

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO.50 of 2014

WITH
APPEAL FROM ORDER NO.50 of 2016

APPEAL FROM ORDER NO.50 of 2014

1. Mrs. Ida Barreto, widow of Antonio, major
Teodosio Furtado, resident of Casa
Fatima, Quepem, Goa.
2. Mr. Francisco Isidoro Furtado and his wife, major
3. Lucia Aquaviva Furtado,

both residents Carson Bldg., next
to Universal Medical Store, Baina,
Vasco da Gama, Goa.
4. John Furtado
5. Xavier Furtado and his wife, major
6. Mrs. Sharon Furtado
7. Mr. Olavo Furtado and his wife,
8. Mrs. Ame Furtado @ Emilia
9. Mr. Wilson Furtado and his wife
10. Mrs. Meena Furtado
Appellants Nos. 4 to 10 resident
of Casa Fatima, Quepem, Goa.
11. Mrs. Renny Furtado e Fernandes
12. Mr. Eddy Fernandes
Both resident of Naikamvadda, Sarzaro
Chinchinim, Salcete, Goa.
13. Mr Mito Jio Furtado and his wife
14. Mrs Sahara Furtado

- r/o H.N.53, Behind Holly Cross School,
Cusmane, Quepem
15. Mrs. Crista Furtado e Fernandes
 16. Mr. Milagres Fernandes
both r/o.H.N. 363, Opp. Hotel Sona
Fatorda Margao Goa.
 17. Mrs. Mavina Furtado, alias, Dias
 18. Mr. Winston Dias
both r/o H.N. 68 St Joaquim Road
Borda, Margao, Goa.
 19. Mrs. Fatima Furtado e Pereira
 20. Mr. Agnelo Pereira
both r/o H.N. 229 Near Govt. Primary
School, Velcao, P.O. Cansaulim, Goa.
 21. Mr. Memlee Furtado and his wife
 22. Mrs Marcelima Dulcina Furtado alias Dias
r/o H.N. 709-A Dandewaddo, Chinchinim
Salcete, Goa.
 23. Mrs. Dominica Furtado, alias, Souza
 24. Mr. Aureo E Souza
both r/o E-41 Patto, Ribandar, Ilhas, Goa.
 25. Mrs. Mipath Furtado de Souza
 26. Francisco de Souza
r/o H. N.53, Behind Holy Cross
School, Cusmane, Quepem
- Appellants.

Versus

1. Mr. Maxmiano Guilherme Furtado and his wife
2. Mrs. Leonor Noronha
Both are resident of No.94 Casa
Fatima Quepem Goa.
3. Mr. Andre Bebiano Furtado and his wife (since Deceased)
 - (a) Inacio Pedro Furtado
Son of late Andre Bibiano Furtado

major of age, service and his wife

- (b) Mrs. Sabina Raposa e Furtado
major of age
- (c) Mr Altonio Bernard Furtado
son of late Andre Bibiano Furtado
major of age, service, Bachelor
- (d) Mr Agnel Remedios Furtado
son of late Andre Bibiano Furtado
major of age, Seaman, and his wife
- (e) Mrs Georgina Pereira e Furtado
Major of age, Advocate.

All the above residents of H.No.29,
Near Quepem Sports Complex Borimol,
Quepem – Goa.

- 4. Mrs. Brigida Vaz
Both resident of near Stadium
Borimol quepem Goa.
- 5. Mrs. Pedrina Gama e Furtado
- 6. Mr. Antonio M. Furtado and his wife
- 7. Mrs. Angela Furtado
- 8. Mr. Aristoblo Furtado

Respondents 5 to 8 are resident of
House near Gopika Farm
Wood Industry Cacora Goa.

- 9. Mr. Pedro Furtado and his wife
- 10. Mrs. Retina Furtado

Both resident of Bhende Chawl
Bensai, Cacora, Curchorem, Goa.
- 11. Mr. Jose Furtado and his wife
- 12. Mrs. Fatima Furtado

Both resident of near Devendra Bale
House, Santacruz, Cacumoddi, Xeldem

13. Mr. Venancio Furtado and his wife

14. Mrs. Odry Furtado

Both resident of India House
Ambaji Fatorda Margao Goa.

