

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****APPEAL FROM ORDER NO. 17 OF 2024**

1. Sarina Esmeralda Lopez nee Lobo, Indian Inhabitant, aged 63 years, Occ. Teacher, residing at Flat 302, Wahedna Apts. 75 Hill Road, Bandra, Mumbai – 400 050.
2. Xavier Peregrino Lopez, Adult, Indian Inhabitant, aged 71 years, residing at Flat 302, Wahedna Apts. 75 Hill Road, Bandra (W), Mumbai – 400 050.

... APPELLANTS**VERSUS**

1. Dennis Francis Lobo, major of age, Indian Inhabitant, residing at 51, Massabielle, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.
2. Bella Joaquim Lobo, major of age, Indian Inhabitant, residing at 18 Sea Mist, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.
3. Kimberley Nunes Lobo, major of age, Indian Inhabitant, residing at 51, Massabielle, Manuel Gonsalves Marg, Bandra, Mumbai 400 050.
4. Anna Marie Schmidt Lobo, major of age, residing at 132, Bad Homburg Tannenwaldallee 61348 Germany.
5. Holger Schmidt, major of age, residing at 132, Bad Homburg Tannenwaldallee 61348 Germany.
6. Allen Mario Lobo, major of age, Indian Inhabitant, residing at 101, Shelter Apts. St. Francis Road, Bandra, Mumbai 400 050.

7. Annabelle Lobo, major of age, Indian Inhabitant, residing at 101, Shelter Apts. St. Francis Road, Bandra, Mumbai 400 050.
8. Francis Lobo (deceased) formerly of Aldona Carona, Bardez, Goa. ... RESPONDENTS

Appellants in person.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Advocate for the Respondents.

CORAM: **BHARAT P. DESHPANDE, J.**
RESERVED ON: **20th JULY, 2024**
PRONOUNCED ON: **25th JULY, 2024**

JUDGMENT:

1. Heard Appellant No. 1 in person and Mr. Pereira, the learned Senior Counsel appearing with Mr. Korgaonkar for the Respondents.
2. Admit.
3. The present matter is taken up for final disposal at the admission stage with consent of the Appellants who appeared in person and the learned Senior Counsel for the Respondents.
4. The order dated 22.05.2024 passed by the learned Trial Court in the inventory proceedings is challenged in the present Appeal.

5. Appellant No. 1 argued the matter in person whereas Appellant No. 2 was personally present with her.

6. Both the Appellants who are residents of Mumbai claimed that the inventory proceedings were conducted in their absence including the licitation and auction, which according to them is illegal and bad in law. The Appellants, therefore, filed an Application under Section 151 of CPC to recall the order of auction and also to recall/quash the licitation, which was held ex-parte.

7. It is the contention of Appellant No. 1 that she is the eldest daughter/child of deceased Francis Lobo, upon whose death Inventory Proceedings No. 188/2014 was filed by her brother/Respondent No. 1. It is further her case that the survey records and more specifically, Form I & XIV with regard to the properties bear the name of her great grandfather Francis Lobo/Francisco Lobo and not that of her father, who also had the similar name. It is her contention that Respondent No. 1 mislead the Trial Court in believing that the estate belongs to Francis Lobo i.e. her father and father of Respondent No. 1, when in fact the estate belongs to her great grandfather having the same name i.e. Francis Lobo/Francisco Lobo. Francis Lobo/Francisco Lobo (great grandfather of Appellant No. 1 and Respondent No. 1) had one

son by the name of Roque Denisio Lobo (grandfather of Appellant No. 1 and Respondent No. 1) and said Roque Lobo had two children, namely, Francis Lobo (father of Appellant No. 1 and Respondent No. 1) and Esmeralda Mendes nee Lobo. She submits that the properties left by her great grandfather, which in fact devolved upon Roque Lobo, however, the same was never allotted or transferred to Roque Lobo and further to her father Francis Lobo and his sister Esmeralda Lobo. She claimed that the entire inventory proceedings filed by Respondent No. 1 are fraudulent being based on a false premise that the deceased Francis Lobo, who died on 25.01.1979, was the sole owner/estate leaver. It is submitted that in fact, the sister of Francis Lobo by the name Esmeralda Mendes nee Lobo also had rights in the said properties, which belonged to her grandfather Francis Lobo. According to her Esmeralda Mendes nee Lobo and her legal heirs are also entitled to the said properties, which were auctioned ex-parte on 29.09.2021 and that too without notice to the Appellants. She claimed that fraud has been played on the Courts by misleading that Francis Lobo was the sole owner.

