



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO.111 OF 2023
WITH
CIVIL APPLICATION NO.124 OF 2023**

1. Mrs Anita Vithal Arondekar, wife of late Vithal Arondekar, about 71 years in age, widow, Indian National, resident of H.No.E164/3N, Serene Hills, Kadamba Plateau, near Narendra Maharaj Math, Baiguinim, Velha-Goa, Tiswadi-Goa.
2. Mr Saprem Vithal Arondekar, son of late Vithal Arondekar, about 38 years in age, bachelor, Indian National, resident of H.No.E164/3N, Serene Hills, Kadamba Plateau, near Narendra Maharaj Math, Baiguinim, Velha-Goa, Tiswadi-Goa.
3. Mrs Suchita Dinesh Apte, Daughter of late Vithal Arondekar, about 53 years in age, married, Indian National, resident of H.No.478, Chodan Wada, Salvador-do-Mundo, Bardez-Goa.
4. Mrs Suchita Dinesh Apte, Daughter of late Vithal Arondekar, about 53 years in age, married, Indian National, resident of H.No.478, Chodan Wada, Salvador-do-Mundo, Bardez-Goa. Applicants

Versus

1. Mrs Asmita Sunil Arondekar, wife of late Sunil Arondekar, major in age, married, Indian National, resident of H.No.E164/3N, Serene Hills, Kadamba Plateau, near Narendra Maharaj Math, Baiguinim, Velha-Goa, Tiswadi-Goa.

2. Mast. Viaansh Sunil Arondekar, minor in age, student, Indian National, resident of H.No.E164/3N, Serene Hills, Kadamba Plateau, near Narendra Maharaj Math, Baiguinim, Velha-Goa, Tiswadi-Goa.
3. Ms. Aadhyा Sunil Arondekar, daughter of late Sunil Arondekar, minor in age, student, Indian National, resident of H.No.E164/3N, Serene Hills, Kadamba Plateau, near Narendra Maharaj Math, Baiguinim, Velha-Goa, Tiswadi-Goa.
[Resp. 2 and 3, through their natural guardian i.e. Resp. No.1] ... Respondents
[Mentioned above are registered addresses of Interested Parties]

Mr Omkar Thakur, Advocate for the Appellants.

Mr Ashwin D. Bhobe, Advocate with Ms Nicole Mayekar, Advocate for Respondents No.1 to 3.

CORAM: VALMIKI MENEZES, JJ.

DATE: 26th September, 2024.

ORAL JUDGMENT:

1. Heard Mr Omkar Thakur, learned Counsel for the appellants and Mr Ashwin Bhobe, learned Counsel for the respondent.
2. This First Appeal was admitted on 30.11.2023. With the consent of all parties, same is taken up for final hearing and disposal.
3. The appeal impugns Judgment dated 30.06.2023 passed by the Civil Judge Junior Division, E Court at Panaji in Inventory Proceedings No.18/2021 by which the Chart of Allotment has been drawn up wherein specific properties were allotted from the estate of the deceased

Sunil Arondekar. Whilst assailing the impugned Judgment and Chart of Partition, the appellants have also raised a ground challenging an order dated 02.05.2023, by which their application for impleadment as interested parties to the inventory proceedings was dismissed resulting in the impugned Judgment being passed in their absence.

4. The point for determination that arose is the following:-

Whether the impugned Judgment dated 30.06.2023 partitioning/alloting the estate of deceased Sunil Arondekar is vitiated by the passing of the impugned Order dated 02.05.2023 closing the evidence of the appellants/newly impleaded parties.

5. It is the contention of the appellants that on the demise of Sunil Arondekar, apart from his spouse, respondent no.1 herein and his two children, respondents no.2 and 3, the appellants, who are, the mother of the estate leaver and his siblings, are interested parties and ought to be successors to his estate. The claim has been raised to a share in the estate on the premise that the properties concerned in the inventory proceedings form part of Hindu Joint Family and the properties do not belong exclusively to the estate of deceased Sunil Arondekar.

6. It was further contended by the appellants that since the appellants are interested parties, they sought impleadment in the inventory proceedings which was dismissed vide order dated 18.12.2021 passed by the Inventory Court; this order came to be assailed in Appeal From Order No.295/2022(Filing) before this Court, which was ultimately allowed vide judgment dated 26.08.2022. By this Judgment

the appellants were impleaded in the inventory proceedings and consequently, were required to be evidenced to show that they were interested parties in the estate to be partitioned under inventory. This Court's judgment further noted that the scope of enquiry of the application before the Inventory Court was to determine whether the appellants were interested parties and whether they would be entitled to any share or right in the estate which was subject matter of the inventory proceedings.