15. Mr. Alfred Furtado and his wife

16. Mrs. Loa Furtado

Both resident of Amtoj, Girdolim
Chandor Goa.

17. Mrs. Julie Furtado

18. Dmelsa Beretto

19. Deleni Baretto

Respondent No.17 to 19 resident
of 4th Ward Colva Salcete Goa

20. Mrs. Maria Furtado (unmarried)
R/o. Caraxiramol, Agonda, Goa. Respondents.

All above are major in age.

Shri M. B. Da Costa, Senior Advocate with Ms. K. Betquecar,
Advocate for the appellants.

Shri Almeida Mario Joaquim Pinto, Advocate for the respondent
nos.1 and 2.

Shri A.D. Bhobe with Ms. S. Bhobe, Advocate for the respondent
nos.8, 11 and 12.

WITH

APPEAL FROM ORDER NO.50 of 2016

Mr. Sameer Digambar Khatkhate,
son of late Mr. Digambar Khatkhate,

age 41 years, Businessman,
residing at House No.38,
Laximi Sadan, Opp. Nova Goa,
Panaji, Goa.

... Appellant

Versus

1. Smt. Mohini Jaiwant Khatkhate,
widow of late Mr. Jaivant Khatkhate,
aged 72 years, residing at
House No.38, Laximi Sadan,
Opp. Nova Goa, Panaji, Goa.
2. Mr. Sandeep Jaivant Khatkhate,
son of late Jaivant Khatkhate,
aged 44 years, married,
residing at 8022 Peregrine PL,
Sandy, Utah 84094 USA ,
through his power of attorney
the respondent no.2,
by virtue o the power of
attorney dated 7.7.11
executed at Panaji, Goa.
3. Smt. Kamala Digambar Khatkhate,
widow of late Mr. Digambar Khatkhate,
aged 71 years, household,
residing at House No.38,
Laximi Sadan, Opp. Nova Goa,
Panaji, Goa.
4. Mrs. Sharmila Lawande,
daughter of late Mr. Digambar Khatkhate,
aged 49 years, married, housewife,
residing at Hill Side Apartments,
Block A, Ground Floor, C-5,
House No.141, Fontainhas,
Panaji, Goa.
5. Mr. Rajnish B. Lawande,
husband of the Respondent No.4,
aged 50 years, married, service,
residing at Hill Side Apartments,
Block A, Ground Floor, C-5,
House No.141, Fontainhas,
Panaji, Goa.

6. Mrs. Aruna Khatkhate alias
Aruna Sachin Prabhu Chodankar
daughter of late Mr. Digambar Khatkhate,
aged 44 years, married,
housewife.
7. Mr. Sachin Kashinath Prabhu Chodankar,
aged 45 years, married,
both residing at House No.38,
Laximi Sadan, Opp, Nova Goa,
Panaji, Goa
8. Mr. Madhuri P. Baokar,
aged 75 years,
residing at 12 Zapura Sahitya Sahawas,
Bandra East Bombay – 51.
9. Mr. Purshottam Baokar,
aged 81 years,
husband of the Respondent No.7,
residing at 12 Zapura Shahitya Sahwas,
Bandra, East Bombay -51.
10. Mr. Tajashree Minind Colvalar,
aged 37 years, married,
residing at C-19, Ganeshpuri,
Housing Colony, Altinho,
Mapusa Bardez, Goa 403507.
11. Mr. Milind Madhukar Colvalkar,
aged 39 years,
husband of the Respondent No.10,
residing at C-19, Ganeshpuri,
Housing Colony, Altinho,
Mapusa, Bardez, Goa 403 507.
12. Shri Ganpat H. Kamat,
aged 87 years, widower,
residing at Sapre Apartments,
Ground Floor, Opp. Datta
Guru Mandir, Hanuman Road,
Vile Parle, East,
Mumbai 400 057.
13. Mr. Ameeta Kulkarni,

Aged 59 years, married
resident of 108, Sankeet Apts.,
Saant Janabi Marg,
Vile Parle, East,
Mumbai 500 057.

