

Uma Mahesh Bandekar And Anr. vs Vivek Sadanand Marathe And Ors. on 13 March, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1449, AIR ONLINE 2019 SC 152, 2019 (3) ABR 501, (2019) 1 RENCRA 401, 2019 (202) AIC (SOC) 6 (SC), (2019) 2 WLC(SC)CVL 31, (2019) 3 ALLMR 958, (2019) 3 CAL HN 68, (2019) 3 MAD LJ 460, (2019) 5 SCALE 60, AIR 2019 SC (CIV) 1366

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Bench: M.R. Shah, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2961__OF 2019
(Arising from SLP (C) No. 15949/2016)

UMA MAHESH BANDEKAR AND ANOTHER

..APPELLANTS

VERSUS

VIVEK SADANAND MARATHE AND OTHERS

..RESPONDENTS

JUDGMENT

M.R. SHAH, J.

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.05.2016 passed by the High Court of Judicature at Bombay, Bench at Goa in Appeal from Order No. 39/2015, by which the High Court has dismissed the said Appeal from Order and has confirmed the order dated 02.06.2015 passed by the learned IIIrd Additional Adhoc Senior Civil Judge, Margao in the Inventory Proceedings by the original Inventariante and other parties, the original appellants before the High Court have preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

At the outset it is required to be noted that the 'lease premises' was of a partnership firm in the name and style "Ramnath Anant Kesarkar" at Margao. That appellant no.1 and respondent nos. 1 & 3 herein are the sisters and brother. The parents of the

parties (appellant no.1 and respondent nos. 1 & 3 herein), namely, Late Sadanand V. Marathe and his wife Late Nirmalabai S. Marathe succeeded to the lease premises in terms of Deed of Partition dated 29.03.1976, registered in the office of the Sub Registrar of Salcete at Margao, Goa. The said premises was of a partnership firm in the name and style "Ramnath Anant Kesarkar" having business carried out in the tenanted premises belonging to one Jairam Vasant Katkar at Margao. That the father Sadanand V. Marathe died on 12.05.1985. That the mother Nirmalabai S. Marathe died on 05.05.1998. Thus, the parents of the parties i.e., Late Sadanand V. Marathe and his wife Late Nirmalabai S. Marathe since deceased passed away on 12.05.1985 and 05.05.1998 respectively. That after the demise of the parents, respondent no.1 – brother of appellant no.1 and son of Late Sadanand V. Marathe and Late Nirmalabai S. Marathe filed Regular Inventory Proceedings No.11/2013/C dated 08.11.2013. That the Court appointed respondent no.1 as the head of the family/Cabeca de Casal to administer the estate left by the deceased, during the pendency of the said proceedings and also appointed a court valuer for valuing and determining the extent of properties stated in the inventory proceedings. The valuer appointed by the court submitted its report to the court on 30.04.2014. The appellants herein filed objections to the valuation report, inter alia, pointing out that there are certain infirmities regarding the enlisted plots, survey nos. and also ambiguous narration of the area and the amended list of assets.

As a result of the said objections, respondent no.1 filed a revised list of assets in the inventory proceedings on 16.10.2014. The appellants herein filed their objections/reply to the revised list of assets. The main objection on behalf of the appellants was non-inclusion of the 'lease premises' in the inventory proceedings/list of assets. Respondent no.1 filed reply to the objections of the appellants. It was submitted on behalf of respondent no.1 that the partnership firm does not form part of the estate of the deceased as married daughters are not entitled to the tenanted premises.

3.1 That by order dated 02.06.2015, the learned Civil Judge at Margao (hereinafter referred to as the 'Inventory Court') dismissed the objections of the appellants for correcting the area of the said property and also denied enlisting of the said tenanted premises to the estate of the deceased.

3.2 Aggrieved with the order passed by the learned Inventory Court dated 02.06.2015, the appellants filed an appeal before the High Court being Appeal from Order No. 39/2015. That by the impugned judgment and order, the High Court of Bombay at Goa has dismissed the appeal preferred by the appellants. From the impugned judgment and order passed by the High Court, it appears that the High Court has mainly relied upon Section 2(o) of the Goa Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as the 'Goa Rent Act'), and relying upon the aforesaid provision of the Goa Rent Act, the High Court has held that the married daughter would not qualify as a tenant in terms of the Goa Rent Act. The High Court also examined and considered Decree No. 43525 of the Portuguese Civil Code and observed and held that in view of Section 59 of the Goa Rent Act and the repeal provision, Decree No. 43525 of Portuguese Civil Code shall stand repealed and the parties shall be governed by the provisions of the Goa Rent Act only.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court and dismissing the Appeal from Order and confirming the order passed by the learned Inventory Court holding that being a married daughter, appellant no.1 has no right in the “lease premises” and therefore the same cannot be subjected to the inventory proceedings, the appellants □ original petitioners – objectors have preferred the present appeal.

