

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 926 OF 2013

Mrs. Bharti Parkar,
wife of Mr. Prakash Parkar,
age 58 years,
residing at H. No., 105,
Ansabhat, Mapusa,
Goa.

..... Applicant

V e r s u s

1. Mr. Vilas Mahadev Pilankar,
son of late Mahadev Pilankar,
age 59 years,
2. Mrs. Sonal Pilankar,
wife of Mr. Vilas Pilankar,
age 48 years,
both residing at H. No. E, F/F-1,
Gilberta Apartment,
Near Pornima Lodge,
Ansabhat, Mapusa, Goa.
3. Mr. Ulhas Mahadev Pilankar,
son of late Mahadev Pilankar,
age 62 years,
residing at House no. 105,
Feira Baixa, Ansabhat,
Mapusa, Goa.
4. Mrs. Kalpana Ulhas Pilankar,
wife of Mr. Ulhas Pilankar,
age 41 years,
residing at house no. 105,
Feira Baixa, Ansabhat,
Mapusa, Goa.
5. Mr. Dattaram Pilankar (deceased)
Through his legal representatives

- (a) Smt. Diksha Dattaram Pilankar,
widow of Dattaram M. Pilankar,
age 47 years
- (b) Ms. Thrusha Dattaram Pilankar,
daughter of Dattaram Pilankar,
age 11 years

both residing at House no. 204,
Ground floor, Chamunda Garden,
Near Dattaram Mantravadi,
Memorial High School,
Ansabhat, Mapusa, Goa.
Presently residing at Wadi,
Opp. Rampurush Temple,
Behind Primary Health Centre,
Candolim, Goa.

- 6. Mr. Meghashyam Pilankar,
son of late Mahadev Pilankar,
age 49 years, his wife;
- 7. Mrs. Maduri Pilankar,
wife of Mr. Meghashyam Pilankar,
age 45 years,
both residing at Parvati,
H. No. 153-I/9, Main Road,
Behind St. Xavier College,
Dattawadi, Alto Mapusa, Goa.
- 8. Nilesh Mahadev Pilankar,
son of late Mahadev Pilankar,
age 41 years,
all residing at H,. No. 105,
Ansabhat,
Mapusa, Goa.
- 9. Mrs. Sughandha Shirodkar,
wife of Mr. Laxmidas Shirodkar,
age 64 years and her husband;
- 10. Mr. Laxmidas Shirodkar,
age 67 years,

both residing at Prasad Residency
1st floor, Block A, F/1-2, F-2,
Opp. Market yard,
Sanquelim, Goa, 403 505.

11. Mrs. Sandhya Falari,
wife of Mr. Santosh Falari,
age 47 years,
and her husband
12. Mr. Santosh alias Krishna J. Falari,
age 55 years,
both residing at H. No. 105,
Feira Baixa, Ansabhat,
Mapusa, Goa.
13. Mrs. Shanti Masurkar,
wife of Mr. Sainath Masurkar,
age 44 years,
and her husband
14. Mr. Sainath Masurkar,
age 46 years,
both residing at H. No. 2-4854
Near Nagdev Temple
Murida, Fatorda, Margao,
Salcete, Goa.
Respondents

...

Shri Valmiki Menezes, Advocate for the Applicant.

Shri J. A. Lobo, Advocate for the Respondent nos. 1 and 2.

Shri M. B. Da Costa, Senior Advocate, as Amicus Curiae, with Ms. Sonia Chodankar, Advocate.

Shri S. D. Lotlikar, Senior Advocate, addressing the Court.

:4:

Coram :- **F. M. REIS,**
C. V. BHADANG,
K. L. WADANE, JJJ.

Date : **22nd December, 2015**

ORDER (Per F. M. Reis, J.)

The above reference was placed before the Full Bench pursuant to the directions issued by the Hon'ble Chief Justice on 16.07.2015 in view of a report by the learned Single Judge, (Jamdar J.), to constitute a Larger Bench to determine the question as to whether a First Appeal needs to be filed from a final Order passed in Inventory Proceedings. If Civil Procedure Code is to be made applicable to the Appeals from Inventory Proceedings, whether a First Appeal is to be filed from a final Order in Inventory Proceedings and whether thereafter a right of Second Appeal would follow. The next question which was also raised is what is the Court fee payable if the Appeal is to be treated as a First Appeal as the Court Fees Act of 1870 which came into force on 03.04.1964 in Goa, did not contain any provision relating to Inventory Proceedings.

2. We have heard Shri Valmiki Menezes, learned Counsel appearing for the Applicant, Shri J. A. Lobo, learned Counsel

appearing for the Respondents, Shri M. B. D' Costa, learned Senior Advocate as Amicus Curiae and we also permitted learned Counsel to address the Court on the points raised who included Shri S. D. Lotlikar and Shri J. E. Coelho Pereira, learned Senior Advocates and Shri M. P. Almeida, learned Counsel.

3. Shri M. B. D' Costa, learned Amicus Curiae, has first taken us through the provisions of Section 4 of the Indian Civil Code, 1908 to point out that it provides that in the absence of any provision to the contrary, nothing in that Code shall be deemed to limit or otherwise affect any Special or local law now in force or any special jurisdiction or power conferred by or under any other law for the time being in force. The learned Amicus Curiae has thereafter pointed out that under the provisions of the Portuguese Civil Procedure Code (Port. C.P.C. for short), the remedies of challenging the decisions of the learned Lower Court, are Agravo, Apelação, Revisão, Revista, etc. The learned Amicus Curiae further submits that both these legislations have not been enacted by the same legislature and, as such, the Port. C.P.C. are saved and as such applying the provisions of the Indian Civil Procedure Code, would be totally erroneous. The learned Amicus Curiae, further submitted that when there is a specific provision in the Port. C.P.C. to challenge an Order or Judgment

passed in Inventory Proceedings, it is completely beyond the jurisdiction of the Court to entertain an Appeal or a Revision under the provisions of an all together different Code. The learned Amicus Curiae further submitted that the learned Single Judge of this Court in the Judgment reported in **1984 Bom. 295** in the case of **Zacarias Duarte Domingos Pereira vs. Camilo Inacio Evaristo Pereira** has taken a view that once Inventory Proceedings are held to be governed by the Port. C.P.C., all other provisions in the Port. C.P.C. connected thereto are in force. The learned Amicus Curiae thereafter pointed out that *Apelação* lies against the final Order homologating the partition in terms of Article 1421 of the Port. C.P.C. The learned Amicus Curiae further submits that all other Orders which are subject to challenge but are not susceptible or subject to *Apelação* and an Agravo lies in terms of Article 733 of the Port. C.P.C.. The learned Senior Counsel further submits that Article 1414, 1421 and 1435 of the Port. C.P.C. which deals with *Apelação* are part of the Chapter that lays down the procedure for Inventory Proceedings. The learned Amicus Curiae further submits that as there is no scope in the relevant rules to register an Agravo, it was agreed that they could be registered as Appeals from Order in the Judgment passed by the Then Acting Judicial Commissioner in the matter of Civil Appeal (*Apelação*) No. 5/72 in the case of **Jose Xavier Filipe F. L. C. S. Fernandes vs.**

