

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****APPEAL FROM ORDER NO. 13 OF 2024**

Shri. Nilesh M. Mahatme, son of late Manohar Moreshwar Mahatme, aged 66 years, service, resident of 5/3 Gurudeo Co-operative Housing Society, Hatiskar Marg, Prabhadevi Sea Face, Mumbai, State of Maharashtra 400 025, through his duly constituted attorney, Shri. Dileep Bhairao Mahatme, son of Shri. Bhairao Mahatme, aged 83 years, resident of 9/ 1, Saklnagar Baner Road, Aundh Pune, State of Maharashtra 411 007.

... APPELLANT

Versus

1. Smt. Tejaswini Mahatme, widow of Manohar Moreshwar Mahatme, aged 95 years, housewife, resident of 5/3, Gurudeo Co-operative Housing Society, Hatiskar Marg, Prabhadevi Sea Face, Mumbai, State of Maharashtra 400 025;
2. Smt. Dhanashree Nilesh Mahatme, wife of Shri. Nilesh M. Mahatme, aged 60 years, housewife, resident of 5/3, Gurudeo Co-operative Housing Society, Hatiskar Marg, Prabhadevi Sea Face, Mumbai, State of Maharashtra 400 025;
3. Smt. Archana Phenani, widow of Shailesh Phenani, daughter of late Smt. Usha S. Danait and late Suryakant D. Danait, aged 50 years, housewife, resident of 2/6, Ganesh Niketan, Prof. V.S. Agashe Road, Near Portuguese Church, Dadar – West, Dadar, Mumbai, State of Maharashtra 400 028;

4. Shri. Shailesh Phenani (since deceased) his legal heirs:

- (a) Kum. Arnav Shailesh Phenani, son of late Shailesh Phenani, 17 years of age, student;
- (b) Kum. Sharvani Shailesh Phenani, daughter of late Shailesh Phenani, 17 years of age, student,

Both residents of 2/6, Ganesh Niketan, Prof. V.S. Agashe Road, Near Portuguese Church, Dadar West, Dadar, Mumbai, State of Maharashtra 400 028, (Respondent nos. 4(a) and 4(b) are represented by their mother and natural guardian — Respondent no. 3);

5. Smt. Shamala Sabnis (since deceased) her legal heirs:

- (a) Shri. Dattaram Sabnis, son of late Vaman Sabnis, 88 years of age, retired, resident of Flat No. 8/A, First floor, Yesshodham Jivan Co-op. Housing Society, Rajaji Path, Dombivali-East, District-Thana, State of Maharashtra;
- (b) Shri. Rajesh Dattaram Sabnis, son of Shri. Dattaram Sabnis, 53 years of age;
- (c) Smt. Deepali Rajesh Sabnis, wife of Shri. Rajesh Dattaram Sabnis, 51 years of age,

Both residents of B1402 Anamitra Prakruti Park, Off G.B. Road, Thane-West, State of Maharashtra;

- (d) Smt. Rekha Upendra Chitre, daughter of Shri. Dattaram Sabnis, 48 years of age;

(e) Shri. Upendra Rajanikant Chitre son of Shri. Rajanikant D. Chitre, 52 years of age,

Both residents of F604, Pinewood, Vasant Garden, Off L.B.S. Marg, Mulund-West, Mumbai, State of Maharashtra.

... RESPONDENTS

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Appellant.

Mr. Rui Gomes Pereira, Advocate for the Interested Parties/ Respondents.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 19th JUNE 2024

ORAL JUDGMENT:

1. Heard.

2. Admit.

3. Heard finally since the parties appearing for the other side are also not disputing the contentions raised by the Appellant in the Appeal.

4. Mr. Usgaonkar, the learned Senior Counsel submits that after the inventory was completed, it was observed that due to

inadvertence only one survey number was entered for the purpose of the said inventory and therefore, an Application was filed under Section 446 of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 (the Succession Act, for short) for the purpose of amendment to the partition. He submits that such an Application was filed by the Head of the Family (HoF), which was not objected to by the interested parties. He further submits that the learned Inventory Court passed an order on 13.02.2024 observing that though there is some variation in the spelling of the name of the deceased as appearing in the survey records, the same could be ignored as a minor discrepancy. However, directed the Appellant to produce other documents in support of such Application. The learned Inventory Court also directed the Appellant to verify the share of the deceased in the said survey holdings. He submits that after the production of such material including the Surveyor's report, a separate order was passed on 04.04.2024 wherein the learned Inventory Court again took up the issue of variance in the name of the deceased in the survey holdings as well as in the name of the property and partly allowed the said Application thereby directing to re-open the original inventory in order to enable the Appellant to file additional list of assets with respect to the survey numbers excluding Survey Nos. 237/12, 258/1, 258/3, 258/9, 258/10, 258/12, 258/14 and 258/16.

The remaining survey holdings were allowed to be included in the additional list.

5. Mr. Usgaonkar would submit that it is not a civil suit/proceedings for declaration so as to examine upon the matter and the statements of the HoF on affidavit ought to have been accepted. It is submitted that there is no objection raised by the interested parties to such an Application and in fact, all the interested parties supported such Application. However, the learned Trial Court upon its own motion went up to observe that the name of the deceased is different and the name of the property is different in some survey holdings and accordingly, rejected the prayer partly with regard to the amendment of the partition. He submits that such reasoning is contrary to the order dated 13.02.2024 passed by the same Court. He further submits that there is no rational view taken by the learned Inventory Court while rejecting part of survey holdings and allowing the remaining, even though, the name of the original property is not found recorded in the survey holdings.

