



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

**APPEAL FROM ORDER NO.11 OF 2024
WITH
CIVIL APPLICATION NO.44 OF 2024**

MELANEY MARIE WILHELMINA
DSOUZA AND ANR ...AppellantS
VERSUS
EDLYN CYRIACO DESOUZA
AND ANR. ...RESPONDENTS

**WITH
CIVIL APPLICATION NO.44 OF 2024
IN**

APPEAL FROM ORDER NO.11 OF 2024

MELANEY MARIE WILHELMINA
DSOUZA AND ANR ...AppellantS
VERSUS
EDLYN CYRIACO DESOUZA
AND ANR. ...RESPONDENTS

Mr. Gustavo Monteiro, Advocate for the Appellants.

Ms. A. Agni, Senior Counsel with Ms.Afrin Harihar and Mr.Junaid Shaikh, Advocates for the Respondents.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 04th September, 2024

ORAL ORDER

1. Heard Mr. Monteiro learned counsel for the Appellants and Ms.Agni, learned senior counsel for the Respondents.
2. The challenge in the present appeal is to the order passed on 03/02/2024, thereby rejecting an application filed by the Appellant under Sections 256 and 381 of the Goa Succession, Special

Notaries and Inventory Proceeding Act, 2012 (the Goa Succession Act of 2012 for short)

3. Mr. Monteiro would submit that an inventory proceeding was filed wherein the Respondent No. 1 was appointed as the Head of the Family who submitted the list of assets wherein he included only four properties. The Appellant being the interested party filed objections to such list stating that all properties of the Estate Leaver were not listed.

4. Mr. Monteiro would submit that subsequently, Respondent No. 1 was removed from being the Head of the Family since he is a resident of Canada and in his place, Appellant No. 1 was appointed as the Head of the Family.

5. He would further submit that while preparing the list of assets, the Appellant No. 1 found that three other properties of the Estate Leaver were not included in the list of assets filed by Respondent No. 1 and that too deliberately.

6. He further submits that when the Appellant No. 1 tried to enquire for the purpose of listing of the properties, it was observed that three other properties were already included in another inventory proceeding filed by Ms. Flora. Accordingly, Appellant No. 1 was unable to list the said three properties. She filed list of assets, including only four properties, however, filed the memo

also stating that she is unable to list remaining three properties since such properties are already part and parcel of the inventory filed by Ms. Flora.

7. Mr. Monteiro, further submits that subsequently, Appellant No.1 came across one letter in the handwriting of Respondent No.1, which is dated 02/04/1993, wherein he admitted that the three remaining properties belonging to Estate Leaver exists. Accordingly, the Appellant filed application under Section 256 and 381 of the Goa Succession Act of 2012 claiming that Respondent No. 1, deliberately suppressed three properties from the list of assets and thus, his right should be forfeited in favour of the other interested parties in connection with the said three properties.

8. Mr. Monteiro would submit that the reply is filed on behalf of the Respondent No.1, denying the knowledge about the said three properties as belonging to the Estate Leaver and thereafter, the impugned order was passed, rejecting it only on the ground that there is no material to show that there was deliberate concealment and that the Respondent denied having knowledge of such properties.

9. It is the contention of Mr. Monteiro that the Inventory Court ought to have conducted an enquiry by giving opportunity to the Appellant to demonstrate that there was deliberate suppression of

three properties by the Respondent No. 1 while filing list of assets. He further submitted that even though the Civil Suit is filed by Appellant against three parties, the question of suppression cannot be gone into in the suit and the same will have to be dealt with in the inventory itself.

10. Per contra, Ms. Agni appearing for the Respondents would submit that the proceedings filed before the Inventory Court are required to be decided in a summary manner and that provisions of the Civil Procedure Code are not applicable, except, where it is provided so. She would submit that Section 403 of the said Act provides that when there is a dispute relating to concealment of assets, and where even detailed enquiry is required, the Court shall direct the parties to file a Civil Suit, if they so desire.

11. Ms. Agni would further submit that Respondent No.1 is a resident of Canada, which is admitted by the Appellant, whereas Appellant was staying with the Estate Leaver. The inventory was filed and the list of assets was furnished only on the basis of 4 Wills by which the Estate Leaver bequeathed the properties belonging to him in favour of his children. She submits that the so-called letter which is relied upon by the Appellant is only a note and it nowhere admits about the knowledge of the Respondent No.1 about the ownership of the remaining three properties.

12. Ms. Agni would further submit that the list of assets filed by the Appellant No. 1 is the same as filed by Respondent No. 1 and the Civil Suit which is filed in the year 2022, against Ms. Flora and others, nowhere alleges that Respondent No.1 deliberately concealed such three properties by playing fraud on the Appellant. She would submit that the reply filed to the application would clearly go to show that Respondent No. 1 had no knowledge about the said properties.

13. Ms. Agni would further submit that the Appellant are now trying to stay the inventory proceedings in view of the filing of the Civil Suit, however, such attempt was not successful since the learned Inventory Court rejected the application for stay.

14. In rebuttal, Mr Monteiro, submits that the application for stay was filed subsequent to filing of the present appeal and that there is no suppression of such facts while filing the present.