14. Dr. Vidyadhar Kulkarni,
aged 64 years, husband of the
Respondent no.13, resident of
108, Sankeet Apts,
Saant Janabi Marg,
Vile Parle, East,
Mumbai 500 057.
15. Mrs. Sucheta Patki,
aged 37 years, married,
wife of Sumit Patki,
16. Mr. Sumit Patki,
aged 59 years,
husband of the Respondent No.15,
both residents of C/o Ganpat Kamat,
Sapre Apartments,
Ground Floor, Opp. Datta Guru
Mandir, Hanuman Road,
Vile Parle, East, Mumbai 400 057.
17. Mr. Srimati alia
Meera A. Hemmadi, (expired)
through her legal representatives;
- 17A. Mrs. Nutan Pramod Basroor,
aged 70 years, married,
resident of Anita Nagar,
Building No.11, B-Wing 604,
Lokhandwala Complex,
Mumbai 400 001.
- 17B Mr. Pramod Basroor,
aged 74 years,
husband of Respondent No.17A,
resident of Anita Nagar,
Building No.11, B-Wing 604,
Lokhandwala Complex,
Mumbai 400 001.

- 17C Mrs. Bharati Mohan Sthalekar,
aged 69 years, married,
resident of 22nd floor,
1905/1906, Riveira Towers,
Towers C, Lokhandwala Complex,
Khadivali East,
Mumbai 400 101
- 17D Mr. Mohan Sthalekar,
aged 72 years,
husband of the Respondent No.17C,
resident of 22nd floor,
1905/1906, Riveira Towers,
Towers C, Lokhandwala Complex,
Khadivali East,
Mumbai 400 101
18. Dr. Binata S. Zantye,
(expired) through her legal
representatives:
- 18A. Dr. Avinash Shashikant Zantye,
aged 45 years,
resident of Anmol Bungalow,
Opp. Bangiwadi, Medha,
Malvan, 416 606, District
Sindhudurg, Maharashtra.
- 18B. Dr. Shilpa A. Zantye,
wife of Dr. Avinash Shashikant Zantye,
aged 41 years,
residing at Anmol Bungalow,
Opp. Bangiwadi, Medha,
Malvan, 416 606, District
Sindhudurg, Maharashtra.
- 18C. Dr. Amol Shahikant Zantye,
aged 43 years,
residing at Anmol Bungalow,
Opp. Bangiwadi, Medha,
Malvan, 416 606, District
Sindhudurg, Maharashtra.
- 18D. Mr. Malavika A. Zantye,
wife of Dr. Amol Shahikant Zantye,
aged 38 years,

residing at Anmol Bungalow,
Opp. Bangiwadi, Medha,
Malvan, 416 606, District
Sindhudurg, Maharashtra.

19. Mr. Shashikant Zantye,
aged 76 years, married,
residing Anmol Bungalow,
Opp. Bangiwadi, Medha, Malvan,
416606, district Sindhudurg,
Maharashtra.
20. Mrs. Aparna B. Shetye,
aged 70 years, married,
residing at Jalamina Society,
Subhash Road,
Near United INK Factory,
Vile Parle, East Mumbai 400 051.
21. Mr. Bhaskar Shetye,
aged 74 years,
husband of Respondent No.20,
residing at Jalamina Society,
Subhash Road,
Near United INK Factory,
Vile Parle, East Mumbai – 400 051.
22. Mr. Srirang S. Guriye,
aged 57 years, married,
residing at 16B Kamat
Kunji Subhash Road,
Opp. United INK Factory,
Vile Parle, Bombay 400051.
23. Mrs. Vaibhavi Srirang Guriye,
aged 53 years, married,
residing at 16B Kamat
Kunji Subhash Road,
Opp. United INK Factory,
Vile Parle, Bombay 400051.
24. Mr. Sachidanand G. Ghurye,
aged 55 years,
residing at 2 Anand Niwas, 74,
Shivaji Park, Dadar,
Mumbai 400 028.

