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IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL APPLICATION NO.67 OF 2023
IN
FIRST APPEAL NO.48 OF 2023**

Mr. Edgar Francisco Valles,
69 years of age, married,
son of Late Edgar Valles,
Portuguese National,
Having his office at
Av. Da Republica,
97 rc. 1050-190 Lisboa,
Portugal.

... Applicant

Versus

1. Mr. Ajit Sukhija,
Son of Late Colonel (Dr.)
Chamanlal Sukhija,
Major, residing at House No. 165. Campal,
Panaji, Goa.

2. Miss. Filomena Fernandes,
SINCE DECEASED
Major, residing at house no. E-346,
Morgado, St.Inez,
Panaji Goa, Indian National,

Amended as per
order dated
16.10.2023

3. Mrs. Guida Da Silva,
Major, [resident of 7 Marina House,
New Marine Lines, Mumbai.] [DELETED]
Indian National, resident of
3A, Kakad House 'A' Wing,
3rd floor, II, V. Thakersey Marg
Mumbai 400 020

Amended as per
order dated
16.10.2023

4. Dr. Maria Lilia de Sequeira Sukhija,
Major, married, wife of Plaintiff,
Residing at House no. 165, Campal,
Panaji, Goa Indian National,

5. Ms. Rajni Porob
Major, r/o. H.N. E-346
Morgado, St. Inez, Panaji, Goa.

6. Mr. Chandrakant Pissurlekar,
Major, resident of Dwarka Ram Nivas,
Khadpabandh, Ponda Goa. ... Respondents

Mr Sudin Usgaonkar, Senior Advocate with Ms T. Mashelkar,
Advocate *for the Applicant*.

Mr S.D. Lotlikar, Senior Advocate with Ms V. Mahato, Advocate *for Respondent No.1*.

CORAM: M.S. SONAK &

VALMIKI SA MENEZES, JJ.

DATED: 26th February 2024

P.C.:

1. This is a civil application seeking interim relief of stay of the operation of Judgment and Decree dated 17.01.2023 passed by the Civil Judge Senior Division, Panaji in Special Civil Suit No.54/2007/B. By the impugned Decree, the Civil Court has declared Will dated 22.08.2005 executed by late Augusta Iria Valles in favour of the Appellant/Original Defendant No.1 Null and Void; The Decree permanently restrains the Appellant from deriving any benefit under the Will or laying claim to any part of the estate of late Augusta on the strength of the Will or from creating

third party rights of dealing with the assets belonging to the estate, and further directs the Appellant to bring back whatever he has received from the estate on the strength of the Will, along with interest of 6% per annum from the date of appropriation of the benefits, and to furnish true and correct accounts in respect of monies invested and other valuables of the estate.

2. During the pendency of the suit, an interim order dated 20.09.2007 passed by this Court in Appeal from Order No.67/2007 arising from the suit, came to be passed and was in operation throughout, till the impugned decree was passed. The order reads as under:-

“The appeal from order has been filed by separate order. As far as grant of interim relief is concerned, I am not inclined to grant the blanket stay of the operation of the Will. In my view, defendant Nos. 2 to 3 & 5 who are the beneficiaries should not be deprived of the benefits which accrued to them under the Will. As far as defendant No.4 is concerned, she is the wife of the plaintiff and she has chosen to deny the validity of the Will. In the circumstances, she is injunctioned from claiming any of the benefits under the Will. As far as defendant No.1 is concerned, he is admittedly residing in Portugal. As against him to prevent irreparable injury, I am inclined to give limited interim relief since he is universal legatee. The respondent No.1 is therefore, injunctioned from creating any third party rights in respect of immovable properties which may devolve upon him under the Will dated 22.8.2005. As regards the moneys, stocks, other investments and movable properties which may devolve upon him under the Will, he will be entitled to encash or enjoy the same within the Country. He will however, not take these benefits out of the country without obtaining prior permission of this Court. He will maintain accounts of the properties of the benefits received by him. C. A. disposed off.”

3. After the impugned Decree was passed, an Inventory Proceeding bearing No.15/2004/B came to be filed at the behest of the Respondent No.1 herein, for the allotment and distribution of the estate of late Augusta, in the absence of the Will executed in favour of the Appellant. In the Inventory Proceeding, the Court has appointed Respondent No.1 as the Administrator, and it is submitted by the Appellant, that he has not been served with notice of these proceedings. It is further stated by the Appellant that he intends on testing these proceedings and would seek to get himself appointed as the Administrator in place of the Respondent No.1, on the claim that he has a preference over Respondent No.1 in terms of the law. That being the situation, the Execution Proceedings pending before the Civil Court to execute the impugned Decree would not achieve any end, since all questions connected with the execution of the Decree and allotment of the estate would have to be decided in the Inventory Proceeding. Even the question of who would administer the estate and collect its income or submit further accounts would depend upon orders passed by the Inventory Court on the appointment of an administrator.

4. Considering these facts, and considering the interim order which was in operation during the pendency of the suit, we are of the opinion that the following order would justly balance the rival cases of the parties as an interim arrangement, till the disposal of the Appeal.

5. Pending disposal of the First Appeal No.48/2023 and until further orders of this Court, the impugned Judgment and Decree dated 17th January 2023 shall stand stayed only to the extent of the direction to the Appellant/Original Defendant No.1 to bring back all and whatever he has received from the estate left by late Augusta Iria Valles with interest @ 6%

p.a. thereon from the date of appropriation of the benefits.

6. Further, the Appellant is restrained from creating any third party rights, or alienating, leasing or transferring in any manner or granting on leave and licence basis any of the assets belonging to late Augusta Valles.

7. Until the Inventory Court/Civil Judge Senior Division, Panaji decides in Inventory Proceeding No.15/2024/B who shall administer the estate of late Augusta Valles, the Appellant shall continue to deposit in the Inventory Proceeding, every month, a sum of ₹50,000/- from the income of the estate; On the Inventory Court deciding the appointment of the Administrator, it shall be that heir so appointed who shall administer the estate in terms of law.

8. The Appellant shall furnish to the Inventory Court true and correct accounts of all the monies of the estate belonging to Augusta invested by him as also of all valuables and continue to file the same before the Inventory Court until the Administrator is appointed.

9. The result in the Inventory Proceeding shall be subject to the final outcome of the appeal. Since no part of the impugned decree would now survive to be executed on the passing of this order, the execution proceeding bearing Special Execution Application No. 4/2023 before the Civil Judge, Senior Division, Panaji shall stand disposed. In that view of the matter, all further steps with regard to the estate of late Augusta Valles shall be filed and decided by the Inventory Court.

10. The Application stands disposed of in the above terms.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.