Flora Fernandes e Abreu & Ors. Learned Amicus Curiae has thereafter taken us through the Judgment in the case of Jose Xavier Filipe (Supra) and pointed out that neither an *Agravo* nor an *Apelação* is governed by Section 104 and 105 read with Order 41 or Order 43 of the Indian C.P.C. Learned Amicus Curiae further submits that in the case of **Zacarias Duarte Domingos Pereira vs. Camilo Inacio Evaristo Pereira** (Supra), the learned Single Judge of this Court has noted that it cannot be conceived that one set of procedure would govern Inventory till the final Order and another set of procedure for execution in one and the same proceedings. The learned Amicus Curiae, as such, points out that it is not permissible to follow two Procedures in one and the same proceedings i.e. for Inventory Proceedings and as regards *Agravo* and *Apelação*, the Indian C.P.C. The learned Amicus Curiae thereafter points out that the right to prefer an *Agravo* or an *Apelação*, is vested in the parties at the time of the institution of the proceedings and, as such, it is not open to forgo such right by holding that such Appeals, *Apelação* and *Agravo* would be governed by the procedure of the Civil Code. Learned Amicus Curiae further submits that Article 1435 of the Port. C.P.C. ex-facie shows that all interlocutory Orders cannot be challenged along with the final Appeals (*Apelação*) and there are five distinct situations contemplated therein. The learned Amicus Curiae further points out that *Agravos*

are to be preferred at different stages during the proceedings and, as such, it would not be justified to hold that interlocutory Orders can be challenged along with an *Apelação* i.e. a Regular Appeal as Clause (e) of the said provisions restricts the scope of the challenge along with the *Apelação*. The learned Amicus Curiae pointed out that an Agravo cannot be equated with an Appeal from Order as the Inventory Proceedings are not governed by the provisions of the Indian C.P.C.. The learned Amicus Curiae further pointed out that Section 105 of the Indian C.P.C., contains a scheme altogether different from the Scheme of Article 1435 of the Port. C.P.C. The learned Amicus Curiae further pointed out that many Orders against which Agravo lies do not affect the decision of the case on merits and thus, the question of allowing a challenge to such Orders along with an *Apelação*/Regular Appeal would not at all be justified. The learned Amicus Curiae further points out that the final Judgment in Inventory Proceedings is not a Decree and, as such, merely because there is some similarity between the procedure codes, it would not justify mixing up the two procedures particularly because the provisions of the Port. C.P.C. and the provisions of the Indian C.P.C., are not enacted by the same legislature. The learned Amicus Curiae further points out that the provisions of the Port. C.P.C. are intimately connected with the provisions of the Portuguese Civil Code and are intended to set out

the rules and procedure in respect of the substantive rights conferred in the Portuguese Civil Code. Learned Amicus Curiae as such points out that the Appeals against the decisions passed in the Inventory Proceedings by the Trial Courts are to be governed in terms of the provisions of the Port. C.P.C. and, according to him, the question of applying the provisions of Indian C.P.C. and equating such orders and decision to an Order under Section 104 of the Indian C.P.C., is totally erroneous.

4. Mr. Valmiki Menezes, learned Counsel appearing for the Applicant, has pointed out that in the case of Jose Xavier Filipe Fernandes (*supra*), the then learned Addl. Judicial Commissioner's Court has taken a view that it is not in dispute rather admitted at the bar that Agravo/Apelacao presented to the Appellate Court from Orders in the Inventory Proceedings have to be disposed of in accordance with the provisions of the Indian C.P.C. and it has been further held that there is no difficulty in treating them as Appeals from Order within the meaning of the provisions of Section 104 read with Order 43 of the Indian C.P.C. Learned Counsel further pointed out that the Orders and decisions passed in the Inventory Proceedings during the course of such proceedings as well as final Judgment homologating such proceedings are to be treated as Appeals from

Order in view of the said Judgment. Shri Valmiki Menezes, further points out that the Apex Court in the Judgment reported in **AIR 1979 SC 1352** in the case of **Maria Christine De Souza Soddar & Ors. vs. Maria Zurna Pereira & Ors.**, has held that the contention that since the right of Appeal had been conferred by the Portuguese Civil Code, the forum where it could be lodged was also governed by the said Code, cannot be accepted. The learned Counsel further points out that the Apex Court further held that the forum of filing an Appeal was governed by the Code of Civil Procedure 1908 read with the provisions of the Goa Daman and Diu Civil Courts Act, 1965, both of which came into force in June 1965 and that under the Central Act XXX of 1965 w.e.f. 15.06.1966, the provisions of the Indian C.P.C. were extended to the Indian Territory of Goa, Daman and Diu and the corresponding provisions of the Portuguese Code were repealed. The learned Counsel has thereafter taken us through the Judgment of **Zacarias Duarte Domingos Pereira** (Supra) to point out that the learned Single Judge has taken a view that execution of the final Judgment in the Inventory Proceedings are not governed by the provisions of the Indian C.P.C. but by the Port. C.P.C.. The learned Counsel has thereafter taken us through the Judgment of the Divisions Bench of this Court reported in **1991(2) Goa L. T. 11** in the case of **Fernando Jorge Colaco vs. State of Goa & Ors.**, wherein it

has been held that stamp duty is required to be paid on owelty amounts in terms of Article 23 of the Schedule IA of the Stamp Act depending upon the description of the property and that such stamp duty is payable after a chart is prepared in terms of the first part of Article 1421 of the Port. C.P.C. Learned Counsel has also brought to our notice the Judgment of the learned Single Judge reported in **2000(2) Goa L. T. 479** in the case of **Aruna Devi N. Gaekwad vs. Sanjita Udaisingh Rane & Ors.**, wherein it has been held that an Appeal against an Order in Inventory Proceedings is a Misc. Appeal in terms of Section 104 of the Indian C.P.C. Learned Counsel has also brought to our notice a Judgment passed by one of us (F. M. Reis, J) reported in **CDJ 2014 BHC 2385** in the case of **Mary Dias & her husband vs. Pedro Machado (since deceased) & his wife & Ors.**, wherein it has been held that considering the provisions of Section 104 of the Civil Procedure Code and the reading of Article 1435 of the Code of 1939, there is no doubt that a party who is aggrieved by an Order passed during the course of the Inventory Proceedings, can challenge the findings which affect the final decisions whilst challenging the final homologation of the partition. Learned Counsel has also relied upon a Judgment of the learned Single Judge of this Court reported in **CDJ 2006 BHC 746** in the case of Ms. Helen Carvalho vs. Ms. Maria Teresa da Cunha & Ors., wherein

