

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 96 OF 2023

Peter Paul Almeida alias Pedro Paulo
Lopes Almeida, alias Clemente Almeida,
alias Clemente Almeida, of 78 years of
age, widower, resident of House no.142,
Carrasco Vaddo, Mapusa, Bardez, Goa. ...Petitioner

Versus

1. Mrs. Veronica D'Souza E Pinho,
Major of age, widow, and her son.
2. Mr. Remigio D'Souza,
Major of age, Bachelor,
Both residents of House no.127,
Karraswaddo, Mapusa, Bardez, Goa.
3. Mr. Anthony Everisto de Sauza,
alias Everest Anthony D'Souza,
alias Everest D'Souza,
alias Anthony Evarist de Souza,
Major of age, and his wife.
4. Mrs. Flocie Emilia Dottie Rozario,
alias Flossy Rosario,
alias Flossy D'Souza,
Major of age, both residents of
3/7, New Triune CHS Ltd.,
Yagnik Nagar, Amboli,
Andheri (West), Mumbai,
Maharashtra-400 058.
5. Mr. Genevi Louis D'Souza,
alias Genevi Luis D'Souza,
alias Louis D'Souza,
alias John D'Souza,
Major of age, and his wife.
6. Mrs. Maria Ursula Fernandes,
alias Maria D'Souza,
Major of age, both residents of

3/7, New Triune CHS Ltd.,
Yagnik Nagar, Amboli,
Andheri (West), Mumbai.
Maharashtra- 400 058.

7. Fr. Salvador Lawrence D'Souza,
alias Lawrence Salvador D'Souza,
alias Lawrence Joaquim D'Souza,
alias Lawrence D'Souza,
Major of age, unmarried
residents of 3/7,
New Triune CHS Ltd.,
Yagnik Nagar, Amboli,
Andheri (West), Mumbai.
Maharashtra- 400 058.

8. Mrs. Eva Boona Duratin Almeida,
alias Eva Almeida e Affonso,
major of age, and her husband,

9. Mr. Allan Affonso,
Major of age,
both residents of Room No.65,
B.I.T. Block No.1,
2nd Floor, Chandanwadi,
Mumbai, Maharashtra-400 004.

10. Mr. Victor Alex Almeida,
Major of age, resident of Room No.65,
B.I.T. Block No.1,
2nd Floor, Chandanwadi,
Mumbai, Maharashtra-400 004.

11. Mrs. Ema Pauline Almeida,
alias Ema Almeida e D'Mello,
Major of age, and her husband,

12. Mr. Anthony Angelo D'Mello,
Major of age,
Both residents of Room No.65,
B.I.T. Block No.1,
2nd Floor, Chandanwadi,
Mumbai, Maharashtra-400 004.

13. Mr. Dores Francisco Almeida,
alias Francis Almeida,
Major of age, unmarried,
Resident of House No.142,
Carrasco Vaddo, Mapusa,
Bardez, Goa.

14. Ms. Mary D'Souza,
Major of age, unmarried,
Resident of Fatima Villa,
Mani Nagar, Ahmedabad,
Gujarat-380008.

15. Mr. John Francis Cruz D'Souza,
Major of age, unmarried,
Resident of Fatima Villa,
Mani Nagar, Ahmedabad,
Gujarat-380008.

16. Mr. Judas Theodore D'Souza,
Major of age, unmarried,
Resident of Fatima Villa,
Mani Nagar, Ahmedabad,
Gujarat-380008.

17. Mrs. Melita Pereira,
Major of age, and her husband

18. Mr. Cajetan Felix Pereira,
Major of age,
Both residents of Fatima Villa,
Mani Nagar, Ahmedabad,
Gujarat – 380008.

...Respondents

Mr. J.E. Coelho Pereira, Senior Adv. With Mr. V. Braganza and
Mr.Sagar Rivonkar Advocates for Petitioner.

Mr. Nigel Fernandes, Advocate for Respondent Nos. 1 and 2.