3.4 This Court issued notice in the special leave petition vide order dated 08.07.2016. That during the pendency of the present appeal, the Inventory Court has pronounced the final order and has drawn the final chart of partition in Regular Inventory Proceeding No.11/2013/C vide final order dated 31.07.2017, excluding the “lease premises” which is the subject matter of present appeal.

4. Ms. Binu Tamta, learned advocate has appeared on behalf of the appellants and Ms. A. Subhashini, learned advocate has appeared on behalf of the respondents.

4.1 Ms. Binu Tamta, learned advocate appearing on behalf of the appellants has vehemently submitted that both, the learned Inventory Court as well as the High Court have materially erred in not considering the right of a married daughter, vis a vis, the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (hereinafter referred to as the ‘Inventory Proceeding Act 2012’).

4.2 It is vehemently submitted by the learned counsel appearing on behalf of the appellants that both, the learned Inventory Court as well as the High Court have materially erred in considering the provisions of the Goa Rent Act and not at all considering the right of succession of the married daughters as per the Inventory Proceeding Act, 2012.

4.3 It is vehemently submitted by the learned counsel appearing on behalf of the appellants that so far as the succession in the inventory proceedings is concerned, the parties are governed by the Inventory Proceeding Act, 2012. 4.4 Ms. Binu Tamta, learned advocate appearing on behalf of the appellants has taken us to the relevant provisions of the Inventory Proceeding Act, 2012 and relying upon the relevant provisions of the Inventory Proceeding Act, 2012, more particularly Sections 3, 5, 9, 68 of the said Act, has submitted that under the provisions of the Inventory Proceeding Act, 2012, there is no distinction/classification between daughter married or unmarried & son. It is submitted by Ms. Binu Tamta, learned counsel on behalf of the appellants that Section 399 provides for list of assets, movable & immovable assets including mortgages, easements, lease and others encumbrances.

4.5 It is further submitted by the learned counsel appearing on behalf of the appellants that definition of ‘tenant’ under the Goa Rent Act shall not be applicable in the case of Law of Succession. It is submitted that in the present case the proceedings were not initiated under the Goa Rent Act and the dispute was not between the landlord and the tenant, and therefore, the provisions of the Goa Rent Act shall not be applicable at all. It is submitted that therefore both the courts below have materially erred in non□suing the appellants relying upon and/or considering the provisions of Goa Rent Act. It is submitted that both the courts below have not properly appreciated the fact that the proceedings were/are inventory proceedings for the purpose of inheritance of the estate of the deceased and therefore the provisions of the Inventory Proceeding Act, 2012 only shall be applicable

and are required to be considered.

4.6 It is vehemently submitted by the learned counsel appearing on behalf of the appellants that if the rights of appellant no.1 being a married daughter are considered vis a vis/considering the Inventory Proceeding Act, 2012, in that case, appellant no.1 being a married daughter shall have a right of succession with respect to “lease premises”, considering Sections 3,5,9,68 and 399 of the Inventory Proceeding Act, 2012. 4.7 Making the above submissions, it is vehemently submitted by the learned counsel appearing on behalf of the appellants that both the courts below have materially erred in excluding the “lease premises” from the list of assets in the inventory proceedings and have materially erred in observing and holding that appellant no.1 being a married daughter has no right of succession in the “lease premises”. Making the above submissions, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Ms. A. Subhashini, learned advocate appearing on behalf of the respondents.

5.1 It is vehemently submitted by the learned counsel appearing on behalf of the respondents that in view of the subsequent development and passing the final order by the Inventory Court and drawing the final chart of partition in Regular Inventory Proceeding No. 11/2013/C, which has been signed and accepted even by the appellants, the present appeal has become infructuous. It is vehemently submitted by the learned counsel appearing on behalf of the respondents that in the final order and/or the final chart of partition in Regular Inventory Proceeding No. 11/2013/C, the “lease premises” has not been included and the said order has been accepted by the appellants, the present appeal has become infructuous. 5.2 It is vehemently submitted by the learned counsel appearing on behalf of the respondents that even on merits also, both the courts below have rightly held that appellant no.1 being a married daughter has no right of succession in the “lease premises” in view of Section 2(o) of the Goa Rent Act. It is submitted that considering the provisions of Section 2(o) of the Goa Rent Act, a married daughter has no right in the tenanted/lease premises.