it has been held that the maintainability of the Appeal from Order challenging an Order in the Inventory Proceedings is well settled by this Court in the Judgment in the case of Shri Krishna Mhalu Pai Raikar vs. Shri Hari Mhalu Pai Raikar delivered on 12.04.2001 in Appeal from Order no. 16 of 2000. Learned Counsel as such points out that the Appeal preferred by the Applicant is maintainable as an Appeal from Order considering the views taken by the learned Single Judge of this Court wherein it has been held that such Appeals are to be governed by the provisions of Section 104 of the Civil Procedure Code.

5. Shri J. A. Lobo, learned Counsel appearing for the Respondents, has pointed out that the Appeal preferred by the Applicant is not maintainable as, according to him, the final Judgment homologating the partition cannot be equated to be an Order in terms of Section 104 of the Civil Procedure Code.

6. Shri S. D. Lotlikar, learned Senior Advocate, who also sought leave to address the Court has pointed out that, the final Judgment in the Inventory Proceedings finally determines the rights of the parties in the estate of the deceased and, as such, a First Appeal would lie challenging such decision. The learned Senior Counsel

further points out that even in terms of Section 96 of the Civil Procedure Code, the rights of Appeal as provided in other laws are saved and, as such, there is no bar in considering Judgment passed whilst disposing of the Inventory Proceedings to be a First Appeals in terms of the Indian C.P.C. The learned Senior Advocate further points out that all other Orders passed during the pendency of the Inventory Proceedings which have not been challenged and affect the final decision passed in such proceedings, can be challenged along with an Appeal challenging the final Judgment. Learned Senior Advocate has also brought to our notice a note prepared by Mr. M. S. Usgaonkar, learned Senior Advocate.

7. Shri M. P. Almeida, learned Counsel, as well as Shri J. E. Coelho Pereira, learned Senior Advocate, have also addressed the Court and pointed out that they support the contentions of Shri S. D. Lotlikar, learned Senior Advocate. The learned Senior Advocate further pointed out that it would be appropriate that the Full Bench should take a final decision in the matter to ensure that such anomalies in the procedure are finally decided so that the procedure which would govern the Appeals challenging the Judgments in the Inventory Proceedings, are well settled.

8. We have given our thoughtful considerations to the rival contentions. With the assistance of the learned Counsel, we have also gone through the relevant provisions of the Port. C.P.C. as well as the Judgments relied upon by the learned Counsel.

9. Before we proceed to decide the above points referred for consideration, we would like to briefly note the law which governed this State prior to Liberation in December, 1961. The territories of Goa Daman and Diu, were then under the Regime of the Portuguese Government and the provisions of Portuguese Civil Code of 1867 covered all areas of substantive law unlike the rest of India where laws of succession of different communities are in different Acts. The law of succession in the State of Goa, contained in one Code and was an Uniform Civil Code applicable to all communities irrespective of their religion. The provisions of the Port. C.P.C. dealt with the procedural aspects. Upon the death of an estate leaver, the succession law as in force provided that Inventory Proceedings had to be initiated to determine the shares of the heirs of the estate leaver. In cases in which the succession devolved upon a minor, Inventory Proceedings were compulsory. Chapter XVII of the Port. C.P.C. deals with Inventory Proceedings. The procedure followed upon initiating such Inventory Proceedings is well defined. The partition or distribution of

assets of the deceased person by the intervention of the Court is called "inventory proceedings". To initiate such proceedings an application is required to be made to the Court wherein the head of the family (*cabeça de casal*) is appointed. Such *cabeça de casal* has to take oath and thereafter record his statement *inter alia* disclosing the list of heirs of the deceased entitled to the inheritance. A summons for appearance is thereafter served on all the interested parties who are entitled to raise objections to the competence of such proceedings or to the appointment of the *cabeça de casal*. A list of assets is thereafter filed of the properties both movable and immovable left behind by the deceased. Further, the procedure *inter alia* includes the valuation of such assets and where the parties so desired an auction is conducted restricting amongst the heirs and the interested parties in such proceedings. It may be pertinent to note that different types of persons can seek intervention in the inventory proceedings other than the legal heirs and representatives such as donees, legatees etc. After the auction is held, the successful bidder gets the property allotted to him. After a chart is prepared the money realized out of the auction is distributed amongst the remaining heirs. The Court directs the auction bidder to pay stamp duty on the owelty amount and ultimately after complying with due process as provided under the relevant provisions of the Port. C.P.C. read with Port. Civil

Code, a final order is passed homologating the partition.

10. After Liberation, the first step taken was to amend the Constitution of India by the 12th Amendment thereby Goa, Daman and Diu became a part of the Union of India having status of Union Territory administered by the President himself through his delegate known as “ Administrator”. Thereafter, Goa, Daman and Diu (Administration) Ordinance 1962 was promulgated and Section 4 provides that all laws in force immediately before the appointed date in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority. Immediately thereafter the Goa, Daman and Diu (Administration) Act, 1962 was passed on 27.03.1962 which also inter alia provided under Section 5 that all laws in force immediately before the appointed date in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority. Sub- section 2 of Section 5 gives power to the Central Government to adopt or modify by order such existing laws within two years from the appointed date and Section 6 empowered the Central Government to extend by Notification with whatever restrictions or modifications of laws in force in the Union Territory of Goa, Daman and Diu. Accordingly, the Goa,

Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration Act), Act, 1965 was passed by Parliament. This Act inter alia provides for the extension of the Code of Civil Procedure, 1908 and the Arbitration Act, 1940 to the Union Territory of Goa, Daman and Diu and for certain other matters. Section 3 of the said Act provides that the Code of Civil Procedure, 1908 as in force in the territories to which they generally extend are extended to and shall be in force in Goa, Daman and Diu. Section 4 inter alia provides that so much of any law in force in Goa, Daman and Diu as corresponds to the Code of Civil Procedure, 1908 or any part of the said Code or Act as the case may be shall stand repealed as from the coming into force of this Act in Goa, Dman and Diu. Section 5 of the said Act reads thus :

“5. Rules of construction.- (1) In the Code of Civil Procedure, 1908 and in the Arbitration Act, 1940,-

(a) any reference to any provision of law not in force, or to any functionary not in existence, in Goa, Daman and Diu shall be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that Union territory :

Provided that -

(i) if any question arises as to

who that corresponding
functionary is, or

(ii) if there is no such
corresponding functionary,
the Lieutenant-Governor shall
decide as to who such functionary
will be and his decision shall be
final;

(b) any reference to the State
Government shall be construed as
a reference to the Central
Government and also as including
a reference to the Lieutenant-
Governor.

