

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.705 OF 2015

Shri Vaman Krishna Mandrekar,
Through his legal heirs
1(a). Pramod Vaman Mandrekar and his wife

1(b). Smt Rakhi P. Mandrekar
Both major, r/o H No. 802, Deugi,
Chorao, Ilhas, Goa

1(c) Smt Navita Ramesh Naik,
Major, r/o Near Panchayat House
Carambolim, Ilhas, Goa

1(d). Smt Jyotsna Vaman Mandrekar
alias Vaishali Vishant Uskaikar
Major, r/o H No.231, St Caitan,
Keribhat, Merces, Tiswadi, Goa.

1(e). Shri Siddarth alias Krishna
Vaman Mandrekar,
major, r/o H No. 802, Deugi,
Chorao, Ilhas, Goa

1(f). Shri Vishwas alias Ramkrishna
Vaman Mandrekar, and his wife

1(g) Smt Sharmila R. Mandrekar
Both major, r/o H No. 802, Deugi, Chorao, Ilhas,
Goa, Residing at Deugi, Chorao.

2. Smt Rajai Vaman Mandrekar,
major, r/o H No. 802, Deugi,
Chorao, Ilhas, Goa,
Through the Power of Attorney
for the Petitioners 1(c) to 1(f), 2.

3. Mr Shashikant K. Mandrekar and his wife

4. Smt Praful S Mandrekar

Both major, r/o H No. 854, Deugi,
Chorao, Ilhas, Goa

... Petitioner

Versus

1. Shri Satchit Krishna Manderkar,
and his wife
2. Smt. Pushpavati Satchit Mandrekar,
both major in age
and both residing at Deugi, Chorao,
H.No. 793, Ilhas Goa.
3. Mr Vishant Pandhari Uskaikar
Major, r/o H No.231, St Caitan, Keribhat,
Merce, Tiswadi, Goa.
4. Smt Dayavati C. Naik,
Major, r/o H No. 38, Near Govt primary School
Nagzari, Ponda, Goa

...Respondents

Mr. Nigel Da Costa Frias with Mr. Vishal Sawant and Mr. Shane Coutinho, Advocates for the Petitioners.

Mr. M.B. D'Costa, Senior Advocate with Mr Rehan Abbasi,
Advocate for the Respondents.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: **8th February, 2024**

PRONOUNCED 12th February, 2024
ON:

JUDGMENT:

1. Rule was issued vide order dated 09/12/2015.
2. Heard Mr. Nigel Da Costa Frias, learned Counsel for the petitioner and Mr. M.B. D'Costa, learned Senior Advocate for the Respondent

3. A limited question is raised in the present petition as to whether the order passed by the First Appellate Court in allowing the appeal and rejecting the order of the Inventory Court for fixing the date of auction, needs interference.

4. Mr. Costa Frias would submit that upon the death of Krishna Mandrekar the Inventory Proceedings were instituted bearing No.102 of 1999 before Panaji Court. Only one immovable property was listed in the list of assets left over by the deceased. Head of the family appointed by the Inventory Court applied for fixing the date for auction on the ground that valuation has been done and the description of assets left is also prepared. The learned Court passed an order on 30/04/2009 on such application that the matter is fixed for auction.

5. Mr Costa Frias would further submit that immediately after passing of such order, the Inventory Court passed another order on the same date thereby keeping the matter sine die since suit between the parties was filed. It was directed that the Inventory will be taken up only and when the proceedings between the parties is disposed of. Subsequently on 23/07/2010 head of the family vide his application requested the Inventory Court to take up the matter on board. Notices were issued to the interested parties and the matter was fixed for appearance from time to time.

6. Mr. Costa Frias would then submit that an application was filed on 06/12/2012 for fixing the date for auction, which was objected by filing reply by the respondents. The Inventory Court after hearing both the parties allowed such application and fixed the matter for auction.