25. Mrs. Neeta Ghurye,
aged 51 years, wife of Respondent No.24.,
residing at 2 Anand Niwas, 74,
Shivaji Park, Dadar,
Mumbai 400 028.
26. Mr. Arun Ranganekar,
aged 79 years, married,
residing at Shankar Niwas
Srikrishna Nagar,
Near Sanjay Gandhi Park,
Borivili East, Mumbai 400 066.
27. Ms. Padmavati Ranganekar,
aged 46 years, married,
residing at Shankar Niwas
Srikrishna Nagar,
Near Sanjay Gandhi Park,
Borivili East, Mumbai 400 066.
28. Ms. Khanchan Ranganekar,
aged 43 years,
residing at Shankar Niwas
Srikrishna Nagar,
Near Sanjay Gandhi Park,
Borivili East, Mumbai 400 066.
29. Ms. Geeta Ranganekar,
aged 40 years,
residing at Shankar Niwas
Srikrishna Nagar,
Near Sanjay Gandhi Park,
Borivili East, Mumbai 400 066.
30. Smt. Sunita Gopalkrishna Prabhu,
aged 71 years, married,
residing at Geeta Sadan,
Lodi Bagh, Karwar,
Karnatka 581 303.
31. Mr. Gopalkrishna Prabhu,
aged 76 years, married,
residing at Geeta Sadan,
Lodi Bagh, Karwar,
Karnatka 581 303.

... Respondents

Shri Valmiki Menezes, Advocate for the appellant.

Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar, Advocate for the respondent nos.1,2, 10 and 11.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 8th June,2017.

PRONOUNCED ON: 6th July,2017.

JUDGMENT:

These two appeals deal with the primary objection to the maintainability of the appeals before this Court raised on behalf of the respondents in both the appeals. The appellants in the first Appeal from Order had challenged the order dated 15/11/2014 and Order dated 11/12/2014 passed by the Additional Senior Civil Judge, Margao on the premise that there was a misconstruction of the provisions of Article 1417 of the Portuguese Civil Procedure Code. It was also challenged on the premise that the Trial Court had failed to notify to whom the owelty money was payable once the registry had prepared the chart of partition and found that the money was payable. The Trial Court had grossly misread clause 'c' of Article 1417 and ought to have held that the Inventory Court had no power to extend the time to deposit the owelty money, much less did it have the powers to deposit the money in installments. The appellants in this appeal had therefore sought for a reversal of the impugned order passed by the Trial Court. The respondents had raised a preliminary objection to the maintainability of the appeal on

the premise that the jurisdiction to entertain the appeal lay with the District Court and that this Court had no powers to deal with the appeal.

2. Shri M. B. D'Costa, learned Senior Counsel on behalf of the appellants contended that in terms of Article 1369 of the Portuguese Civil Procedure Code the initial valuation of the property would be spelt out by the parties initiating the Inventory Proceedings, that in terms of Article 1387, the Court had to order the appraisal of the properties by the appraiser where no questions were raised against the description or those so raised had been decided. The next stage of valuation would arise when the licitation took place and parties offered the market value. He adverted to the commentary on Judicial Partition by Antonio Joao de Lopes Cardoso which observed that the admissibility of the appeal in the Inventory Proceedings, when the initial value is within the jurisdiction of first instance, depends upon the value which is recorded in the Chart of Partition and submitted that licitation was relevant for determining the Forum of appeal. He also referred to Article 1411 which referred to the stage at which licitation was done apart from partition as contained in Article 1414 and of the Chart of the Partition being drawn thereafter in terms of Article 1416 and submitted that based on the valuation, the appeal was maintainable before this Court. He

next referred to Section 451 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 and submitted that in terms thereof, an appeal from the final order made in the Inventory Proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be an appeal under Section 96 of the Code of Civil Procedure, 1908.