(2) For the purpose of facilitating
the application in relation to Goa,
Daman and Diu of the said Code
or the said Act, any Court or other
authority may construe it in such
manner not affecting the
substance as may be necessary
or proper to adapt it to the matter
before the Court or other authority.

Thus, Section 5(2) of the said Act inter alia contemplate
that for the purpose of facilitating the application in relation to Goa,
Daman and Diu of the Indian Civil Procedure Code, any Court or
other Authority may construe it in such a manner not affecting the

substance as may be necessary or proper to adapt it to the matter before the Court or other authority. Thus, the Court has power to construe the provisions of the Indian C.P.C. in such a manner not affecting the substance as may be necessary or proper to adapt it to the matter before the Court.

11. In the background of the provisions of law referred to herein above, we shall now proceed to examine the procedure to be followed when a decision is challenged before the Appellate Forum against the order or judgment passed in the inventory proceedings.

12. Before we consider the said aspect, we may note that the learned Single Judge of this Court in the judgment in the case of **Zacarias Durate Domingos Pereira** (supra) has held at para 13 thus :

“13. At the outset, it must be said that Shri Tamba, the learned advocate for the petitioner does not dispute that the Inventory proceedings commenced by the parties under the Portuguese Civil P.C. are not valid or without jurisdiction, or that no such proceedings lie before the extension of the Indian Civil P.C. and the various other Indian laws to the Union territory of Goa, Daman and Diu. On the contrary, according to him that part or body of the Portuguese Civil P.m

C. relating to Inventory proceedings as embodied in Chapter XVII has been saved and are in force inspite of the extension of the Indian Civil P.C., 1908 and proceedings for distribution and partition of the assets of a deceased would lie to the competent Civil Court on the death of any person under the said Chapter XVII of the Portuguese Civil Procedure Code. His only objection is that once the Inventory proceedings culminates or terminates into a final order, the execution if required for obtaining possession of an asset resort must be had to the Civil P.C., 1908 for there is no provision for execution of any order in that part or body of the Portuguese Civil P.C. relating to Inventory proceedings.

13. On the basis of the said judgment, Mr. M. B. Da Costa, learned Amicus Curiae has pointed out that the procedure governing appeals would have to be as provided in the Port. C.P.C. But however, the said judgment is in the context as to whether the final order in the inventory proceedings can be a decree for the purpose of execution in terms of the Order 21 of the Civil Procedure Code. In the present case, the reference is only to consider what is the effect of the final order in the inventory proceedings and the scope or remedy of a party to challenge such order before the appellate forum.

14. In this connection, the learned Acting Judicial

Commissioner K. Mishra by an order dated 19.02.1981 in the case of **Jose Xavier Filipe F. L. C. S. Fernandes** (supra) has taken a view that an appeal can lie from orders if the law for the time being in force provides for an appeal. The Port. C.P.C. dealing with inventory proceedings thus provides for such an appeal against any order made in the inventory proceedings either as Agravos or Apelacaos depending upon the nature of the order. It is further held therein that an appeal against an order passed in the inventory proceedings could be entertained as an appeal from orders and could be disposed of accordingly. It is also observed therein that this position is also agreed to by the members of the Bar appearing in the batches of the cases. Thus, the learned Judicial Commissioner has held that the orders passed in the inventory proceedings are appealable in terms of Section 104 of the Indian C.P.C.

15. Another learned Single Judge of this Court in the judgment reported in **2000(2) GLT 479** in the case of **Aruna Devi N. Gaekwad and others V/s Sanjita Udaisingh Rane and anr.**, has observed at paras 26 and 27 thus :

“**26.** In fact, many of the above referred provisions of the Portuguese Civil Code and Portuguese Civil Procedure Code as well as Section 34 and Section 22 of the Civil Courts

Act were considered by the Apex Court in the matter of Maria Christine's case while holding that the appeals against the orders passed in the proceedings arising under the Portuguese law shall be lodged in the appellate Courts in terms of code of Civil Procedure read with the provisions of Civil Courts Act.

27. What emerges from the above discussion is that though the inventory proceedings are to be conducted in the Court of first instance in terms of the provisions relating thereto comprised under Portuguese Civil Procedure Code, read with Portuguese Civil Code, and that the right of appeal being vested right accrued under the repealed Code is also protected, but the procedure to be followed to pursue the remedy of appeal is not saved and a new forum as available under Civil Procedure Code is provided for enforcement of such vested right of appeal. The appeals against orders passed in the inventory proceedings are to be preferred and filed and dealt with as the appeals under the Code of Civil Procedure.”

16. The learned Single Judge as such found that though the inventory proceedings are to be conducted in the Court of the first instance in terms of the provisions relating to the Port. C.P.C. read with Portuguese Civil Code, a right of appeal being a vested right accrued under the repealed Port. Code is also protected and the

procedure to be followed to pursue the remedy of appeal is not saved and a new forum as available under the Indian C.P.C. is provided for enforcement of such vested right of appeal. Thus, what emerges from the aforesaid discussion is that the learned Judicial Commissioner in the case of **Jose Xavier Filipe** (supra) has taken a view that all appeals against all orders in the inventory proceedings are to be filed in terms of Section 104 of the Indian C.P.C. In the case of **Aruna Devi N. Gaekwad** (supra), it has been held that though the right of appeal has been saved nevertheless, the procedure to be followed in preferring such appeal would be governed by the procedure of the Indian C.P.C. 1908.

17. Mr. M. B. Da Costa, learned Amicus Curiae has pointed out that the procedure to be followed in appeals against the orders passed in the inventory proceedings cannot be examined under the Indian C.P.C., but under the provisions of the Port. C.P.C. The said contention of Mr. Da Costa, learned Amicus Curiae cannot be accepted taking note of the observations of the learned Single Judge of this Court in the case of **Aruna Devi N. Gaekwad** (supra) wherein it has been rightly held that though the right of appeal under the Port. C.P.C. read with Portuguese Civil Code is saved, however the procedure of filing such appeal would be governed by the Indian

C.P.C. 1908.