8. The Appellants then further claimed that the commencement of the inventory proceedings at the behest of Respondent No. 1 on 10.04.2014 is replete with falsehoods. She

claimed that Respondent No. 1 is not in possession and enjoyment of the said estate as a legal heir or as the administrator. The estate is in fact in care and possession of the tenants whose names are figuring in the survey records. According to the Appellants, the appointment of Respondent No. 1 as Head of Family [HoF] is also by playing fraud and without the consent of the Appellants. They further claimed that Respondent No. 1 always lived in Mumbai and had no connection with the properties as he spent major part of his life as an Officer of the Merchant Navy. Appellant No. 1 claimed that she is the eldest child of deceased Francis Lobo and that Respondent No. 1 has misled the Court by projecting that the properties which in fact belong to their great grandfather as that of their father.

9. The prayers in the said Application under Section 151 of Cr.P.C. are to recall the order of appointment of Respondent No. 1 as HoF, to recall the order of auction, to quash and set aside such auction and to dismiss the inventory proceedings.

10. The Respondents filed a reply to such Application and objected to the contentions raised therein. The learned Trial Court by a detailed order, which is impugned in the present Appeal,

rejected all the contentions of the Appellants, which resulted in the filing of the present Appeal.

11. Appellant No. 1 would submit that though after receipt of the summons from the Inventory Court in the year 2015 itself, she appeared before the Court, except the notice/summons, no other document was attached to it. She even explained her grievance before the concerned Court that the documents were not supplied to her. Accordingly, the Court passed an order directing Respondent No. 1 to furnish the papers to the Appellants.

12. The Appellants would further submit that no papers were handed over to her and thereafter, she contacted her mother, on which, Appellant No. 1 was given to understand that Respondent No. 1 abandoned the inventory proceedings and thus, there is no need to appear before the Court. She would further submit that believing her mother, she did not appear before the Inventory Court. It is submitted that the Appellants are staying in Mumbai and therefore, were not aware of the inventory proceedings, which were in fact conducted behind her back and by misleading her. She submits that the auction took place of the properties when in fact, the properties are capable of being partitioned amongst the interested parties. The Appellants would further submit that even

there is no proper valuation of the properties and the so called valuation carried out is as on the date of the death of Francis Lobo in the year 1979. She claimed that the properties have much more value than the one which is mentioned in the valuation report.

13. The Appellants would further submit that it is mandatory to issue notice to the interested parties before conducting any auction. She submits that no notice was issued to the Appellants by the Inventory Court and therefore, the entire proceedings, which were conducted in the absence of the Appellants are *void ab initio*.

14. The Appellants would further submit that even the summons/notices of the inventory proceedings were incomplete as no documents were attached along with the said notice and therefore, such notice is required to be considered as *non est*. She submits that there was no need for carrying out licitation as the properties allegedly left by the deceased are clearly divisible. She would submit that the Inventory Court was supposed to follow the due procedure of law while conducting the inventory proceedings and since such procedure has not been adopted, the entire process of conducting the proceedings and licitation are illegal and bad in law.

15. The Appellants would further submit that the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 [the Act of 2012, for short] mandate that the list of properties is required to be kept for objection, however, though the HoF furnished the list of properties, there are no remarks as to the valuation of it. She claimed that the licitation would apply only when the properties are indivisible and for that purpose, the report of the valuation must indicate so. She further submits that even the HoF nowhere raised the issue that the properties are not divisible and therefore, required licitation/auction.

16. The Appellants would further submit that the impugned order is clearly perverse and against the settled proposition of law and thus, requires interference in the appellate jurisdiction as injustice would be caused to the Appellants if the auction is allowed to remain on record. She submits that fraud has been played on the Courts as well as on the Appellants when she was told by her mother that such inventory proceedings have been abandoned. Finally, she claimed that the impugned order needs to be quashed and set aside and her Application is required to be allowed.

17. Per contra, the learned Senior Counsel Mr. Pereira would submit that the provisions of the CPC are not applicable and the

inventory proceedings are required to be carried out by summary procedure. He would submit that Section 151 of CPC will have no application to the matter in hand. He submits that the Appeal would not lie before this Court as the inventory proceedings are pending before the learned Civil Judge Junior Division and accordingly, the Appellate Court would be the District Court.

18. Mr. Pereira would further submits that the Appellants were duly served in the year 2015 itself and except on one day, when they appeared before the Inventory Court, there was no appearance on behalf of the Appellants personally or through an Advocate. He submits that admittedly, the Appellants are residing in Mumbai and not within the jurisdiction of the learned Trial Court. There is absolutely no explanation coming forward as to why the Appellants failed to appear before the Inventory Court personally or through an Advocate. He submits that the explanation for non-appearance is only an excuse and an afterthought.