3. Shri M. P. Almeida, learned Counsel for the respondents no.1 and 2 submitted that the issue had received a quietus in view of the enactment of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 and that Section 451 determined the appellate forum. The question which was at large before this Court was whether the value of the assets as referred to in sub-section 1 and value of assets at the time of the order provided for in sub-section 2 were synonymous or not. In his submissions, therefore the appeal lay before the District Court. Shri A.D. Bhobe, learned Counsel for the respondents no. 8, 11 and 12 adopted the arguments of Shri M.P. Almeida, learned Counsel for the respondents no.1 and 2 and rested his case on the aspect of maintainability of the appeal.

4. In the next appeal No.50 of 2016 the appellants had taken exception to the order dated 08/07/2006 and the Draft Chart of

Partition dated 13/07/2016 passed by the Senior Civil Judge, Panaji. It was the case of the appellants in that appeal that the impugned order and chart was passed with material irregularity and contrary to the provision of Articles 1784, 1789, 2098 and 2099 of the Portuguese Civil Procedure Code. The reasoning adopted by the Trial Court for rejecting the appellant's Chart of Partition in part, and directing the Chart of Partition to be prepared in the manner done by the Court was based on a wrong interpretation of the law and to the prejudice of the appellant. The Trial Court had erred on such and similar grounds and therefore it was necessary to quash and set aside the impugned order. In this appeal too, preliminary objection was taken to the maintainability of the appeal and therefore in such circumstances Shri S.M. Usgaonkar, learned Senior Counsel came to be heard on behalf of the respondents. He adverted to the application in the Inventory Proceedings No.90/2000, where the inventariante had made a reference to the assets at ₹5,00,000/- and ₹1,00,000/- for the purpose of the jurisdiction i.e. the total value of ₹6,00,000/- being given by the Inventariante. He next referred to the description of assets where the valuation of the land and building was estimated at ₹5,00,000/- and the shop at ₹1,00,000/- and the list of assets spelt out by the Cabeça de Casal in which he had valued the item No.1 at ₹5,10,000/- and the item no.2 at ₹1,10,000/- and the order being made by the Trial Judge

dated 11/12/2007 to comply with the Article 1391 of the Portuguese Civil Code.

5. Shri S. M. Usgaonkar, learned Senior Counsel placed reliance in **Vero Nunes and another v/s. Euroco Erasmo Nunes and others** (Writ Petition no.119 of 2010) being a judgment of this Court delivered by a learned Single Judge and submitted that in those proceedings the property was initially valued at ₹1,00,000/- while the Administrator had valued the assets at ₹5,35,000/- in the course of the Inventory Proceedings and adverted to the findings to substantiate his contention that this judgment supported his case that the valuation at the time of the Inventory Application determined the Appellate Forum and not the valuation done at a latter stage. He also relied on the judgment in **Lourdes Gregorio Gomindes and another v/s. Milagres Santana Gomindes** (Appeal from Order Nos. 28, 39 and 48 of 2013) where the issue at large before the learned Single Judge of this Court was whether the appeal lay before the High Court when the subject matter of the assets for the purpose of jurisdiction were valued at less than ₹20,00,000/- and the property being valued at the time of filing of the Inventory Proceedings at ₹60,000/-. In the said judgment it held that the appeal could not be entertained before this Court and that the appeal memo as well as the annexures had to be returned

to the appellants to enable them to file an appeal before the Competent Court of jurisdiction squarely applied to this case and the issue was no longer res integra.

6. Shri S. M. Usgaonkar, learned Senior Counsel next relied on another order in **Mr. Renoir I.B. Cota v/s. Mr. Wright Clement Cota and others** (A.O.Nos.69 and 70/2013) in which the Administrator valued the assets at ₹1,00,000/- while latter the valuation of the assets was fixed at ₹20,00,000/- and the learned Single Judge having held that the appeals lay before the District Court and not before this Court. According to him, these three judgments held the field and clearly supported his contention that the appeals lay before the District Court in view of the initial valuation and that this Court had no jurisdiction to entertain the appeals. He next contended that Section 451 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 made no violence to these judgments even on the partition and consideration of sub-sections (1) and (2) thereof and therefore the appeals had to be returned to be filed before the District Court.