18. Before we proceed to examine the procedure for appeal as provided under the Port. C.P.C. and the Indian C.P.C. we would like to note that the law of procedure may be defined as that branch of law which governs the process of the litigation. It is the law of action which would follow all legal proceedings, civil or criminal. But however, substantive law relates not to the process of the litigation, but to the purposes of the subject- matter. The substantive law is concerned with the end which the administration of justice seeks. The procedural law deals with the means and the instruments by which those ends are to be attained. The latter regulates the conduct and the relations of the courts and the litigants in respect of the litigation itself; the former determines their conduct and the relations of the matters litigated.

In such circumstances, we find that different sets of procedures in actions can be applied at the first instance; at the appellate stage or the execution proceedings. This is in the context that the procedural law does not create any vested right and this aspect has been rightly enunciated by the learned Single Judge of this Court in the case of **Aruna Devi N. Gaekwad** (supra).

19. In terms of the rights and the procedure to be followed in

the inventory proceedings, the regime of appeals against the orders passed in the inventory proceedings are governed by Article 1435 of the Port. C.P.C. Article 1435 reads thus :

“Article 1435 (Regime of appeals) :

In the inventories of the value up to 10,000\$00 the regime of appeals from summary suits shall be applied.

In the inventories of superior value, the following shall be observed:

a) The appeal preferred against the order putting an end to the proceedings, shall be forwarded immediately and in the same proceedings; and along with it other appeals preferred against previous orders, if any, shall be forwarded.

b) The appeal preferred against the order excluding from the proceedings any heir, or excluding or removing anybody from the office of the administrator, guardian, curator, or member of the family council, shall be forwarded immediately, but in separate, along with all the appeals preferred against previous orders.

c) The appeals preferred against other orders till the end of the description of

properties shall be forwarded to the superior court along with and in separate from the principal file, when the description is finalised.

d) The appeals preferred from subsequent orders up to the presentation of the file to pass order directing as to how the partition should be effected, shall be forwarded to the superior court jointly and in separate from the principal file, when the file is at the stage of drawing the form of partition.

e) The appeals preferred from the order directing how the partition should be effected and of subsequent orders shall be forwarded in the same file, to the superior court, along with the appeal filed against the judgment which homologates the partition.”

20. Reading the said provisions, it reserves a right of appeal, which vested right cannot be taken away but however what is to be examined is the procedure to be followed to exercise such right of appeal. The said provisions inter alia provide that appeals can be preferred at various stages of the Inventory proceedings. The appeal preferred against an order putting an end to the proceedings or against an order excluding from the proceedings any heir or excluding

or removing anybody from the office of the administrator, have to be immediately forwarded to the superior Court along with all appeals preferred against the previous orders, if any. The next stages of appeals against orders are those preferred till the end of the description of the properties which are to be forwarded to the superior court but in a separate form but separate from the principal file when the description is finalized. The appeals preferred from subsequent orders up to the presentation of the file to pass orders directing as to how the partition should be effected, have to be forwarded to the superior court jointly and separate from the principal file when the file is at the stage of drawing the form of partition. These provisions disclose that though appeals are allowed to be filed at different stages of the proceedings up to the end of the description or orders directing as to how partition should be effected nevertheless, such appeals need not be immediately forwarded to the superior court but kept separately and forwarded at a later stage along with all other pending appeals. The last stage of preferring appeal is from the order directing how the partition should be effected and subsequent orders which have to be forwarded to the superior court along with appeal filed against the judgment which homologates the partition. Consequently, such appeals are to be submitted along with the appeals challenging the final judgment in the proceedings.

21. It would also be appropriate to take note the general provisions governing appeals under the Port. C.P.C. Article 677 provides that a judicial decision may be challenged by way of appeals. The appeals are ordinary and extra ordinary. The ordinary appeals are appeal from judgment, revista, appeal from order, complaint and appeal to the full court. The extra ordinary appeals are opposition of third parties. Article 687 of the Port. C.P.C., provides that appeals are presented by way of a simple application expressing the desire to prefer an appeal indicating therein the type of appeal. Such application shall be presented in duplicate in the office of the Court which passed the judgment appealed from. Thus, on examining the relevant provisions as contained in the Port. C.P.C., it clearly disclose that at the end of the inventory proceedings there is an Apelacao provided against the judgment which homologates the partition whereas in Article 1435 under clauses (a), (b), (c), (d) and (e), it refer to all Agravos.

Thus, the homologation of the inventory proceedings would mean a civil confirmation by the Court of Justice by a judgment.

22. Section 104 of the Indian C.P.C., inter-alia provides that an appeal shall lie from orders referred to therein save as otherwise

expressly provided in the body of the Code or by any law for the time being in force from any other order. The term order has been defined as a formal expression of any decision of a Civil Court which is not a decree. The distinction between a decree and an order lies in the fact that every decree is appealable unless barred by the Court or by any other law for the time being in force. No appeal lies from an order unless it is expressly provided by the Code or by any law for the time being in force. Moreover, in the case of a decree, a second appeal also lies to the High Court though no second appeal lies from an order passed in an appeal from order. Thus, the provisions of the Port. C.P.C., which is a law for the time being in force clearly provides for an appeal against an order passed in the inventory proceedings. In such circumstances, any appeal preferred against orders passed in the inventory proceedings at different stages of the proceedings referred to herein above, excluding the final judgment homologating the inventory proceedings, would lie in terms of Section 104 of the C.P.C. Thus, in all cases in which Agravo appeal lies in terms of Article 1435, clauses (a), (b), (c), (d) and (e) of the Port. C.P.C., an appeal from order would lie in terms of Section 104 of the C.P.C. The learned Judicial Commissioner in the case of **Jose Xavier Filipe F. L. C. S. Fernandes** (supra), as such has rightly taken a view that an appeal would lie under Section 104 of the C.P.C., against all orders passed in

the course of the inventory proceedings.

23. The only aspects which would remain to be considered are two folds namely what is the nature of an appeal which would govern a challenge to the final judgment homologating the partition and whether the orders which have not been challenged during the course of the inventory proceedings by an interested party and which would affect the final judgment in the inventory proceedings can be assailed while challenging the final judgment.

