. The Trial Court has proceeded to dismiss the application mainly on the ground of delay.

12. Further, as now pointed out, the Trial Court has taken on record by subsequent order dated 24.11.2025, the two Wills and would be giving effect to those two Wills. None of these documents have been challenged by the parties in the Inventory Proceedings. It is in the light of this fact that the impugned order will have to be quashed and set aside as mere delay cannot be the only reason to reject the application, when consequence of not considering the Gift Deed in the final partition or allotment in the Inventory Proceeding would have a far wider consequence.

13. Allowing the Inventory Proceeding to proceed without the Gift Deed would also create multiplicity of proceeding, as in any case, Blasio Antonio Braz and through him his wife and children are already entitled to a share in the Item No. 1 listed in the Inventory Proceeding, since these rights were created through a Gift Deed made inter vivos between Francisquino,

Rosa, Pedro on one hand and Blasio Antonio Braz on the other hand.

14. The District Court, in its order of 20.12.2024, whilst dismissing the Misc. Civil Appeal no. 46/2024 has endorsed the Judgment of the Trial Court and supplied two further reasons for dismissing the application to produce the Gift Deed on record. The District Court holds that the Gift Deed was sought to be produced beyond the 30 days provided by Section 400 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012; it also holds that the Gift Deed was executed, by gifting the donor's disposable quota in the suit property, and this was contrary to the Judgment of this Court in *Jose Antonio Filip Miranda V/s Joao Miranda*<sup>1</sup>.

15. This Court in *Jose Antonio Filip Miranda (supra)*, has considered the effect of executing a Will of the undivided share in a specific property amongst many properties that forms part of the estate leaver, considering validity of such a Will, this Court has held that in terms of Article 2177 of the Civil Code, the co-owners cannot dispose of a specific portion of the common property when that part of the property being specifically assigned to him; the Judgment further holds that

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<sup>1</sup> (1999) (1) GLT 77

alienation of the specified portions of the property, in which the donor has undivided rights would be void.

The District Court has misconstrued this judgment and has practically declared the Gift Deed dated 24.08.2006 to be void and of no effect when there has been no challenge by the party to the Inventory Proceeding to the Gift Deed, and the aforementioned judgment of this Court could not apply, given the facts before the Inventory Court.

16. In the present case, the Gift Deed made by Blasio Antonio Braz specifically gifts his undivided disposable share in the entire estate, which in this case happens to be a single property described under Item No. 1. Rosa Elma and her husband have also gifted their disposable share in the property under item No. 1, which is in the only asset of the estate leaver. The Gift Deed was therefore on the face of it quite valid.

17. In paragraph Nos. 12 and 13 of the Judgment of this Court in *Jose Miranda* (supra) this Court has considered this very situation and held that it is in only when the donor carves out a specific part of the property which forms part of the estate in a Gift Deed, that such Deed would be contrary to the provisions of Article 2177 of the Civil Code. Relevant portion of the Judgment are quoted below:

*“12. Once, it is clear that a donor is not entitled to dispose of the specific property in entirety by any gift deed, the point which now arises for consideration is whether the gift deed in question could be void in its entirety because Clause (e) therefore is void as held above. As already seen above, Clause (e) of the deed specifically refers to three properties being subject matter of the gift deed. The contention of the learned Advocate for the Respondents that it only clarifies that the disposable quota gifted by the donor would include half share of the ownership of the donor from the said three properties mentioned therein is devoid of substance. Moreover, the remaining portion of the deed of gift does not relate to any specific property and on the contrary, it clearly relates to the disposable quota of the donor. This remaining portion of the deed in other words, in no way is hit by any of the provisions of law relating to right of disposition of the property by a donor. Considering the fact that the portion of the deed comprising of Clause (e) is completely severable from the remaining portion of the deed of gift, the said remaining portion of the gift deed cannot be considered to be null and void merely because Clause (e) thereof is void. Being so, no fault can be found with the impugned Order to the extent it has rejected the objection of the Appellants as far as it relates to the extent of the gift deed excluding therefrom the said Clause (e) is concerned.*

*13. in this view of the matter, therefore, the Appeal partly succeeds. The impugned Order to the extent of rejection of the objection raised by the Appellants to the gift deed dated 28<sup>th</sup> February, 1985 executed by Mrs. Dominga Maria Dias alias Dominga Maria Dias e Miranda in favour of the Respondent No.1 herein in respect of three specific properties mentioned under Clause (e) thereof is hereby set aside. The gift deed in question to the extent of Clause (e) thereof is held to be ex facie bad in law and, therefore, null and void and not enforceable and, therefore, cannot be considered for any*

*purpose in the course of the partition left behind by the late Jose Miranda. Moreover, the remaining portion of the said gift deed can certainly be considered in the course of the partition of the estate left behind by late Jose Miranda. Order accordingly. There shall be no order as to costs."*

18. Section 400 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 provides that within 30 days from submission of List of Assets, parties may raise objections that all assets have not been listed, or that Head of Family or donee denies existence of the asset, or that the donee denies the obligation to collate or that the donee disputes having received the asset gifted to him. If plainly read, Article 400 would not be attracted at all to the facts of the present case, as none of the parties have either made a challenge to the Gift Deed or denied its existence or raised any objections to either the existence of the property or the obligation to collate. The reasoning of the District Court, in its order dated 20.12.2024, on both counts, i.e. on the applicability of Section 400 and that the Gift Deed is void, are both unsustainable.

19. Since there is only one immovable asset in the present inventory, which has a house standing thereon, which is the subject matter of the allotment, the only option left to the Trial Court was to proceed with the auction of this property amongst the parties, however after considering the shares and after factoring into the two Wills and the Gift Deed. The Trial Court

would therefore proceed to dispose of the Inventory Proceeding in accordance with law after considering the two Wills dated 26.10.1987 and 01.08.2001 and the Gift Deed dated 24.08.2006.

20. Consequently, I quash and set aside the impugned order dated 25.09.2024, passed by the Inventory Court in Inventory Proceedings No. 65/2005/III and the impugned order dated 20.12.2024 of the District Court and make Rule absolute in terms of prayer clause (a) of the petition with the observations made above. No costs.

**VALMIKI MENEZES, J.**