5.3 It is vehemently submitted by the learned counsel appearing on behalf of the respondents that right of a married daughter in the “lease premises” has been considered by this Court in the case of Mohammad Laiquiddin vs. Kamala Devi Misra (Dead) by Lrs., (2010) 2 SCC 407. It is submitted that in the aforesaid case, this Court has also considered Decree No. 43525 under the Portuguese Civil Code and also Section 59 of the Goa Rent Act, which relates to the repeal and savings clause. It is submitted that as held by this Court in the aforesaid decision as from the date on which the Goa Rent Act has brought into force in any local area, the provisions of Decree No. 43525 dated 7th March, 1961 and the Legislative Diploma No. 1409 dated 14.02.1952 and the corresponding provisions of any other law for the time being in force shall stand repealed in that area. It is submitted that in the present case, as such, the appellants heavily relied upon Decree No. 43525 dated 7.3.1961. It is submitted that however in view of Section 59 of the Goa Rent Act, the provisions of Decree No. 43525 dated 7.3.1961 stand repealed, the appellants cannot claim any right on the basis of the provisions of Decree No. 43525 dated 7.3.1961. 5.4 It is vehemently submitted by the learned counsel appearing on behalf of the respondents that as per Section 2(o) of the Goa Rent Act, a married daughter would not qualify as a tenant and therefore being a married daughter appellant

no.1 cannot claim any right in the tenanted/lease premises. It is submitted that the special law override the general law and the Goa Rent Act being a special law which makes special provision for any inheritance upon the death of the tenant and the tenancy created by the Special Statute would be construed as a statutory tenant, the statutory tenancy making no provision for inheritance, confers no right on any legal heir. It is further submitted that consequent upon the enforcement of the Goa Rent Act, not only Decree No. 43525 dated 7.3.1961 came to be repealed (in view of Section 59 of the Goa Rent Act), but also “the corresponding provision of any other law for the time being in force”, which would mean that the general law of succession contained in the Portuguese Civil Code, 1867, would automatically stand repealed upon the enforcement of the Goa Rent Act insofar as building tenancies are concerned. It is submitted that therefore reliance placed upon Section 399 of the Inventory Proceeding Act, 2012 is misplaced. It is submitted that even Section 460 of the Inventory Proceeding Act, 2012 has no application in the present case.

5.5 Making the above submissions, it is vehemently submitted by the learned advocate appearing on behalf of the respondents that the Inventory Court as well as the High Court have rightly held that appellant no.1 being a married daughter has no right in the “lease premises”, and therefore, the same is rightly excluded from the list of assets in the inventory proceedings.

5.6 Making the above submissions, it is prayed to dismiss the present appeal.

6. We have heard learned counsel for the respective parties at length.

6.1 The short question which is posed for consideration before this Court is, right of a married daughter by way of succession in the “lease premises” and whether with respect to “lease premises”, a married daughter shall have a right of succession, vis a vis, Inventory Proceeding Act, 2012 or not?

6.2 While considering the aforesaid question/issue, the relevant provisions of the Inventory Proceeding Act, 2012 are required to be referred to and considered.

6.3 The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 has been enacted to consolidate and amend the law of intestate and testamentary succession, notarial law and the laws relating to partition of an inheritance and matters connected therewith. It has come into force with effect from 19.09.2016. Further, the Inventory Proceeding Act, 2012 shall be applicable with respect to pending proceedings also, in view of Section 460 of the Inventory Proceeding Act, 2012. Section 3 of the Inventory Proceeding Act, 2012 defines succession. As per Section 3 of the Act, succession is the transmission of the estate of a deceased person in favour of his successors. It further provides that a successor is the person who is called to succeed to the juridical relations of the deceased person and upon whom the assets and liabilities devolve. Section 5 of the Inventory Proceeding Act, 2012 provides for the types of successors; heirs and legatees. As per the said provision, heir is the person who inherits or succeeds to the totality of the estate of the estate leaver or to an undefined share thereof without specifying the assets constituting it, while a legatee is the one who succeeds to specific and determined assets. As per Section 9 of the Inventory Proceeding Act, 2012, all persons, besides the State, who are born or conceived at the time of the opening of the succession are competent to succeed, unless the law provides otherwise. Section 10 of the Inventory Proceeding Act, 2012 provides for incompetence to succeed by reason of unworthiness to succeed. It provides