24. As far as the orders passed in terms of clauses (a) and (b) of Article 1435 of the Port. C.P.C., considering that they have to be forwarded immediately to the Superior Court, we find that such orders cannot be challenged along with the appeal challenging the final judgment passed in the inventory proceedings. A decision on such orders would govern the course of the inventory proceedings and would not necessarily affect the final judgment passed in such proceedings. As far as the orders passed at the stages referred to at clauses (c), and (d) of Article 1435 of the Port. C.P.C., the orders which have not been challenged and would affect the final judgment homologating the partition can be challenged along with a challenge to the final judgment homologating the inventory proceedings. In this

connection, one of us (F. M. Reis, J) in the judgment reported in **CDJ 2014 BHC 2385** in the case of **Mary Dias and her husband V/s Pedro Machado (since deceased) and his wife and others**, dealing with the regime of appeals as provided under Article 1435 of the Portuguese Civil Procedure Code has observed at paras 10, 11, 12, 13 and 15 thus :

“10..... On plain perusal of the said provisions, what transpires is that any appeal which is filed before the final homologation of the Partition, can also be decided at the time when the appeal challenging the final homologation of the Partition is considered by the Appellate Court. The said provisions clearly provide that even though an appeal can be filed during the pendency of the said proceedings nevertheless the same can be considered at the time when the challenge is made against the final homologation of the Partition. It would be pertinent to note the procedure provided in filing appeals in terms of the provisions of Article 687 of the Portuguese Civil Procedure Code which, inter alia, requires that such Appeals be filed by way of an application indicating the desire to prefer an Appeal and such application is to be filed in the office of the Court which pronounced the decision. Such procedure is no longer in force. The learned Single Judge of this Court in the case of **Aruna Devi N. Gaekwad & Ors. vs. Sanjita Udaisingh Rane & anr.** (supra), observed at para 28 thus :

“ 28. Once it is clear that the forum of appeal is either High Court or District Court for lodging the appeals against the orders passed in the inventory proceedings and the same are to be dealt

with in accordance with the provisions of Code of Civil Procedure, the rules contained in Order 41 and Order 43 would automatically be attracted and applicable to such appeals.....”

11. Section 105 of the Civil Procedure Code, inter alia, provides that save as otherwise expressly provided, no Appeal shall lie from any Order made by a Court in the exercise of its original or appellate jurisdiction but where a Decree is appealed from any error, defect or irregularity in any order effecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal.

12. Order 43 Rule 1-A further provides that when any order is made under this Code against a party and thereupon any Judgment is pronounced against such party and a Decree is drawn, such party may in an appeal against the Decree contend that such Order should not have been made and the Judgment should not have been pronounced. Thus, when an error or irregularity in an interlocutory Orders passed in the proceedings affects the final decision on merits, a party aggrieved is entitled to challenge those orders whilst preferring an Appeal challenging the final decision. Most of the orders referred to in Order 43 Rule 1 of the Civil Procedure Code, do not determine the substantive rights of the parties. But, however, the consequences of the Orders passed in the course of the Inventory Proceedings are totally different. In such Orders substantive right of the parties are also adjudicated. Even in cases in which the Orders fall within the provisions of Section 104 of the Civil Procedure Code, the party against whom such Orders have been passed, is not

bound to prefer an Appeal against such Orders immediately but he can always assail the irregularity or error therein affecting the final decision as a ground of objection in the memorandum of Appeal whilst challenging the final Judgment passed in the suit.

The provisions of Section 105 of Civil Procedure Code applies to an order i.e. appealable as well as non-appealable order and as such the said provisions allow an appealable order which is not appealed from to be made subject of appeal in any appeal from the final decision in the suit. As such, the said provisions enable the parties to set forth any error, defect or irregularity in any order effecting the decision of the case as a ground of objection in the memorandum of appeal. The words “affecting the decision of the case” in Section 105 of the Civil Procedure Code means affecting the decision of the case on its merits.

.....

13. Considering the ratio laid down by Apex Court in the said Judgment and in view of the provisions of Article 1435 of the Portuguese Civil Procedure Code, read with the provisions of Section 104, 105 and Order 43 of the Civil Procedure Code, and taking note of the fact that the learned Single Judge of this Court has held that an appeal against the orders passed in the inventory proceedings are to be dealt with in accordance with the provisions of the Code of Civil Procedure, 1908, I find that there can be no doubt that an interlocutory Order passed during the course of the Inventory Proceedings which has not been challenged by a party against whom such Order was passed, can challenge the error or irregularity therein affecting the decision in the proceedings whilst preferring an Appeal against the final decision putting an end

to the Inventory Proceedings. Article 1435 (a) of the Portuguese Civil Procedure Code clearly provides that all appeals which have been preferred can be sent to the superior Court along with the Appeal putting an end to the proceedings. This itself shows that such Appeals against interlocutory Orders in Inventory Proceedings can be decided along with the challenge to the final Order homologating the proceedings.

15. Another contention raised by Shri Usgaonkar, learned Counsel appearing for the Respondents, is that the final Judgment passed in the Inventory proceedings is not a Decree. In support of such submissions, he has relied upon the observations of the learned Single Judge of this Court in the case of **Zacarias Duarte Domingos Pereira vs. Camilo Inacio Evaristo Pereira** (supra). The Judgment of the learned Single Judge was to consider whether the final Order in the Inventory Proceedings is a Decree which can be executed by following the procedure under Order 21 of the Civil Procedure Code. In that context, the learned Single Judge has held that it cannot be a Decree which was amenable to Order 21 of the Civil Procedure Code. In any event, it cannot be disputed that the final homologation of the Partition is a formal expression and/or conclusive determination of the rights and shares of the interested parties in the estate of the estate leaver. Considering the provisions of Section 104 of the Civil Procedure Code and reading Article 1435 of the Portuguese Civil Procedure Code, I have no doubt that a person who is aggrieved by an Order passed during the course of the Inventory Proceedings can challenge the findings therein which affect the final decision whilst challenging the final homologation of the Partition. As such,

the learned Lower Appellate Court was not justified to come to the conclusion that merely because the Petitioners had not challenged the Order dated 13.09.2000 at the relevant time, the Petitioners were not entitled to raise such contention in the appeal before the learned Lower Appellate Court. In such circumstances, I find that the impugned Judgment to that extent cannot be sustained.”

Thus, this Court has taken a view that orders which would affect the final judgment homologating the partition which have not been challenged earlier can also be challenged while preferring an appeal challenging the final judgment in the inventory proceedings as it cannot be accepted that law renders it imperative upon the interested party to appeal from every order passed in inventory proceedings which he may conceive himself aggrieved, under the penalty that in case he does not so do he would be unable to raise a contention to examine the correctness of such order which would ultimately affect the final Judgment homologating the partition, before the Appellate Court. In case an interested party has to mandatorily challenge every order which he feels aggrieved during the course of the proceedings, it would impede expeditious disposal of the inventory proceedings. This is also based on the principle that when a Court has decided the matter, it is certainly final as regards that Court. The effect of the rule that at every stage of the litigation a decision not

appealed from must be held to be finally decided even in the superior Courts, will put on every litigant against whom an order is passed during the course of the inventory proceedings, the burden of running to the higher Courts to redress the grievances. This would inevitably delay the progress of the inventory proceedings. It is thus recognised that such orders which were passed during the course of the inventory proceedings and not challenged earlier and which would affect the final decision homologating the partition can also be challenged when an appeal is preferred against such final judgment.