19. Mr. Pereira would further submit that the impugned order deals with all the objections raised by the Appellants in great detail and thus, such observations of the Inventory Court need no interference even if this Court comes to a different conclusion. He

submits that the order for licitation was passed in the year 2019 itself which has not been challenged at all. Mr. Pereira submits that the decision of this Court referred to by the Appellants in the case of **Ms. Helen Carvalho Vs. Ms. Maria Teresa da Cunha & Others** [Appeal From Order No. 23 of 2006 decided on 12.07.2006] is not applicable to the facts and circumstances of the case as such decision is passed, admittedly, prior to the Act of 2012 coming into force. Even otherwise, he would submit that such a decision would not be of any help.

20. Mr. Pereira would submit that Section 388 of the Act of 2012 would show that the proceedings in absentia of the parties could be conducted and notice of licitation/auction is required to be given only to the parties who reside within the jurisdiction of the Court. He further submits that the parties who are residing outside the jurisdiction must file the memo of the residential address stating the house number and other details so that the Court could consider whether the notices could be issued to the parties, who are residing within the jurisdiction.

21. Mr. Pereira would submit that the Appellants by filing an Application under Section 151 of CPC are trying to challenge the orders passed with regard to the appointment of the HoF,

submission of list of assets, the notice of auction/licitation etc. when such proceedings were conducted way back in the year 2019 and 2021 and the period of limitation is already over.

22. The rival contentions fall for determination.

23. An Appeal against an order made in the inventory proceedings is provided under Section 451 of the Act of 2012. It says that an Appeal from an order made in the inventory proceedings shall lie to the competent Court depending upon the valuation of the assets and such Appeal shall be deemed to be an Appeal under Section 96 of the CPC. Sub-section (2) further provides that an Appeal from order shall lie from every order, other than merely an administrative order made in the inventory proceedings to the competent Court depending upon the valuation given to the estate, at the time the order is made, the Appeal shall be deemed to be an Appeal under Section 104 of CPC.

24. Section 458 of the Act of 2012 provides that the inventory proceedings shall be summary proceedings and shall not be governed by the Code of Civil Procedure, unless specifically provided for. Thus, admittedly, the inventory proceedings are required to be conducted as summary proceedings. The provisions of CPC are not applicable, unless specifically provided for.

25. Section 451(2) of the Act of 2012 deals with an Appeal from any/every order other than merely an administrative order, to a Court of competent jurisdiction depending upon the valuation given to the assets at the time when the order is made and such Appeal shall be deemed to be an Appeal under Section 104 of the CPC.

26. Section 104 of CPC deals with Appeal from orders and specifically the category against which such Appeal shall lie. Thus, when Section 451(2) of the Act of 2012 provides that an Appeal against every order shall be deemed to be an Appeal under Section 104 of CPC, it has to be considered that such Appeal would be governed by the provisions of Order XLIII of CPC, which deals with Appeals from orders. The impugned order deals with an Application filed by the Appellants under Section 151 of CPC. Thus, first of all, it is necessary to note here that Section 458 of the Act of 2012 specifically provides that the inventory proceedings shall be summary proceedings and shall not be governed by CPC, unless specifically provided for. The intention of the legislature is that inventory proceedings are required to be decided in a summary manner and the provisions of CPC shall not be governed unless specifically provided for.

27. The Appellants failed to demonstrate any provisions under the Act of 2012, which would allow such a party to file an Application under Section 151 of CPC for the purpose of seeking recall orders. When Section 458 of the Act of 2012 specifically says that the provisions of CPC are not applicable, unless specifically provided for, it is for the party who is applying under any provisions of CPC, in inventory proceedings, must first of all satisfy the Court that such provision is provided for in the Act so as to entertain such Application.

28. The Appellants failed to demonstrate from the Act of 2012 as to under which provisions of the said Act, the party is entitled to file an Application for recall of the earlier orders and that too by applying the provisions of Section 151 of CPC, which are necessarily applicable only as inherent power and that too when nothing in CPC is deemed to limit such inherent power and it may be necessary for the ends of justice to prevent the abuse of the process of the Court.