15. Rival contentions now fall for determination.

16. Section 256 of the Goa Succession Act 2012 reads thus:

256. Concealment of assets of the inheritance by the head of the family or heir.— (1) The moiety holder or heir who fraudulently conceals assets of the inheritance, whether as head of the family or not, forfeits in favour of the heirs or co-heirs, as the case may be, the right he may have to the

concealed assets.

(2) The person who conceals assets is deemed to be merely in custody of those assets and the Court may order him that they be handed over to the head of the family.

17. Section 381 of the Goa Succession Act, 2012 reads thus:-

Consequences of concealment.— (a) Where the head of the family has concealed assets, he shall forfeit any right he may have to the assets concealed in favour of the other heirs.

(b) Where the head of the family has concealed the title deeds necessary to know the nature or charges of the assets, he shall be liable for damages resulting from such concealment.

18. Both the above provisions are having drastic consequences.

It is no doubt true that the duty of the Head of the Family is to disclose the true and correct facts, including the assets, the heirs and even the liabilities of the Estate Leaver and that too after taking oath of the office of Head of the Family. Thus, it is duty of the Head of the Family to disclose the true and correct facts, including the assets left by the Estate Leaver.

19. The provisions which are quoted above would further show that it is not only the Head of the Family, but includes the heirs who fraudulently conceals assets of inheritance. Section 256 of the

Goa Succession Act, 2012 as quoted above, provides that even the moiety holder or an heir has a duty to inform the Court about the assets of the Estate Leaver which include Head of the Family, as well.

20. Section 381 of the Goa Succession Act, 2012 specifically provides that where the Head of the Family has concealed assets, he shall forfeit any right, he may have to the assets concealed in favour of the other heirs. Thus, both these provisions operate in different fields. The effects of such concealment and that too fraudulently, is drastic and the person who is concealing shall be forfeited with his right or interest in the property, which is concealed.

21. Section 403 of the Goa Succession Act, 2012 reads thus:

403. Disputes relating to concealment of assets.—

(1) The person who conceals the asset is deemed to be merely in custody of those assets and the court may order such person to hand over these assets to the head of the family.(2) The issue whether there is concealment of properties shall be decided in the inventory when the dispute can be decided on perusal of the application and replies of the parties and the documents and other material on record.

(3) Where a detail inquiry is required, the court shall direct the parties to file a Civil Suit, if they

so desire.

22. This provision would further show that the person who conceals the assets is deemed to be merely in custody of those assets and the Court may order such person to handover, said assets, to the Head of the Family

23. Sub-section (2) is material to decide the present appeal wherein it is held that the issue whether there is concealment of property shall be decided in the inventory when the dispute have been decided on perusal of the application and the reply of the parties together with documents and other material on record.

24. Sub-section (3) provides that in case a detailed enquiry is required to prove such concealment, the Court shall direct the parties to file a suit if they desire.

25. The above provision and more specifically, sub-section 2 and 3 of Section 403 is the complete answer to the contentions raised by Mr. Monteiro as far as the enquiry to be conducted by Inventory Court, itself.

26. Sub-section (2) of the section 403, mandates that the issue regarding concealment of properties shall be decided only on an application and reply of the parties together with documents and other material on record. It no where provides that the Inventory

Court is bound to conduct any enquiry in connection with such concealment. For that purpose, sub-section (3) specifically provides that in case of a detailed enquiry, the Court may direct the parties to file a suit. Thus, the learned Trial Court while passing the impugned order had only on the basis of an application, reply, documents, and other material available on record, rightly decided such application.

27. The learned counsel Mr Monteiro would submit that oral request was made to the Inventory Court to conduct an enquiry to prove concealment. However, the impugned order, nowhere shows that such request was made at the time of arguing the application.

28. Be that as it may, the provision of Section 403 of the Goa Succession Act, 2012 is clear as far as the enquiry to be conducted and by whom. Besides, this court in *Sarina Esmeralda Lopez nee Lobo & Anr. Vs. Dennis Francis Lobo & ors., in Appeal from Order No. 17 of 2024*, clearly observed that proceedings under the inventory are to be conducted in a summary manner as provided under Section 458 of the said Act and that it shall not be governed by the provisions of the Civil Procedure Code, unless specifically provided for.

29. The Civil Suit, which is filed by the Appellant in the year 2022, nowhere alleges that present Respondent No. 1 deliberately

suppressed such properties while filing list of assets and that the said Respondent No. 1 committed fraud along with Ms Flora while listing the said three properties in another inventory proceeding such allegations are found for the first time in the application file under Section 256 and 381 of the Act of 2012, both presented on 14/07/2023.

30. The impugned order passed by the Trial Court would clearly show that the aspect of deliberate concealment of three properties by Respondent No.1 cannot be decided since the said Respondent No.1 in its reply, disclosed that he was not aware about the remaining three properties. Accordingly, the application was decided on the basis of reply, documents and other documents available in the file. The contention that no enquiry was conducted has no substance in view of specific provisions under Section 403(3) of the Goa Succession Act of 2012.

31. The impugned order, therefore, cannot be faulted with. There is no illegality or impropriety in the impugned order so as to interfere with it in the appellate jurisdiction.

32. Accordingly, the appeal fails and stands dismissed.

33. Parties shall bear their own cost.

34. In view of dismissal of the Appeal from Order No.11 of 2024 nothing survives in the Civil Application No. 44 of 2024 which stands disposed of accordingly.

BHARAT P. DESHPANDE, J.