25. In this context, we shall now proceed to examine which are the orders which would affect the final judgment and as such can be challenged while preferring an appeal against the final judgment. As pointed out herein above, clauses (a) and (b) of Article 1435 of the Port. C.P.C. deal with appeals against orders putting an end to the proceedings or against orders excluding from the proceedings, any heir or excluding or removing anybody from the office of the administrator, guardian, curator or member of the family council. The challenge to such orders would not substantially affect the final judgment in the inventory proceedings but only determine the course of the proceedings. Any party aggrieved with such orders has to prefer an appeal immediately before the superior Court during the

course of the inventory proceedings itself. In fact, such orders would determine the progress of the inventory proceedings at the initial stage and as such we find that orders which are covered by clauses (a) and (b) of Article 1435 of the Port. C.P.C., cannot be assailed while challenging the final judgment in the inventory proceedings but have to be challenged immediately in accordance with law. With regard to orders passed in terms of clauses (c), (d) and (e) of Article 1435 of the Port. C.P.C., are concerned, we find that such orders may affect the final judgment homologating the inventory proceedings. The Port. C.P.C. also contemplate that appeals against such orders can be submitted to the superior Court at the later stage which suggest that a challenge need not be raised immediately as provided in clauses (a) and (b) of the Article 1435 of the Port. C.P.C. Thus, orders passed in terms of clauses (c), (d) and (e) of Article 1435 of the Port. C.P.C., which have not been challenged and affect the final judgment can be challenged at the time of filing appeal against judgment homologating the partition.

26. In such circumstances, the fact that orders passed during the course of the inventory proceedings can be challenged in terms of Section 104 of the Civil Procedure Code cannot be doubted. Section 104 of Indian C.P.C. inter-alia provides that an appeal shall lie from

orders referred to therein and save as otherwise expressly provided in the body of the Code or by any other law for the time being in force. The fact that the provisions of the Port. C.P.C. is a law which is for the time being in force cannot be disputed wherein an appeal is provided in terms of Article 1435 of the Portuguese Civil Procedure Code. Such appeals were held to be governed by the provisions of Sections 104 and 105 read with Order 43 of the Civil Procedure Code as held in the case of **Mary Dias** (*supra*).

27. The only aspect which now remains to be examined is whether a first appeal would lie against the order/judgment finally homologating the partition in the inventory proceedings. In order to examine this aspect, we will first ascertain what is the effect of the final judgment/order passed in the inventory proceedings. Article 2158 of the Portuguese Civil Code provides that the partition of the properties legally made in respect of which there had not been any objection, confers on the co-heirs exclusive ownership of the properties partitioned among them. Thus, the effect of such final judgment would confer exclusive ownership over the properties which have been partitioned. Article 2164 of the Portuguese Civil Code further provides that partitions judicially made and confirmed by judgment which becomes final for want of appeal cannot be rescinded

except in cases of nullity of proceedings and those in which *res judicata* can be invoked. Article 1421 of the Port. C.P.C. further inter-alia provides that judgment will be passed homologating the partition according to the chart and the operation of the sortition. From such judgment, an appeal shall lie, the filing of which will not stay the operation of the judgment. Article 1436 of the Port. C.P.C. further provides that questions which have been decided in the inventory proceedings are considered as finally decided both in relation to the administrator and the persons summoned in the capacity of heirs and in relation to those who took part in the decision except when the right to pursue competent remedies has been expressly reserved.

28. Reading the said provisions which govern the final judgment/ orders passed in the inventory proceedings homologating the partition, we find that a final judgment in the inventory proceedings finally adjudicating the shares of the parties as well as the allotment made therein unless the right to file a suit is expressly reserved therein. There is as such a final adjudication attached to the questions which have been decided in the inventory proceedings. In such circumstances, considering the effect of the final judgment in the inventory proceedings, we shall now proceed to examine whether such judgment can have a status of a decree. The Apex Court in the

judgment reported in **(2015) 2 SCC 682** in the case of **Rajni Rani and another V/s Khairati Lal and others**, has inter alia held that when there is a conclusive determination of rights of the parties upon adjudication, such decision in certain circumstances can have a status of a decree. There has to be a formal expression of an adjudication as far as that Court is concerned. The determination should conclusively put to rest the rights of the parties in that sphere. There may as such be situations where an order can get the status of a decree. The Court may draw up a formal decree or may not, but if by virtue of the order of the Court, the rights have been finally adjudicated, irrefutably it would assume the status of a decree. Thus, keeping in mind the effect of the final judgment in the inventory proceedings and the definite character assigned to such judgment which finally adjudicates the rights of the parties to the inheritance of the estate leaver there can be no doubt that finality is attached to such judgment passed in the inventory proceedings as far as the controversy raised therein is concerned. The interested parties who have taken part in such proceedings are bound by the findings and orders passed in such proceedings. Thus, inventory proceedings homologated by a final judgment which finally determines the shares of the interested parties and the properties are partitioned after an auction is conducted in terms of the relevant procedure of the Port.

C.P.C., indubitably adjudicates the controversy as regards the substantive right of the interested parties and the other parties to such proceedings. The Apex Court in the case of **Rajni Rani and another** (supra) has observed at para 16 thus :

“16. We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A Court may draw up a formal decree or may not, but if by virtue of the order of the Court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evincible, in the case at hand, the counter-claim which is in the nature of a cross-suit has been dismissed. Nothing else survives for the defendants who had filed the counter-claim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not have been unsettled by the High Court in exercise of the power under [Article 227](#) of the Constitution of India. Ergo, the order passed by the High Court is indefensible.”

What emerges from the said observations is that a challenge to an order passed by the Court of the first instance would

not rest on whether a decree is in fact drawn or not. What is material is to find out the effect of such judgment and reading the aforesaid provisions of the Port. C.P.C., the Portuguese Civil Code and considering the effect of the final judgment/order passed in the inventory proceedings, the only conclusion which can be drawn is that the adjudication which precedes the said final judgment in the inventory proceedings attained finality to the allotment made as well as the questions decided therefrom. In such circumstances, we hold that such final judgment passed in the inventory proceedings homologating the partition and disposing of such proceedings has a status of a decree.