CORAM : PRAKASH D. NAIK, J.
DATE : 10th JANUARY, 2024

JUDGMENT:-

1. The Petitioner invokes jurisdiction of this Court to impugn and assail order dated 13th July 2022 passed by District Judge-2, Mapusa-Goa in Misc. Civil Appeal No.10 of 2019 as well as order dated 4th January 2019 passed by Ad-hoc Senior Civil Judge 'A' Court, Mapusa in Inventory Proceedings No. 56/2008/A.
2. Ms. Milagrina D'Souza (Inventariante) initiated the Inventory Proceedings before the Court of Civil Judge, Senior Division at Mapusa, viz. Inventory proceedings No.56/2008/A contending that she is the daughter of Mr. Diogo Antonio De Souza and Mrs. Paulina Rocha (Inventariados). Both of them died on 19th February 1938 and 27th December 1978 without making any will or other disposition of last wish. It was further contended that the Inventariados have left behind immovable properties and heirs. The assets left behind by them have not been partitioned or divided. The larger or greater part of the immovable properties left behind by them are situated at Mapusa. The inventariante offers herself to be appointed as the Cabeca de Casal. She filed list of assets of the properties forming assets left by deceased estate leaver. Item No.3 in the list of Assets refers to Absolute Ownership right of residential house bearing municipal house No.149/3

existing in the property known as “COMONNAICACHO SODDO” known as “AFORAMENTO” also known as “VODDLEA TOLLEACHEM BATTA” surveyed under chalta No.10 of P.T. Sheet No. 53 of City Survey Mapusa, together with the undivided co-ownership right/share in the said property bearing chalta No.10 of PT sheet No.53 of City Survey Mapusa.

3. Ms. Milagrina D’Souza died during the pendency of the proceedings. The petitioner was appointed as head of the family and he gave his statement on oath on 21st July 2017.

4. Respondent Nos. 1 and 2 filed an application dated 12th December 2013 to be ordered to be joined as interested parties and/or interveners in the inventory proceedings. The intervenors contended that the property listed under item No. 3 bearing Chalta No.10 of PT Sheet No.53 of Mapusa city was originally belonging to late Januario D’Souza. The said property is subject matter of Inventory Proceedings bearing No.101 of 1990 in respect of estate of late Januario D’Souza which is pending before the Civil Court, Mapusa-Goa. The property was allotted by Communidade of Mapusa to late Joaquim Vincent D’Souza. The final possession of the suit property was given to Mrs. Maria Joseph D’Souza, wife of Januario D’Souza. Maria Joseph D’Souza paid 20 annuities in respect of the said property to Communidade of Mapusa by virtue of which she became absolute owner of the property. By Public Will dated 7th march 1963, Maria Joseph D’Souza

bequeathed her estate to Mr. Ursicio D'souza. He died on 1st July 2008 leaving behind the Interveners as his legal heirs. In survey record of the property it is shown as belonging to Januario D'Souza and Mr. Ursicio D'Souza as owner thereof or title holder of said property. The interveners are legal heirs of late Ursico D'Souza and they have inherited right in the said property under item No.3 in present inventory proceedings upon death of late Ursicio D'souza. In case, the Inventory Proceedings is disposed off thereby declaring the said property listed under Item No.3 in the list of assets on the assumption that it is exclusively belong to their ancestors, who has initiated the Inventory proceedings, great prejudice will cause to the interveners as they are co-owners of the said properties. Suit is pending between Milagrine D'Souza and Interveners in the Court of Civil Judge Senior Division, Mapusa wherein Milagrino D'Souza is restrained by temporary injunction from undertaking further constructions in the suit property and also from creating third party interest in the suit property.

5. The Petitioner filed reply to the Intervention Application and opposed the application denying the contention of the intervenors.

6. Learned Ad-hoc Senior Civil Judge 'A' Court, Mapusa vide order dated 4th January 2019 allowed the application for Intervention and it was directed that Interveners be added as interested parties No.19 and 20 by amending cause title of the application.

7. The petitioner challenged the said order by preferring Appeal before the Court of District Judge, Mapusa. The appeal was dismissed vide order dated 13th July 2022 on the ground that, the Respondents are necessary parties in the Inventory Proceedings.

8. Learned Senior Advocate Mr.J.E. Coelho Pereira appearing for Petitioner submitted that, the impugned orders are ex-facie bad in law. Respondent Nos. 1 and 2 are neither the heirs, successors, legatees nor creditors of the estate leavers. The Will produced by Intervener could not be relied upon. It is not the Will of estate leavers and that the Intervenors do not come within the purview of the definition of 'interested parties' as envisaged under Section 375(3) of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012. The intervenors are not interested parties. The respondents are neither parties or interested parties to be joined in the Inventory Proceedings. The essential and basic predicates as stipulated under the said Act is not fulfilled by Respondent No.1 and 2. The Courts failed to appreciate the provisions of the Act in proper perspective.