7. It is the contention of the appellants that the appellant no.4 filed his affidavit in evidence on the impleadment application before the Inventory Court on 16.12.2022 after which the matter was adjourned on at least three occasions since the Presiding Officer of the Inventory Court was on leave for official work. Though an adjournment was sought at the behest of the advocate appearing for the appellants on 15.04.2023 on the ground that he was required to attend the training organised by the Bar Council of Maharashtra and Goa, on the very next date, i.e. on 02.05.2023 when time was sought by the advocate for the appellants on the ground that the witness was out of station on that date for some personal work, the application for adjournment came to be rejected by the impugned order and the evidence of the appellants was closed. Consequently, the inventory proceedings culminated in taking absence of the appellants, in the impugned Judgment dated 30.06.2023, by which the estate came to be partitioned/allotted and claim of the appellants was not considered. It is submitted that the passing of the impugned order dated 02.05.2023 has resulted in vitiating the Judgment and Chart of Allotment passed by the Inventory Court, inasmuch as the appellants have been denied their right to the estate.

8. Per contra, the appeal has been opposed by Shri Bhobe, learned Counsel appearing for the respondents; he has supported the impugned Judgment and the passing of the impugned order dated 02.05.2023, submitting that it was at the behest of the appellants who have filed a petition before this Court that the impleadment of the appellants was allowed. He submits that under those circumstances it was incumbent upon the appellants to diligently pursue the application and lead evidence on their claim without seeking unnecessary adjournment. He submits that after the affidavit in evidence was filed on 16.12.2022, the appellants sought time on at least two occasions, on 12.01.2023 and on 05.04.2023. The impugned order dated 02.05.2023 was passed considering these circumstances which justify closing the evidence of the appellants.

9. I have perused the record and considered the arguments of learned Counsel for the parties. The impleadment of the appellants as parties to the inventory proceedings pursuant to the Judgment of this Court dated 26.08.2022 set aside the earlier order of the Inventory Court itself allowing their impleadment, it would have been expected of the appellants to seek no further adjournment and to proceed with the completion of their evidence in an expeditious manner. After affidavit in evidence was filed on 16.12.2022, the appellants have sought time on two occasions, the first being on 12.01.2023 and the second occasion arose on 21.01.2023. The trial Court has found justifiable reasons for adjourning the matter on both those occasions. The reasons on which the adjournment was granted on previous occasions and merely for the fact that two adjournments have been granted could by no means be a reason for rejecting the application for adjournment on 02.05.2023.

That application had to be decided on its own merits. From the record it does not appear that the appellants were resorting to any dilatory tactics since between 16.12.2022 and 02.05.2023, out of seven hearings that took place, three of the hearings were adjourned due to unavailability of the Presiding Officer. On this count, it would be unfair to the appellants to close their evidence. The point for determination as framed above is answered in the affirmative. Consequently, for the aforesaid reasons the impugned order dated 02.05.2023 stands quashed and set aside.

10. As a consequence of the impugned order, the resultant Judgment passed in absence of the claim raised by the appellants, is required to be set aside since the claim will have to be considered on its own merits by the trial Court. Consequently, the impugned Judgment and the Chart of Allotment dated 30.06.2023 is quashed and set aside.

11. The Inventory Court shall now proceed to record the evidence of the appellants/intervenors. The learned Advocate for the appellants today undertakes, on instructions of the appellants, that the appellants would complete their evidence without seeking any further adjournments. He submits that the appellants would examine only two witnesses and, thereafter, close their evidence.

12. For the reasons set out in the impugned order dated 02.05.2023 and impugned Judgment, the Chart of Allotment and the Decree dated 30.06.2023 are quashed and set aside. Consequently, the parties shall appear before the Inventory Court in the inventory proceedings on 07.10.2024 at 02:30PM. It is made clear that the appellants shall refrain from seeking unnecessary adjournment and shall complete their evidence as expeditiously as possible.

- 13.** Registry to draw the decree accordingly.
- 14.** Civil Application No.124 of 2023 also stands disposed of.

VALMIKI MENEZES, J.