7. Mr. Costa Frias would submit that the interested party filed appeal challenging the said order of the Inventory Court on the ground that the application for licitation/auction was not filed within time and therefore such right of the party stands waived. The Appellate Court by accepting contentions of the respondents allowed the appeal, which is challenged in the present matter.

8. Mr. Costa Frias would submit that the order passed by the Inventory Court on 30/04/2009 is still in existence and such order being a judicial order is having the force of law till it is vacated, recalled or declared void by a Court having jurisdiction. He submits that the objections in the appeal were raised with regard to the time in which licitation has to be applied. However he would submit that the first order dated 30/04/2009 is still in operation and which was allowed on an application filed by the head of family which has not been objected or set aside till date.

9. Mr. Costa Frias would submit that subsequent application dated 06/12/2012 was only with a purpose of fixing a particular date for

auction since the earlier application was allowed for licitation/auction. He submits that the Appellate Court misconstrued two different aspects and arrived at a wrong conclusion.

10. Mr. M.B. D'Costa, learned Senior Counsel appearing for the respondents would submit that Article 1391 is very clear and the application itself is bad in law as there is no contention of the head of family that he is bidding for the said proceedings. There is no expression for desire to auction. He submits that therefore the order dated 30/04/2009 is of no consequence as it is not in accordance with Article 1391.

11. Mr. D'Costa, learned Senior Counsel would then submit that there is specific limitation for seeking the relief of licitation and on expiry of such period, such right considered to be waived.

12. Rival contentions fall for determination as under.

13. Article 1391 of the Civil Code deals with second examination and inspection of the file in connection with conference of the parties. It provides that after the description is made, what is provided in the first part of Article 1390 shall be observed.

14. Article 1390 deals with final description. The first part provide that after the appraisal is finalised within eight days the office should make the final description of the properties and of the debt with indication of their value.

15. Thus once the description is made, as per first para of Article 1390, the provisions of Article 1391 comes in to play. It shows that during the time of examination or of the inspection it is lawful to complain against excessive valuation, make application to convene the conference of the parties and make declaration of licitation on certain and specified properties indicating the value offered over and above the valuation. It could be done till the time of examination, by the parties who have not appointed the Advocate.

16. The sole paragraph (proviso) to Article 1391 says that the licitations may be applied only till the end of the time for examinations.

17. Article 1379 deals with examination and inspection of the file. It provides that once the lists of the properties have been submitted or the time within which they should have submitted has expired, the file shall be made available, for examination, for 48 hours, to each of heirs who have appointed Advocate, as per order of their appointment, thereafter to the Advocate of the donee and of the administrator, and finally

inspection shall be given, for the some period to the Public Prosecutor, when the Inventory is of orphan's jurisdiction.

18. Thus the period mentioned in the above provision will certainly varies on the basis of number of heirs who have appointed advocates, the number of donees and finally as directed by the Administrator. Lastly, it comes to the Public Prosecutor only in case the inventory is of orphan's jurisdiction. Each party who has appointed advocate is entitled for 48 hours of examination of the file.

19. During such period of examination or inspection, the Advocates for the said parties and the Public Prosecutor may complain about lack of description of the properties, or give their say in the case the administrator or the donee deny the existence of the properties in their possession or the duty to bring them under collation, or raise questions as to which properties he received and has obligation to collate.

20. The learned Inventory Court after considering the provisions of Article 1379 as a guidelines and not mandatory, rightly observed that an order was passed on 30/04/2009 for fixing the matter for auction and thereafter the matter was kept sine die. The second application filed on 06/12/2012 is not at all for fixing the matter for auction as by order dated 30/04/2009 the Inventory Court fixed the matter for auction.

Admittedly, such order dated 30/04/2009 was not challenged by any of the interested parties and thus, it becomes binding.

21. The contention of the learned Senior Counsel Shri D'Costa that such order dated 30/04/2009 is of no consequence as it was not passed in accordance with Article 1391, at the first place cannot be accepted at this stage since the said order is passed by a Competent Court having jurisdiction whether rightly or wrongly and by not challenging it, the parties accepted it and same become final.