for the persons who shall be unworthy to succeed the estate leaver and are consequently incompetent to be the successors (it does not include the married daughter). Section 52 of the Inventory Proceeding Act, 2012 provides for order of legal succession. It provides inter alia that the legal succession shall devolve in the order as mention in Section 52 and it first devolve on the descendants. Section 68 of the Inventory Proceeding Act, 2012 provides for succession of children and their descendants and it specifically provides that the children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age. Section 399 of the Inventory Proceeding Act, 2012 provides for initial list of assets and it includes movables and livestock, the immovables including mortgages, easements, leases and other encumbrances thereon and lastly debts due by the estate. Section 446 of the Inventory Proceeding Act, 2012 permits amendment of partition. It provides that the partition may be amended, even after it has become final and no appeal has been preferred, in the very same inventory proceedings by agreement of the parties or their representatives, where there is a mistake of facts in the list of assets or in the classification of the assets or any other error which vitiates the will of the parties. Section 460 of the Inventory Proceeding Act, 2012 provides that on and from the date of coming into force the Inventory Proceeding Act, 2012, all provisions of the laws in force at present corresponding to any of the provisions of the Inventory Proceeding Act, 2012 shall stand repealed. However, sub-section 3 of Section 460 of the Inventory Proceeding Act, 2012 provides that “all proceedings pending under the repealed laws before any court in the State or Goa, as on the date of the coming into force of the Inventory Proceeding Act, 2012, shall be continued in terms of the procedure provided in the Inventory Proceeding Act, 2012. The Inventory Proceeding Act, 2012 provides for the proceedings/inventory proceedings to partition the inheritance of a deceased person or to obtain a formal order of allotment of inheritance by the Court. A person who initiates the inventory proceedings has to submit the list of assets to be partitioned.

7. In the present case, respondent no.1 brother of appellant no.1 initiated/filed the inventory proceedings before the Inventory Court with the list of assets which did not include the “lease premises”. According to respondent no.1 the “lease premises” was not included in the list of assets as the “lease premises” is not inheritable and that appellant no.1 being a married daughter has no right of succession in the tenanted/lease premises. Appellant no.1 herein raised an objection against non-inclusion of the “lease premises” in the list of assets submitted in the inventory proceedings. The objection came to be overruled by the learned Inventory Court which has been confirmed by the High Court by the impugned judgment and order on the ground that considering Section 2(o) of the Goa Rent Act, a married daughter has no right in the “lease premises” and a married daughter cannot be said to be a tenant of the “lease premises” in view of Section 2(o) of the Goa Rent Act.

8. Having heard the learned advocates appearing for the respective parties and considering the relevant provisions of the Inventory Proceeding Act, 2012 and the provisions of the Goa Rent Act, for the reasons hereinbelow, we are of the opinion that both, the learned Inventory Court as well as the High Court have committed a grave error in relying upon the provisions of the Goa Rent Act, while considering the right of succession of a married daughter in the “lease premises” vis a vis and/or under the Inventory Proceeding Act, 2012.

9. At the outset, it is required to be noted that the proceedings before the inventory court as well as the High Court were under the provisions of the Inventory Proceeding Act, 2012/ Portuguese Civil Code, which shall be continued on enactment of the Inventory Proceeding Act, 2012, as if those proceedings were/are initiated under the Inventory Proceeding Act, 2012 (in view of Section 460 of the Inventory Proceeding Act, 2012). It is required to be noted that the proceedings before the inventory court and the High Court were not at all with respect to Goa Rent Act. The proceedings were not between the landlord and the tenant. The provisions of Goa Rent Act shall be applicable with respect to dispute between the landlord and the tenant. As per the preamble of the Goa Rent Act, it has been enacted for control of rents and evictions. At the cost of repetition, it is observed that the dispute was neither under the provisions of the Goa Rent Act nor between the landlord and the tenant and therefore both, the inventory court as well as the High Court have erred in considering the provisions of the Goa Rent Act, more particularly Section 2(o) of the Goa Rent Act. The only question which was before the inventory court and the High Court was in respect of the rights of succession of a married daughter in the “lease premises” under the provisions of the Portuguese Civil Code and subsequently under the provisions of the Inventory Proceeding Act, 2012. Therefore, what is required to be considered is whether under the provisions of the Portuguese Civil Code and on enactment of Inventory Proceeding Act, 2012, whether the married daughter would have a right of succession in the “lease premises” or not?