9. Mr. Pereira has relied on the decision of Hon'ble Apex Court in the case of D.A.V. College Trust and Management Society and Others.¹

10. Learned Advocate for Respondent Nos. 1 and 2 submitted that there is no infirmity in the impugned orders. The Intervenors has right in the

¹ (2019) 9 SCC 185

property. The intervenors are concerned with property. The concurrent finding of the court below does not require inference. The respondents are the legal heirs of Mr. Ursicio D'Souza. Will dated 7th March 1963 was executed by Maria Joseph D'souza and she had bequeathed her estate to Mr. Ursicio D'Souza. He expired on 1st July 2008. The property is subject matter of Inventory Proceedings bearing No.101 of 1990 in respect of estate of late Januario D'Souza. The Intervenors had acquired inherited right in the property upon death of late Ursicio D'Souza. The intervenors are co-owners of property. Suit was filed against Milagrine D'Souza. Order was passed restraining her from creating third party interest. If the proceedings are disposed off by declaring that the property exclusively belong to their ancestors who has initiated the Inventory Proceedings, great prejudice will cause to the intervenors. The inventory court has taken into consideration Section 395 and Section 400 of Goa Succession, Special Notaries and Inventory Proceedings Act, 2012.

11. Reliance is placed on the following decisions:-

- (i) Sakal Deep Sahai Srivastava Vs. Union of India and Anr.²
- (ii) Shri Jacinto Da Silva Vs. Maria Filomena Da Silva and Ors.³

12. Inventory Proceedings were initiated by Ms. Milagrina D'Souza. She was the daughter of Mr.Diogo Antonio De Souza and Mrs.Paulina Rocha.

² (1974) 1 SCC 338

³ 2015 SCC OnLine Bom 6476

Both of them had expired. They had left behind property. Ms. Milagrina D'Souza was appointed as head of the family. After she expired, the petitioner was appointed as the head of the family.

13. The Inventory Proceedings has been initiated upon the death of the parents of the Cabeca De Casal namely Mr. Diogo Antonio D'Souza and Mrs. Paulina Rocha. The persons who have filed the intervention application are neither heirs, legatees or creditors of the deceased estate leavers/inventariados nor do they have any right, title or interest in the estate/properties left behind by the deceased estate leavers/inventoriados and as such cannot be joined as interested parties and/or interveners in the present inventory proceedings. The will relied upon by intervenors is not the will of estate leavers.

14. Section 375(3) of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 reads as follows:-

(3) The words “interested party” mean heir, moiety holder of the deceased, the executor a will where there are minor, interdicted or absent heirs or legatees and the persons who have the right to usufruct of a part of the inheritance without specifying its value or the thing, and also the executor.”

15. The word ‘party’ or ‘interested party’ refers to and includes the heir, moiety holder of the deceased and persons benefited with usufruct of part

of the inheritance. In the present case, the persons who wish to be joined as interested parties and/or interveners do not qualify to be ‘parties’ or ‘interested party’ and as such cannot be joined as interested parties and/or interveners in the present inventory proceedings.

16. Mr. Joaquim Vincent D’Souza is the grand-father of the Cabeca de Casal and the father of the deceased estate leaver/inventariado no.1 namely Mr. Diogo Antonio de souza. The heirs of late Mr. Joaquim Vincent D’Souza including the Inventariado No.1 acquired ‘co-ownership rights’ in the property bearing Chalta No.10 PT. Sheet No.53 of Mapusa.

17. From the documents submitted by the intervention parties it is seen that the alleged will dated 7th March 1963, if any, was a conditional will. The testatrix imposed a condition upon the proposed beneficiary that the said nephew look after her with esteem and affection by giving subsistence and comfort to her that she requires. The intervening parties have stated that they are the ‘sole legal heirs’ of late Mr. Ursicio D’Souza when in fact there are other heirs (daughters) of the said deceased person. These are not an inventory proceedings initiated upon the death of Maria Joseph D’Souza.

18. The respondent No.1 and 2 herein (interveners) did not qualify as interested parties as per the definition. Neither did they qualify as legatees or creditors. The intervenors cannot take recourse to section 395 or Section

400 of the Goa Succession Act. The decisions relied upon by learned counsel for respondents are not applicable to the present proceedings. In the circumstances, the application for intervention ought to have been rejected by the Court. Hence, the impugned orders are required to be set aside.

ORDER

- (i) Writ Petition No. 96 of 2023 is allowed.
- (ii) Impugned judgment and order dated 13th July 2022 passed by District Judge-2, Mapusa-Goa in Misc. Civil Appeal No. 10 of 2019 and order dated 4th January 2019 passed by Ad-hoc Senior Civil Judge, allowing Intervention Application are set aside.
- (iii) Writ Petition stands disposed off.

(PRAKASH D. NAIK, J.)