7. Shri V. Menzes, learned Counsel for the appellant adopted the arguments of Shri M. B. D'Costa, learned Senior Counsel for the appellants in the Appeal from Order No.50/2014

and submitted that there was one valuation of the property at the time of the opening of the inheritance, a second valuation in terms of the Article 1387 at the time of appraisal by the appraiser appointed by the Court and then the value fixed by the Court finally. According to him, the Court had fixed the value of the property at ₹5,10,000/- unlike its valuation after the bid being ₹1,54,40,000/-. According to him, the value at the stage when the order is challenged would decide the Appellate Forum and therefore the appeal was very much maintainable before this Court and the preliminary objections had to be dismissed. On his part, he place reliance in **Fernando Jorge Colaco v/s. State of Goa and others** (1991(2) Goa L.T. 11).

8. Shri M.B. Da Costa, learned Senior Counsel for the appellant in A.O. No. 50/2014 contended that the judgment in **Vero Nunes** (supra) was clearly distinguishable and that on a bare reading of paragraph no.9 with paragraph no.13 it was apparent that the Court had considered the contention that the valuation at the time of the order determined the forum of appeal. His next submission was that the judgment in **Lourdes Gomindes** (supra), was per incurium as it had not considered his contention qua the commentary by Lopes Cordoso in its proper context and that the learned Judge had not considered the passage at page 500 which it had erroneously

referred to the passage at page 615 which was not discussed. In case the judgment was being considered, the matter had to be referred to a larger Bench. Shri V. Menezes, learned Advocate for the appellant in A.O. No.50 of 16 too distinguished the judgment in **Vero Nunes** (supra) and asserted the maintainability of the appeal before this Court.

9. i would consider their submissions in the light of the judgments, the relevant provisions of the Portuguese Civil Procedure Code and Section 451 of the Goa Succession Special Notaries and Inventory Proceeding Act,2012 and decide whether the forum of appeal is the District Court or this Court as per the rival contentions.

10. The commentary by **Anotinio Joao de Lopes Cardoso** on Judicial Partition at page 500 reads

" In this case, there is no doubt at all, the value of the proceedings is fixed and it is immediately known whether the appeal lies or not, because it is within or beyond the jurisdiction of the Court against which the appeal is to be preferred."

There was a reference to a citation that in inventories the value is only determined when the value of the assets is known at the stage the description is done and after this value is determined, the jurisdiction is defined and fixed, unless there is an increase in the

value by licitation or appraisal.

A bare reading of this commentary would substantiate the case of Shri Usgaonkar, learned Senior Counsel that the value of the assets which is known at the stage of description would determine the forum of the appeal and it is not as contended by Shri M. B. Da Costa, learned Senior Counsel that the value of the appeal would depend on the Chart of Partition drawn after licitation. In the appeal filed by Shri M. B. Da Costa, learned Senior Counsel the valuation of the property was inflated to an amount more than ₹2,00,00,000/- unlike the amount which was initially fixed bringing the appeal within the jurisdiction of the District Court. In the next Appeal No.50 of 2016, the valuation of the property was a mere ₹6,20,000/- even at the time of disclosing the list of assets which was without prejudice to the appeal filed against the order dated 24/05/2008 and then carried well beyond the jurisdiction of the District Court.