10. Considering the relevant provisions of the Inventory Proceeding Act, 2012, referred to hereinabove, first of all, it is required to be noted that so far as rights of successor, i.e., heirs and legatees, as provided under Section 5 of the Inventory Proceeding Act, 2012, as such, there is no classification between the daughter married or unmarried and son. It cannot be disputed that a daughter, may be a daughter married or unmarried, would have a right of succession in the properties of the parents including the lease. Section 399 of the Inventory Proceeding Act, 2012 provides for list of assets which can be thrown to succession and it includes movable and immovable assets including mortgages, easements, leases and other encumbrances. Even, as admitted by the learned advocate appearing on behalf of the respondents, so stated in the additional written submissions, it is not disputed to the proposition, whether Portuguese Civil Code, 1867 makes no distinction as to the gender of the child or as to the order of birth or as to the status of being single or married to discriminate in matters relating to succession. It is also admitted that this legal position has not been changed pursuant to the enactment and enforcement of the Inventory Proceeding Act, 2012, brought into force with effect from 19.09.2016. Even otherwise, as per Section 68 of the Inventory Proceeding Act, 2012, all the children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age. Thus, under the provisions of the erstwhile Portuguese Civil Code, 1867 and/or under the provisions of the Inventory Proceeding Act, 2012, there is no further classification between a daughter married or unmarried and son. Therefore, considering the scheme and the provisions of the erstwhile Portuguese Civil Code and as per the provisions of the Inventory Proceeding Act, 2012, which has come into effect with effect from 19.09.2016, even the married daughter would have a right of succession in the “lease premises”. As observed hereinabove, Section 399 of the Inventory Proceeding Act, 2012 provides for list of assets which includes movables and immovables assets including mortgages, easements, leases and other encumbrances.

11. From the impugned orders passed by the inventory court and the High Court, it is not in dispute that both the courts below have held against the appellants, more particularly appellant no.1 – married daughter, mainly relying upon and considering Section 2(o) of the Goa Rent Act, which, as observed hereinabove, ought not to have been considered and has no relevance while considering the right of succession of a married daughter in the “lease premises” under the provisions of the erstwhile Portuguese Civil Code and subsequently on enactment of the Inventory Proceeding Act, 2012. The sum and substance of the above discussion would be that a married daughter would have a right of succession in the “lease premises” also.

12. Insofar as the submission on behalf of the respondents that in view of the subsequent development of the inventory court pronouncing the final order and has drawn the final chart of partition in Regular Inventory Proceeding No. 11/2013/C, which does not include the “lease premises” and the appellants having signed and accepted the same, the present proceedings have become infructuous is concerned, the aforesaid has no substance and the same is required to be rejected outright. It is required to be noted that the final order has been pronounced by the inventory court during the pendency of the present proceedings, excluding the “lease premises” in the list of assets in the inventory proceedings which are under challenge. As the lease premises was not included in the list of assets in the inventory proceedings, naturally, the same would not be in the final chart of partition, and therefore, whatever order is passed by the inventory court, the appellants would have to sign and accept the same. However, as the present proceedings were pending and during the pendency of the present proceedings, the inventory court has pronounced the final order and has drawn the final chart of partition, it cannot be said that the challenge to the exclusion of the “lease premises” from the list of assets in the inventory proceedings has become infructuous. As the present proceedings were pending, the right of the appellants to challenge the exclusion of the “lease premises” from the list of assets in the inventory proceedings would continue and once it is held that appellant no.1 being a married daughter would have a right of succession in the “lease premises”, and the same was wrongly excluded from the list of assets in the inventory proceedings, despite the final order being passed in the inventory proceedings and the final chart being drawn, the same can be amended with the aid of Section 446 of the Inventory Proceeding Act, 2012.

13. In view of the above and for the reasons stated, the present Appeal Succeeds. The impugned orders passed by the inventory court and the High Court are hereby quashed and set aside, and it is held that appellant no.1 being a married daughter shall have a right of succession in the “lease premises” and the same ought to have been included in the list of assets in the inventory proceedings. Consequently, the partition as per the final order passed by the inventory court and consequent drawing of the final chart of partition, pursuant to the final order dated 31.07.2017 in Regular Inventory Proceeding No. 11/2013/C be amended accordingly with the aid and/or considering Section 446 of the Inventory Proceeding Act, 2012.

14. The instant APPEAL is ALLOWED accordingly, in terms of the above. However, there shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI;
MARCH 13, 2019.

.....J.
[M.R. SHAH]