



shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.727 OF 2024

WITH

WRIT PETITION NO.728 OF 2024

WITH

WRIT PETITION NO.729 OF 2024

WITH

WRIT PETITION NO.730 OF 2024

WRIT PETITION NO.727 OF 2024

ISHANI DATTARAJ DESAI
@ ISHANI DATTARAJ SINAI
DESAI REP. HER NATURAL
GUARDIAN AND MOTHER

... PETITIONER

Versus

SANJEEV NARAYAN DESAI @
SANJIV DESAI OR SANJIV
NARAYAN DESAI AND 2 ORS.

... RESPONDENTS

WITH

WRIT PETITION NO.728 OF 2024

SHRIPAD DATTARAJ DESAI
@ SHRIPAD DATTARAJ SINAI
DESAI REP. HER NATURAL
GUARDIAN AND MOTHER

... PETITIONER

Versus

SANJEEV NARAYAN DESAI @
SANJIV DESAI OR SANJIV
NARAYAN DESAI AND 2 ORS.

... RESPONDENTS

WITH

WRIT PETITION NO.729 OF 2024

OMKAR NARAYAN PRABHU
REP. HIS MATERNAL UNCLE
UMESH V. KURDIKAR

... PETITIONER

Versus

ANIL SITARAM PRABHU AND
2 ORS.

... RESPONDENTS

**WITH
WITHWRIT PETITION NO.730 OF 2024**

OMKAR NARAYAN PRABHU
REP. HIS MATERNAL UNCLE
UMESH V. KURDIKAR ... PETITIONER
Versus
ANIL SITARAM PRABHU AND
2 ORS. ... RESPONDENTS

Mr. Sudin Usgaonkar, Senior Counsel along with Mr. Ashwin Ramani and Ms. Vinita Palyekar, Advocates for the Applicants.

Mr. Rui Gomes Pereira, Advocate for the Respondents.

Mr. Nikhil Vaze, Additional Public Prosecutor for the State-Respondent.

**CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 02nd December, 2024**

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith.
2. Heard Mr. Sudin Usgaonkar learned Senior Counsel along with Mr. Ramani and Ms. Palyekar, Advocates for the Petitioners, Mr. Rui Gomes Pereira learned counsel for the Respondents and Mr Nikhil Vaze learned Additional Public Prosecutor appears for the State.
3. On 20.11.2024, following order was passed:-

P.C.

*1. Mr. S. Usgaonkar, learned Senior Advocate
with Mr. A. Ramani and Ms. Vinita Palyekar,*

learned Counsel for the Petitioner.

2. The challenge in the present petition is to the order passed by the Pernem Court thereby refusing to entertain the application filed under Article 1488 of the Portuguese Code of Civil Procedure for permission to sell the share of the minor/not sound mind.

3. Mr. Usgaonkar submits that the inventory proceedings were decided by Pernem Court in two matters somewhere in the year 2023. Subsequently, in the year 2024, the application is filed for the purpose of permission to sell the share of the minor as provided under Chapter XVIII of the Portuguese Code of Civil Procedure which is applicable in Goa and dealing with proceedings of not contentious jurisdiction.

4. Mr. Usgaonkar submits that a Family Council was constituted and the say of the learned Additional Public Prosecutor was obtained who gave consent. However, the learned Trial Court on its own decided that the said Court is not having jurisdiction and rejected the application

by directing the Petitioners to approach the jurisdictional Court.

5. Mr. Usgaonkar submits that such observation of the trial Court is itself a jurisdictional error as the application for permission to sell the share is coming under the caption of "Misc. proceedings" in the main matter itself, which was decided by the same Court.

6. Issue notice to the Respondents, Apart from it, the notice is required to be served on the office of the learned Public Prosecutor as provided in the Code and as done by the learned trial Court before passing the impugned order.

7. Humdast is allowed.

4. In the present matter, the learned Trial Court by the impugned order refused to entertain an application filed under Article 1488 of the Code of Civil Procedure for permission to sell share of minor/not sound mind on the ground that Section 34 of the Goa Civil Courts Act provides that the matters proceeding before the Comarca Court shall be transferred to the Civil Judge Senior Division. Accordingly, she directed the Petitioners to approach appropriate Court i.e. Civil Judge Senior Division for permission

5. Mr. Usgaonkar, while placing reliance on Section 34 of Goa Civil Courts Act and more particularly, sub-section 2(b) and (c), would submit that such provisions would be attracted only in cases of pending matters as on the day of repeal of the provisions of the Portuguese Civil Code. He submits that the matter in the present proceedings, the inventory (Port. C.M.A. No.7/2024 and Port. C.M.A. No. 8/2024) was disposed of by the concerned Court, and there was no proceeding pending as on the date of filing of present application.

6. Mr. Usgaonkar submits that Respondent as well as learned Public Prosecutor appearing before the Trial Court gave no objection to application for sale of the share of the minor. However, the learned Trial Court on its own, considered the provisions of Goa Civil Courts Act and by a wrong interpretation passed the impugned order.

7. The contentions now raised by Mr. Usgaonkar are having merits.

8. The provisions of Section 34 of Goa Civil Courts Act deals with repeal and savings. Sub-section 2 and more particularly (b) and (c) deals with the matters which were pending before the Court of Comarca and the Court of Julgado, which were supposed to be

transferred to the corresponding Civil Judge Senior Division and Civil Judge Junior Division Courts. Thus, above provisions are clearly dealing with matters pending before concerned Courts as on the date of repeal. Such provisions cannot be made applicable to a matter, which is already disposed of by the same Court and subsequently same application is filed for permission to sell shares of the minor/not sound mind.

9. The fact remains that the application has not been opposed by the other interested parties as well as by the Public Prosecutor. Thus, the order passed by the Trial Court needs interference as same is passed by considering the provisions of the matter pending as on the date of repeal.

10. Remaining two matters (Port. C.M.A No.11/2024 and Port. C.M.A. No. 12/2024) wherein no inventory proceedings was filed, will have to be dealt with the Trial Court in accordance with law, since the properties are situated within the jurisdiction of the said Court as well as the valuation has to be taken into account.

11. Parties shall appear before the Trial Court on 16/12/2024 at 10:00 a.m. The Trial Court shall make an endeavour to dispose of the application within one month.

12. For all the above reasons, impugned order is required to be quashed and set aside by restoring the applications file under Article 1488 of the Civil Procedure Code.
13. Learned Trial Court is accordingly directed to decide such application in accordance with law.
14. Rule made absolute in above terms.

BHARAT P. DESHPANDE, J.