29. The first and foremost aspect in the present proceedings is the filing of such an Application by the Appellants under Section 151 of CPC. When the provisions of CPC are not applicable, the question of entertaining such an Application would not arise. Be

that as it may, the learned Trial Court entertained such an Application and decided it by a detailed reasoned order. The Appellants, by challenging such an order passed on 22.05.2024, are trying to challenge all earlier orders in the said inventory proceedings which were passed from the year 2015 itself. From the tenor of the memo of Appeal and the grounds raised therein as well as the Application filed before the Trial Court under Section 151 of CPC, it could be gathered that the Appellants are even trying to claim that the entire inventory proceedings are a fraud played on the Court. With this background, it is clear from the contentions raised in the present Appeal that the Appellants are now challenging even the institution of the inventory proceedings in the year 2014 itself.

30. The first and foremost aspect is the question of entertaining such an Application, at this stage and more so when the Appellants appeared before the Inventory Court on receiving summons in the year 2015 itself.

31. It is no doubt true that the Roznama dated 30.03.2015 shows that Appellant No. 1 appeared in person and filed an authority letter for and on behalf of Appellant No. 2. The learned Counsel appearing for HoF orally submitted that he will furnish

the Application of the inventory and other documents to the Appellants. Accordingly, the matter was fixed for objections on 17.04.2015.

32. It is a fact which could be gathered from the record and also admitted by the Appellants that both the Appellants remained absent before the Inventory Court and even no efforts were made to appoint an Advocate to represent them. It is not the case of the Appellants that they were not able to appoint any Advocate to represent them before the Inventory Court. The only ground which has been disclosed is that the mother of Appellant No. 1, who is Respondent No. 2, in the present proceedings, informed her that the inventory proceedings have been abandoned. It is her contention that she believed the statement of her mother and both the Appellants remained absent and only somewhere in the year 2022, they became aware through one of their sisters that the matter is proceeding for licitation.

33. The contention of the Appellants with regard to their absence before the Inventory Court is difficult to digest. There is nothing mentioned in the Application filed before the Trial Court as well as before this Court as to why the Appellants failed to appear before the learned Trial Court on the next date i.e. on

17.04.2015 or thereafter. It is also not clear from the record as to when Respondent No. 2 i.e. the mother, informed Appellant No. 1 that the inventory proceedings have been abandoned. Only a vague statement is made in paragraph 12(b) of the Appeal that soon thereafter Appellant No. 1 was informed by her mother that the inventory proceedings had been abandoned. First of all a party who is diligent in prosecuting the matter or defending could be protected by the Court, however, if a party is totally negligent of its own rights and fails to appear before the Court inspite of service of notice and summons and remains absent for years together, cannot now turn around claiming such vague grounds for the purpose of setting aside the entire process by placing the matter back to its initial stage.

34. It is further claimed that somewhere in September 2021, a message was received from Respondent No. 4 to Appellant No. 1 asking her to come to Goa for a hearing and therefore, Appellant No. 1 was surprised as to how the proceedings continued and why notices were not issued to them.

35. This statement of the Appellants stating that Respondent No. 4 messaged her in September 2021 would clearly go to show that the sisters were in contact with each other and thus, it is difficult to believe that the Appellants were totally in the dark

about the proceedings which were conducted in Goa in 2015, till she allegedly received such message from Respondent No. 4. Even otherwise, these submissions could be considered for the purpose of condonation of delay in filing an Appeal against the impugned order. Admittedly, no Appeal as provided under Section 451(2) of the Act of 2012 was preferred by the Appellants against various orders passed in the inventory proceedings. Even after getting knowledge of the orders passed in such inventory proceedings, somewhere in September 2021 as alleged, no Appeal as provided under Section 451(2) of the Act of 2012 was preferred before the competent Court. Surprisingly, an Application was filed and that too under Section 151 of CPC praying for a recall of the earlier orders. When the provisions of CPC are not applicable, the question of praying for recall of such orders passed by the Inventory Court would not arise. The proper course available to the Appellants is to prefer an Appeal under Section 451(2) of the Act of 2012 together with condonation of delay since some of the orders were passed even in the year 2015 i.e. the appointment of the HoF. The parties cannot be permitted to circumvent the procedure as provided under the Act of 2012 and thereafter, to challenge the order passed by the Inventory Court by taking recourse to Section 451(2) of the Act of 2012. It is no doubt true that the impugned order passed by the Trial Court comes within

the category of an order as provided under Section 451(2) of the Act of 2012, however, it is also the duty of this Court to first of all to ascertain whether the foundation of the order impugned in the present Appeal is itself available to the aggrieved parties.