22. In the case of **Prakash Narain Sharma v/s. Burmah Shell Cooperative Housing Society Ltd.** [(2002) 7 SCC 46], the Apex Court has observed that order passed by Court having jurisdiction remains in force till it is vacated and declared void in a duly constituted judicial proceedings. No person or authority can ignore such order assuming it to be a nullity.

23. In case of **P.K. Palanisamy v/s. N. Arumugham and Anr** [(2009)9 SCC 173], the Apex Court in paragraph 12 observed that it is now a well settled principle of law that an order passed by the Court having jurisdiction shall remain valid unless it is set aside.

24. Keeping in mind above proposition, the order passed by the Inventory Court on 30/04/2009 is very clear and reads thus:

“C.C. to serve I.P. within the jurisdiction of this Court.

Matter fixed for Auction”

25. Thus, it is very clear that the Inventory Court vide order dated 30/04/2009 after considering the application that there is only one item of which valuation was done and the description of assets is also prepared, accepted the contention of the head of family for fixing the matter for auction.

26. Admittedly, this order was not challenged by the respondents and thus it becomes final and binding as well as having force of law as on date.

27. Record further shows that immediately on the same date the matter was kept sine die because some litigation in the Civil Court pending between the parties. Thus, at that time date of auction was not fixed. However on an application filed by the head of family, the inventory was taken up and notices were issued to the interested party.

28. On 06/12/2012 head of family filed an application for fixing a date for auction (licitation). The prayer is only for fixing date of auction. However, this application was objected by the interested party on the ground that application was not made within time limit as provided under the law. The learned Inventory Court passed the order dated

24/01/2013 thereby observing the earlier order dated 30/04/2009 exists and present application is only for fixing of the date. Accordingly, the said application was allowed, which was challenged by the respondents in an appeal before the learned District Court.

29. Perusal of the impugned order passed by the learned District Court, one thing is clear that the learned Court completely misconstrued the facts of the matter and presumed that the application dated 06/13/2012 was filed for the first time for auction or asking for licitation. Only on that premise, the learned District Court by referring to Article 1379 and 1391, comes to the conclusion that such licitation was not asked within time which amounts to waiver of such right.

30. First of all, the order dated 30/04/2009 is very clear by which the learned Inventory Court allowed the request of the head of family for auction (licitation). Such order is never challenged. Thus, it being a judicial order passed by a Court having jurisdiction, cannot be ignored.

31. The application dated 06/12/2012 is in fact not a prayer for licitation but it mainly deals with fixing the date for licitation/action as during the intervening time and specifically after passing the order dated 30/04/2009, the matter was kept sine die i.e. without giving any date. In such circumstances, the head of family was justified in filing application for fixing the date of licitation. The learned Appellate Court

misconstrued such application as the request for auction instead of considering it as fixing the date for licitation for the simple reason that licitation was allowed vide order dated 30/04/2009 without fixing a proper date.

32. Thus, the contentions on behalf of the respondents that there was no proper pleadings in the application dated 30/04/2009 and such order is of no consequence, cannot be accepted as the order was passed by the Court having jurisdiction and thus the question of exercising jurisdiction without considering the ingredients is entirely difference concept. The respondents could have challenged such order on the ground that it was not in accordance with Article 1391. Since no such right was exercised by the respondents, they cannot now claim that the order dated 30/04/2009 needs to be considered as inoperative or invalid.

33. Having said so the First Appellate Court committed error and misconstrued the facts and arrived at perverse findings. Accordingly, the petition succeed in terms of prayer clause ‘A’ which reads thus”

“A. For a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction thereby quashing and setting aside the impugned judgment and order dated 09/04/2015 passed by the District Judge-I, at Panaji in Misc. Civil Appeal No.16/2013.”

34. The rule is made absolute in the above terms.

35. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J