29. Section 96 of the Civil Procedure Code reads thus :

“96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by

Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.] “

The above provisions deal with appeals under the C.P.C. Sub-section (1) of Section 96 provides that “*save where otherwise expressly provided*” in the body of the Code or by any other law for the time being in force, an appeal is maintainable against any decree passed by the Court exercising original jurisdiction. The fact that the final Judgment passed in the inventory proceedings is by a Court at first instance cannot be disputed. The words “save where otherwise expressly provided in the body of the Code or by any other law for the time being in force” makes it clear that the right of appeal conferred by Section 96 of C.P.C. is subject to the provisions of the Code as also it is subject to other law for the time being in force. In other words, a decision passed by any Court exercising original jurisdiction under any other laws for the time being in force is subject to an appeal under this section unless it is expressly provided otherwise. The right of appeal is provided in terms of Article 1435 of the Port. C.P.C. referred to herein above. The fact that the Port. C.P. C. read with Portuguese Civil Code is “any other law for the time being in force” cannot be disputed. The appeal as provided under the provisions of the Port. C.P. C. would be subject to an appeal as provided in terms of Section

96 of the Indian C.P.C. An appeal is a right of entering a superior Court and invoking its aid and interposition to redress an error of the Court below by following the procedure prescribed. The central idea is a right to prefer an appeal. The right of appeal has been recognised by judicial decisions as a right which vests on a party to the proceedings but however, the procedure to be followed in preferring such appeal and the forum cannot be a vested right. The only aspect reserved as such is that a suitor cannot be deprived of a right of appeal to the superior Court as provided in the provisions of the Port. C.P.C., referred to herein above. The legal pursuit of a remedy in preferring an Appeal and a Second Appeal are really steps in a series of proceedings all connected with each other though the procedure to be followed at different stages can be under different statutes. Hence, considering that the final Judgment/order in the inventory proceedings has a status of a decree, such final Judgments disposing of the inventory proceedings are appealable in terms of Section 96 of the Civil Procedure Code. A right of appeal is not a natural or inherent right but is a creation of the statute and there is no such right to file an appeal unless it is provided clearly by express terms by the Legislation. As such, we find that the final Judgment passed in the inventory proceedings having a status of the decree is appealable in terms of Section 96 read with Order 41 of the C.P.C. Even on going

through the provisions of the Port. C.P.C., dealing with appeals against final judgments in inventory proceedings and the procedure to be followed in appeal under Section 96 of the C.P.C., there is no much difference as the substantial procedure substantiating the same. Though under the Port. C.P.C., an appeal can be filed by filing an application in the same Court, such procedure no longer prevails after the coming into force of the C.P.C., as well as the Civil Manual. Thus, we find that the procedure followed by the Appellate Court in cases where appeals are preferred against final judgment in Inventory Proceedings are not substantially inconsistent with the provisions of the Indian Civil Procedure Code for the reasons stated herein above. Apart from that, Section 5(2) of the Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration Act) Act, 1965 provides that for the purpose of facilitating the application of the provisions of C.P.C., the Court may construe it in such a manner not affecting the substance as may be necessary or proper to adapt it to the matter before the Court. In such circumstances, considering that the final judgment passed in the inventory proceedings has a status of a decree, the provisions of Section 96 of the C.P.C. can be construed in such a manner not to affect the substance as found proper to adapt it to an appeal preferred against the final judgment passed homologating the inventory proceedings.

30. For the aforesaid reasons, we find that a First Appeal would lie against a final Judgment homologating the partition in the Inventory Proceedings under Section 96 of the Indian C.P.C. read with Civil Courts Act and thereafter a right of Second Appeal would follow in terms of Section 100 of the C.P.C.. However, as pointed out herein above, appeals challenging the orders under clauses (a) and (b) of Article 1435 of the Port. C.P.C., would not lie along with a First Appeal challenging the final Judgment in the Inventory Proceedings, but, however, orders under clauses (c), (d) and (e) of Article 1435 of the Port. C.P.C. where no appeals have been preferred earlier, and which affect the final Judgment in such proceedings can be challenged along with an appeal, challenging the final Judgment homologating the inventory proceedings. As referred to herein above, it is not disputed by the learned Counsel appearing for the parties that against the final Judgment, an 'Apelação' is preferred; whereas, against orders passed during the course of the inventory proceedings, an 'Agravo' is preferred in terms of the provisions of the Port. C.P.C. But, however, as far as filing of execution proceedings is concerned, the procedure laid down in the case of **Zacarias Duarte Domingos Pereira vs. Camilo Inacio Evaristo Pereira** (supra), would be followed. The Judgment in the case of **Jose Xavier Filipe**

F. L. C. S. Fernandes vs. Flora Fernandes e Abreu & Ors. (supra)

passed by the learned Judicial Commissioner to the extent it holds that the final Judgment in the Inventory Proceedings namely, 'Apelação' would also be governed in terms of Section 104 of the C.P.C., cannot be said to lay a good law for the reasons stated herein above. However, as far as 'Agravo' is concerned, the appeals shall lie in terms of Section 104 of the Indian C.P.C..

31. As far as Court Fees payable are concerned, the Act in force in the State of Goa, does not provide for any specific provision for payment of Court Fees in respect of inventory proceedings. Thus, as the effect of such orders is in the nature of a declaration, we find that fixed Court Fees payable in cases of the proceedings for declaration of a right would be payable for a petition of inventory proceedings. The same Court Fee paid in the Court of the First Instance shall be payable in the appeal against such Judgments/Orders.

32. In that view of the matter, we answer the question referred to herein above, as under :

(I) A First Appeal would lie in terms of Section 96 of the Indian C.P.C. read with the provisions of the Civil Courts Act against a final Judgment homologating the partition in the inventory proceedings and

thereafter a right of Second Appeal would follow in terms of Section 100 of Indian C.P.C.

(II) All other orders passed in the inventory proceedings can be challenged by filing an Appeal from Order in terms of Section 104 of the Civil Procedural Code.

(III) The orders, which have not been challenged earlier and affect the final decision in the inventory proceedings under clauses (c), (d) and (e) of Article 1435 of the Port. C.P.C. can be challenged along with the final Judgment homologating the inventory proceedings.

(IV) The Court fee payable in filing inventory proceedings is a Fixed Court Fee, payable in proceedings for declaration of rights under the Court Fees Act. The same Court fees shall be payable on the appeal preferred against Judgments/Orders in such Inventory Proceedings.

33. Place the matter for further directions before the appropriate Bench.

K. L. WADANE, J. C.V.BHADANG, J. F. M. REIS, J.

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