36. If the Appellants are not entitled to file an Application under Section 151 of CPC for the purpose of recalling all the earlier orders, the question of allowing such party to file an Appeal taking recourse to Section 451(2) of the Act of 2012 and thereafter, allowing such party to agitate and challenge all the earlier orders passed by the Inventory Court would be abuse of the process of law.

37. In the present matter, the Appellants failed to challenge the various orders passed by the Inventory Court from time to time and adopted a way which is not permissible under the Act of 2012. The learned Inventory Court also failed to consider this aspect and deliberated upon the contentions raised in the said Application. Be that as it may, the question in the present Appeal is whether the impugned order is in any way perverse or illegal so as to interfere with it while considering it under the appellate jurisdiction.

38. Though Mr. Pereira raised the issue of jurisdiction of this Court, the fact remains that the matter is pending before the Civil Judge Junior Division on the basis of the valuation of the inventory.

39. A copy of the inventory Application placed on pages 157 onwards would go to show that the valuation of the estate is shown as Rs.3 lakhs. Accordingly, the proceedings were allotted to the Civil Judge Junior Division at Mapusa. Thus, the contentions of Mr. Pereira need to be accepted that the Appeal against such an order would preferably lie before the District Court on the basis of the valuation and not before this Court as tried to be projected.

40. However, the impugned order passed by the Trial Court would go to show that it is specifically observed that from the year 2015 till October 2021, the Appellants failed to appear and contest the inventory proceedings. It is also observed that the inventory proceedings proceeded further by filing a list of assets, appointment of valuer, report of the valuer, drawing of the final list of assets and then filing of an Application for auction, which was granted somewhere in June 2019. The notices were issued only to the parties who reside within the jurisdiction of the Court with regard to the auction. Thereafter, the auction was conducted on 29.09.2021.

41. The learned Trial Court observed that the provisions of Section 388 of the Act of 2012 permit the Court to issue notices to the interested parties within the jurisdiction. Admittedly, the Appellants are not residing within the jurisdiction of the Inventory Court. They are residing in Mumbai. Thus, the provisions of Section 388 clearly provide that the inventory shall proceed in the absence of parties who after having received the first summons or notice do not attend the Court personally or through their Advocate and that such parties shall not be entitled to any further notice of any stage of the proceedings.

42. With these clear provisions of Section 388 of the said Act, the contentions of the Appellants that they were entitled to a separate notice at the time of licitation/auction, is required to be rejected for the simple reason that first of all they failed to appear and contest the proceedings either personally or through an Advocate and secondly, they do not reside within the jurisdiction of the Inventory Court.

43. The learned Trial Court also observed that the list of assets was filed on 28.10.2015 wherein the Court passed an order calling for any objections, if any. Such objections are required to be filed within the stipulated time. If no objections are filed, the matter

has to proceed further for the purpose of valuation and for drawing the final list. It is necessary to note here that the inventory proceedings are required to be conducted in a summary way and therefore, it has to be proceeded in a time bound manner. Since no objections were raised by any of the interested parties including the Appellants, the final list was drawn and thereafter, the matter proceeded further.

44. The learned Trial Court further observed that Section 435 of the Act of 2012 nowhere provides for the issuance of any notice upon completion of the valuation of assets and licitation, however, it is for the parties to submit the schedule of partition within 30 days. This provision specifically provides under sub-section (3) that no Appeal shall lie from the order deciding the mode of partition, however, such order may be challenged in an Appeal confirming the partition. Thus, the contentions of the Appellants that notice was required are not supported by such provisions.

45. Another aspect which was raised is that the auction was conducted in September 2021 i.e. during the Covid period, which is again negated by the Trial Court on the ground that specific directions were issued to the Trial Court to conduct a limited number of matters and accordingly, the inventory proceedings were taken up and auction was conducted.

46. At the cost of repetition, it is also required to note that the Application filed under Section 151 of CPC was not at all maintainable when specifically the Act of 2012 and Section 458 of the Act of 2012 provide that the inventory shall not be governed by the Code of Civil Procedure, unless specifically provided for. In such circumstances, recourse to Section 151 of CPC is clearly not applicable to such a party. The only course available is to file an Appeal either against the orders passed by the Court at various stages of the inventory proceedings or against the final order as provided under Section 451 of the said Act.

47. The attempt of the Appellants first of all to file an Application under Section 151 of CPC and then to challenge such order, thereby raising a challenge to various orders passed in the inventory proceedings from its beginning, cannot be allowed to be entertained when limitation to file Appeal against such order expired.

48. For all the above reasons, the impugned order needs no interference. The Appeal, therefore, stands dismissed.

BHARAT P. DESHPANDE, J.