11. **Vero Nunes** (supra), took exception to the Order dated 21/01/2010 passed by the District Judge-I, dismissing the objection taken by the petitioners regarding the maintainability of the appeals before the District Court. In the brief facts, the Inventory proceedings were initially valued at ₹1,00,000/- and in the course of the inventory proceedings, the Administrator valued the assets at

₹5,35,000/-. The petitioners led evidence in which they claimed that the value of some of the assets was ₹5,00,00,000/- and the Trial Court disposed off several objections taken by the interested parties. The Petitioners raised an objection to the maintainability of the appeals before the District Court on the premise that the value of the assets was more than ₹20,00,000/-, the appeal would lie before this Court and not before the District Court. The learned Single Judge considered the contentions on behalf of the petitioners and the respondents no.1 and 2 who supported the order and the other contentions made by the other Counsel appearing for the different set of respondents and on a consideration of the rival submissions held that the ratio laid down in the case of **Sheela Rodrigues Vs. Lourencinha Ana D'Cruz Rodrigues** (AIR 2000 Bombay 97) was squarely applicable and that in the case at large, the assets were valued at ₹1,00,000/- at the time of filing of the Inventory Proceedings while the Administrator had valued the assets at ₹5,35,000/- and therefore held that the lower Appellate Court was not at all in error by drawing analogy that the valuation of the suit determines the appellate forum and not the amount decreed and dismissed the petition. The learned Judge had found that the lower appellate Court had held that in terms of Section 22 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, the appeal would lie before the District Court since the

value of subject matter did not exceed ₹1,00,000/- and in that view of the recent amendment by which the jurisdiction of the District Court has been increased to ₹20,00,000/-, the lower Appellate Court would have jurisdiction to entertain the appeals.

12. In **Gomindes** (supra), the question which arose for consideration was on the maintainability of the appeal before this Court when the subject matter of the assets for the purpose of jurisdiction were valued at less than ₹20,00,000/-. In the brief facts, it was pointed out on behalf of the appellants that the subject matter of the assets left behind by the deceased were valued at ₹60,000/-, while at the time of the auction the value was ₹30,00,000/- and, as such, the Appeal was tenable before the High Court in terms of Section 22 of the Goa Civil Court's Act. A reference was also made to the commentary by Dr. Joao Antonio Lopes Cardoso which observed that the forum of jurisdiction changes on the basis of the change in valuation. The learned Judge was seized off the fact that the Orders passed in the Inventory Proceedings are to be considered as Orders passed in terms of Section 104 of the Civil Procedure Code and that the Inventory proceedings were a suit in terms of Section 22 of the Goa Civil Court's Act.

13. In **Gomindes** (supra), the learned Single Judge observed that the Inventory jurisdiction of the Court is determined by the subject matter of the suit, referred to Section 6 of the Civil Procedure Code and observed that there was no manner of doubt that it was the value of the suit, i.e., the value of the subject matter thereof that determines the Court in which the suit is to be filed and also determines the forum of the appeal. In that context, it was further observed that there can be no doubt that the forum of appeals challenging an order passed in the Inventory Proceedings would be on the basis of the valuation stated for the purpose of jurisdiction in such proceedings. The subject matters valued at ₹60,000/- and in view of the provisions of Section 22 of the Goa Civil Court's Act, the appeal would lie to this Court only in cases in which such valuation is more than ₹20,00,000/-. Considering that in the present case, the value was much less than the said sum, the forum of appeal to challenge an order passed in the Inventory Proceedings would be the District Court in terms of the said provisions of the Goa Civil Court's Act. In view of the matter, the learned Single Judge held that the appeal could not be entertained before this Court and ordered the return of the appeal memo as well as the annexures to enable the appellants to file the appeal before the competent Court of jurisdiction. The learned Single Judge had duly considered the commentary by Dr. Joao Antonio Lopes Cardoso

on Judicial Partition and therefore the contention of Shri M. B. D'Costa, learned Senior Counsel for the appellant cannot at all be entertained that the commentary was not considered or that there was an erroneous reference to the paragraph in the judgment as to justify the reference of the matter to a larger Bench for consideration.

