

I.P. No. 5/2022.



Eusebio Eurico Socorro De Noronha
Vs.
Perpetua Rosa Maria Lopes and 04 Ors
CNR : UTDD010010532022

ORDER BELOW EXH. 21.

Vide this application the interested party Smt. Perpetua Rosa Maria Lopes has taken objection to the present inventory proceeding stating that the deceased Carlos Orlando Manuel Joaquim Noronha was her husband who died at Daman on 1st May, 2021 leaving behind herself and their four children. The present inventory proceeding has been filed by one of the sons. However, she and her deceased husband are the joint and indivisible owners of the immovable properties which have been made the subject matter of the present inventory proceeding and since she is still alive the said properties which are sought to be made the subject matter of the present inventory proceedings cannot be termed as the exclusive estate left behind by her deceased husband. Therefore, the present inventory proceeding is pre-mature in law and does not lie. Hence it has been prayed that the proceedings be dropped at this stage.

- 2) The learned Advocate for the applicant has filed written arguments to the present application vide Exh. 23.
- 3) Heard the learned Advocate Mr. Mario Lopes for the interested party and the learned Advocate Smt. Alpa C. Rathod for the applicant. She has submitted that as per Article 1374 the objection should have been taken within the prescribed period of 10 days from the service of summons. However the said objection is taken after a considerable period of about 02 years, 02 months.

Hence the application requires to be rejected in toto as barred by the provisions. She has also argued that the applicant is the eldest son of the deceased and interested party No. 2 (widow) and the other children of the deceased became entitled to their respective shares as per the provisions of the Portuguese Civil Code which governs succession in Daman, upon the demise of the deceased father of the applicant. It is totally false contention that the interested party No. 2 and the deceased were the joint and individual owners of the immovable properties which have been made the subject matter of the present inventory proceedings. All the immovable properties which have been made the subject matter of the present inventory proceedings were owned and recorded in the sole name of the deceased estate leaver, the father of the applicant/administrator. Present inventory proceeding is instituted precisely to define and partition the deceased's share among all legal heirs. It is not a prerequisite for the entire property to be exclusively the deceased's property for inventory proceedings to commence. The present inventory proceeding has been filed by the applicant in his capacity of the legal heirs and co-heirs exercising his legitimate right to demand the partition of his deceased father's estate. This right is absolute and cannot be made contingent upon the demise of another co-heirs. Hence, by taking all these grounds, the learned Advocate for the applicant/administrator has prayed to dismiss the prayer sought vide the objection filed by the interest party No. 2 Smt. Perpetua Rosa Maria Lopes to the present proceeding.

4) Admittedly, the applicant is a son of the deceased Carlos Orlando Manuel Joaquim Noronha and interested party No. 2 is the widow. As per the reply of the interested party No. 2, she has four children, two sons and two daughters, namely Eusebio the applicant, Fideles, Christina and Lidya. Therefore, it is not disputed that the applicant and the interested parties are the legal heirs of the deceased Carlos Orlando Manuel Joaquim Noronha. As per Article 1369 of Chapter XVII, Division-I of Family Laws of Goa, Daman and Diu, Vol.II, the inventory proceeding can be filed by any 'party' on the basis of the death certificate of the deceased. The said Article further clarifies the word 'party' in paragraph 2 as 'party' includes heir, moiety holder of the deceased and the persons benefited with usufruct of part of the inheritance. Thus the applicant being one of the heirs of the deceased has rightly filed the inventory proceeding.

5) It is the contention of the interested party No. 2 that she is the joint and indivisible owner of the immovable properties which have been made the subject matter of the present inventory proceedings. However, on perusal of the record of the proceeding it reveals that the administrator has taken oath on 17.12.2022 in view of Article 1369 of Family Laws vide Exh. 7. After taking oath, the administrator has to file declaration as per Article 2072 and thereafter description of properties of inheritance as per Article 2073, 2074 and 2075 of Division III, Sub-Division-I of Family Laws of Goa, Daman and Diu Vol.II.

6) The record of proceeding shows that the aforesaid declarations are not yet filed on record. Therefore, the Court has no occasion to see what are the properties which have been made the subject matter of the present inventory proceedings. Therefore, without going through the description of properties and documents related to those properties, it cannot be termed that the properties were the joint properties of the deceased and the interested party No. 2 or exclusive properties of the deceased. In view of Article 1371 of Chapter XVII, Division-I of Family Laws of Goa, Daman and Diu, Vol.II, the proceeding can be dropped only when from the declarations of the administrator it is found that there is no basis for the inventory. Therefore, this objection has been taken at a premature stage.

7) Secondly, the learned Advocate for the applicant/administrator has rightly pointed out that as per Article 1374 the objection should have been taken within the prescribed time limit of 10 days after service of summons. However, the said objection has been taken on 04.04.2025 when the interested party No. 2 has received the summons and appeared in the proceeding on 02.02.2023. Therefore considering both these grounds the objection taken by the interested party No. 2 in the present proceedings is not tenable. Hence the prayer sought vide this objection is rejected and dismissed.

Daman
Date: 27/11/2025

(Pranita P. Bharsakade-Wagh)
Civil Judge Senior Division,
Daman

C E R T I F I C A T E

I affirm that the contents of this PD.F File order are same, word to word, as per the original order.

Name of Employee	Santosh R. Khapekar
Designation	Stenographer (L.G.)
Name of Court	Civil Judge Sr. Dn. & C.J.M., Daman.
Date of order	27/11/2025
Order signed by the Presiding Officer on	27/11/2025
Order uploaded on	29/11/2025