

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4803 OF 2014
(Arising out of SLP(C)No.30234 of 2009)

NIRMALA VASSANT DESSAI AND ORS.

.....APPELLANTS

VERSUS

TULSI SADANANDA DESSAI

.....RESPONDENT

O R D E R

Leave granted.

This appeal has been preferred by the appellants-objectors against the order dated 6th August, 2009 passed by the High Court of Bombay at Goa in AFO No.98/2008. By the impugned order, the High Court rejected the objection raised by the appellants-objectors and affirmed the order dated 18th June, 2008 passed by the learned 1st Additional Civil Judge, Senior Division, Margao in the Inventory Proceedings No.131/1998/1.

The Inventory Proceedings aforesaid commenced on 4th November, 1998 upon the death of the estate leavers Smt.Yeshoda Ganba Dessai, who died on 4th August, 1975, and Shri Ganba Bhagdu Dessai, who died on 18th September, 1991. In the said case an order was passed by the Court appointing Vassant Dessai as Cabeça de Casal (hereinafter referred to as the Administrator). On 30th March, 1999, respondent-Tulsi was appointed as Administrator and she was administered oath and filed an additional statement on oath. In the said Inventory Proceedings the appellants filed an application on 24th September, 2002 to declare the Will dated 19th September, 1991

2

of the deceased estate leaver (testator) Ganba Dessai as invalid on the ground that late Ganba was not the sole and exclusive owner of the properties and, therefore, he could not bequeath specific portion of the properties to any person and the bequest deposition was hit by Article 2177 of the Civil Code. The respondent filed her objections on 23rd March, 2007 that what is bequeathed is out of

Ganba Dessai's disposable quota. She further took plea that the issue raised by the appellants can be decided at the time of Informative Chart of Partition. Upon hearing the parties, learned Inventory Judge was pleased to dismiss all their applications by order dated 18th June, 2008 holding that the Inventory Court lacks jurisdiction in entertaining and deciding the issue of validity of the Will. The Inventory Court held that there is no breach of Article 2177 of the Civil Code.

Felt aggrieved, the appellant preferred an appeal bearing No.98/2008 to get the order of the Inventory Court quashed and set aside only to the extent of the rejection of application for declaring the Will null and void.

Learned Single Judge after notice to the respondent by the impugned judgment affirming the order of the Inventory Court, dismissed the appeal.

Learned counsel appearing on behalf of the appellants contended that the substantive law of succession is governed by the provisions of the Portuguese Family Law still in force in Goa, since family laws applicable to the rest of India have not been extended to Goa. The same also pertains to the law of Inventory

3

Proceedings governed by Portuguese Civil Procedure Code, not repealed by Indian Civil Procedure Code extended to Goa, Daman & Diu with effect from 15th June, 1966. As per the law of succession, whenever the estate leaver (testator) has descendants, like in the present case, 50% is mandatory reserved by law to the descendants or non-disposable portion, (legitime), and balance 50% can be freely disposable portion by the estate leaver inter vivos (gifts) or mortis causa (will) by the estate leaver (testator). And in the event, the disposition exceeds the disposable share, to the extent the disposition is in excess shall be reduced and the legatee or the donee is to restore back the excess.

According to the learned counsel for the appellants the main issue required to be determined was whether the testator (or donor) can dispose specific part of or specific area of the

property, which property does not exclusively belong to the testator but belongs jointly to the testator and other heirs or legal representatives. And if so, whether disposition will be null and void. A matter is to be determined in terms of Article 2177 of the Civil Code. It is contended that the aforesaid question cannot be decided at the time of Informative Chart of Partition and the application, in any case, cannot be decided after the auction, but has to be decided before the auction. The reason being that if the some heir has offered higher bid in excess of his/her share, he/she is required to deposit the owelty money, failing which the licitation stand cancelled.

The respondent has appeared and taken similar plea as

4

held by the 1st Additional Civil Judge, Senior Division, Margao in the Inventory Proceedings No.131/1998/1.

From the impugned order what we find that though the appellants raised all the questions but the High Court without discussion of the facts and the grounds taken by the appellants dismissed the AFO No.98/2008 with mere observation that the appellants are seen to have taken a totally different stand namely sought a declaration that Will subject matter is "invalid" in the prayer contained in said the application. None of the issue raised by the appellants or the respondents was discussed and decided.

For the reasons aforesaid, we set aside the impugned order dated 6th August, 2009 passed by the High Court of Bombay at Goa in AFO No.98/2008 and remit the matter to the High Court for deciding the same on merits after giving notice to the parties.

The appeal is allowed in the manner indicated above.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(DIPAK MISRA)

NEW DELHI;
APRIL 22, 2014.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).30234/2009

(From the judgement and order dated 06/08/2009 in AFO No.98/2008
of The HIGH COURT OF BOMBAY AT PANAJI)

NIRMALA VASSANT DESSAI AND ORS.

Petitioner(s)

VERSUS

TULSI SADANANDA DESSAI

Respondent(s)

(With prayer for interim relief and office report)
(For final disposal)

Date: 22/04/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr.Dhruv Mehta, Sr.Adv.
Mr.Yashraj Singh Deora, Adv.
For M/S Mitter & Mitter Co., Adv.For Respondent(s) Mr.Arun R.Pedneker, Adv.
Mr. V.N. Raghupathy, Adv.UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)
Court Master(Usha Sharma)
Court Master

(Signed order is placed on the file)