6. Mr. Usgaonkar would submit that Section 399 of the Succession Act deals with the list of assets whereas sub-section 5 deals with the identification of the property by way of land

registration details, description and inscription details, matrix numbers, location and the area. He submits that there is no procedure to identify the property by a specific name. Thus, the observations of the learned Trial Court regarding variance of the name of the property have no significance.

7. Mr. Rui Gomes Pereira appearing for the interested parties also supported the contentions raised by the learned Senior Counsel.

8. In the case of **Suresh Lawanis & Others Vs. Arun Lavanis & Others, 2008(6) Mh.L.J. 754**, the learned Single Judge of this Court while dealing with Article 2073 and the procedure to be adopted observed that the declaration made by the Administrator needs to be accepted as true until the contrary is proved. In the matter in hand, the HoF filed an Application for declaration that some survey holdings remained to be included in the original list and therefore, the amendment is necessary.

9. In the case of **Zacarias Durate Pereira Vs. Camilo Inacio Pereira, AIR 1984 Bom 295**, the learned Single Judge while dealing with the inventory proceedings clearly observed that such proceedings are more administrative than the litigation

between the two parties contesting with each other. Accordingly, the same view has been reiterated by the learned Single Judge of this Court in the case of **Damodar Ramnath Alve Vs. Gokuldas Ramnath Alve & Others, (1997) 4 Bom CR 653.**

10. Keeping in mind the said proposition as found mentioned in the above decisions, the question of rejecting or partly rejecting such an Application and that too by holding contrary in two orders needs to be considered.

11. The first order was passed on 13.02.2024 on an Application filed under Section 446 of the Succession Act. While dealing with the name of the deceased, the learned Trial Court observed that the spelling of the name varies, but, the benefit of such a mistake could be given to the Applicant. Admittedly, the name of the deceased is shown as 'Moreshwar Mahatme'. At some places, the first name of 'Moreshwar' has been spelt incorrectly. However, the fact remains that the name of the father and the surname remain the same in all the survey records. In such circumstances, Mr. Usgaonkar placed reliance on **Sirajul Hoque Vs. State of Assam & Others, (2019) 5 SCC 534** and more specifically on paragraph 3, which reads thus:

“3. There is no doubt that the great grandfather’s name Amtullah appears as Amtullah throughout the document. Equally, there is no doubt about the father’s name which appears as Hakim Ali throughout. The only discrepancy found is that in some of the documents Kefatullah later becomes Kematullah. However, what is important to note is that his father’s name Amtullah continues as Amtullah and the other family members associated continued as such. Also produced are NRC Registration details of the year 1971 of the grandfather who is noted to be Kefatullah in this document. Other voters lists are then produced where the letter F becomes the letter M with other family names remaining the same. In fact, the appellant has himself produced a document of 1981 from the Income Tax Department giving his Permanent Account Number. Apart from these documents, certain other later documents have also been produced including photo identity cards issued by the Election Commission of India and identity cards issued to his brother including voters lists in which the appellant’s name appears.”

12. The Apex Court while considering the difference in the name or the spelling, clearly observed that such discrepancies are bound to occur and when the other records as well as the father’s name and the surname are the same, such discrepancies need to be ignored.

13. The second order passed by the learned Trial Court on 04.04.2024 would clearly go to show that the said Court has ignored its own earlier findings with regard to the minor discrepancies in the name recorded in the survey records wherein at one place, the name is shown as 'Moreshwar' whereas, at the other place, it is shown as 'Mareshwar'. However, the learned Trial Court completely failed to consider that the father's name and surname are the same. Similarly, the other interested parties did not object to such inclusion of survey holdings, claiming that such property was owned and possessed by Moreshwar.

14. The next aspect is with regard to the name of the property as appearing in different documents including the survey holdings. As rightly pointed out by Mr. Usgaonkar, the identification of the property is only as per Section 399(5) of the Succession Act and for proper identification of the immovable property, the land registration details, description and inscription details, land records, matriz numbers, location and the area are necessary. There is absolutely no reference with regard to the name of the property as one of the factors identifying it.

15. Thus, it is common knowledge that properties are given locations, and names for the purpose of easy identification of the

same to the public as well as the co-owners. Though such names are reflected in the earlier documents like the land registration details, description and inscription details, matriz records as well as the records in the survey holdings, such names, nowhere form the basis for identification in the Court of law. The immovable property is required to be identified on the basis of survey holdings, boundaries, area and location.

16. Thus, the objection raised by the learned Trial Court with regard to the name or variance in the name/spelling of Moreshwar and on the basis of a different name mentioned of the suit property, are not materially affecting the contentions raised by the HoF with regard to the identification or amendment under Section 446 of the Succession Act.

17. The observations of the learned Trial Court in the impugned order dated 04.04.2024 are certainly unwarranted and unnecessary, qua the name and the discrepancies therein. When the HoF made a declaration and the same was not objected to by the interested parties, and that such amendment is supported by relevant documents, the same ought to have been allowed.

18. Similarly, the observations of the learned Trial Court while allowing some of the survey holdings and rejecting the remaining

ones, is itself contrary to its own observations. Accordingly, the impugned order thereby rejecting the survey holdings as found mentioned in paragraph 7 of the order dated 04.04.2024, needs to be quashed and set aside. The Application filed under Section 446 of the Succession Act needs to be allowed.

19. Having said so, the impugned order wherein part of the survey holdings are rejected is quashed and set aside. The Application filed under Section 446 of the Succession Act stands allowed.

20. The Appeal stands disposed of in the above terms.

BHARAT P. DESHPANDE, J.