14. In **Renoir I.B. Cota** (supra), another learned Single Judge of this Court was dealing with the Appeal from order in the Inventory proceedings pending before the Civil Judge, Senior Division at Vasco where the Administrator had valued the assets at ₹1,00,000/-. However, in the course of the proceedings, the valuation was fixed at ₹2,00,00,000/-. The learned Judge considered the unreported judgment in **Lourdes Gregorio Gomindes** (supra), which had discussed the provisions of Section 22 of the Goa Civil Court's Act and held in the facts that as the initial valuation was ₹1,00,000/-, the forum to challenge the order passed in the Inventory proceedings would be the District Court and in that light ordered the return of the appeal to be filed before the District Court, South Goa, Margao. Each of these judgments relied upon by Shri S.M. Usgaonkar, learned Senior Counsel for the respondents in the Appeal No.50/2016 amply substantiates the case that it is the initial valuation which would determine the forum

of appeal and not that done at different stages which would have the effect of providing multiple fora of appeal to the parties depending on the stage of valuation and create an anomalous situation.

15. **Fernando Colaco** (supra), a Public Interest Litigation was regarding the grievance on the levy of stamp duty on owelty amounts directed to be paid in the Inventory Proceedings. In that context the Division Bench of this Court had formulated three questions for determination. However, except that part holding that the final judgment which emerges in the Inventory Proceedings is in fact an instrument of partition and should bear stamp duty, the judgment with respect has no bearing on the case at hand and is therefore clearly distinguishable.

16. In terms of Section 451 of the new Act, an appeal from the final order made in the inventory proceeding shall lie to the competent Court depending upon the value of the assets and such appeal shall be deemed to be appeal under Section 96 of the Code of Civil Procedure, 1908. However, in terms of sub-section 2, an appeal from an order shall lie from every order, other than a merely administrative order, made in the inventory proceedings to the competent Court depending upon the value given to the assets at

the time the order is made and appeal shall be deemed to be an appeal under Section 104 of the Code of Civil Procedure, 1908. In other words an appeal from a final order which is deemed to be an appeal under Section 96 i.e. an appeal from an original decree shall lie to the Court depending on the value of the assets while an appeal from order which is akin to that under Section 104 of Code of Civil Procedure, 1908 shall lie to the competent Court depending on the value given to the assets at the time order is made. A reading of Section 451 of the new Act clearly makes a distinction between an appeal to the competent Court from a final order in terms of sub-section 1 and an appeal in terms of sub-section 2 being an appeal from order to the competent court based on the value at the time of the order. Therefore there is no basis in the contention of Shri M.P. Almeida, learned Advocate that these two situations are not synonymous. A reference to this section also does not substantiate his contention that the appeal would lie to the High Court considering the judgment in **Vero Nunes, Lourdes Gregorio Gomindes and Renoir I.B. Cota** (supra). In the ultimate , it is apparent as contended by Shri S. M. Usgaonkar, learned Senior Counsel for the respondent in A.O. No. 50 of 2016 that these three judgments hold the field and in view thereof the appeals are required to be returned to be filed before the District Court considering the valuation of the assets.

17. In view of the above discussion, the appeal memos alongwith the annexures are ordered to be returned to the appellants to be tendered before the competent Court having jurisdiction within two weeks from the receipt thereof. It goes without say that the learned District Judge will consider the aspect of delay in preferring the appeal. In the event the issue of limitation arises, the appellants would be at liberty to urge that they were prosecuting the above appeals in this Court and which shall be taken into consideration while deciding the issue of limitation.

NUTAN D. SARDESSAI,J.

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Shri M.B. D'costa, learned Senior Counsel for the appellant in Appeal from Order No.50 of 2014 submits that there was a stay operating in his favour which may be continued for a period of two weeks. Shri A. D. Bhobe, learned Advocate for the respondent nos.8, 11 and 12 fairly concedes that the operation of the stay could so continue.

Shri V. Menezes, learned Advocate for the appellant in the Appeal from Order No.50 of 2016 submits that there was a stay operating in his favour which may be continued for a period of two weeks. Shri S. M. Usgaonkar, learned Senior Counsel for the

respondent nos.1,2, 10 and 11 fairly concedes that the operation of the stay could so continue.

Interim stay in both the appeals to continue for two weeks.

NUTAN D. SARDESSAI,J.

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