

---

**(2014) 01 BOM CK 0061**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 522 of 2013**

Reginald Baptist Lobo

APPELLANT

Vs

Robert D'souza

RESPONDENT

---

**Date of Decision :** 28-01-2014

**Acts Referred:**

Maharashtra Land Revenue Code, 1966 — Section 105

**Citation :** (2014) 01 BOM CK 0061

**Hon'ble Judges :** U.V. Bakre, J

**Bench :** Single Bench

**Advocate :** J.P. Mulgaonkar, Advocate for the Appellant; G. Usgaonkar, Advocate for Respondents Nos. 1, 2, 4 and 5, Advocate for the Respondent

**Final Decision :** Dismissed

---

## Judgement

U.V. Bakre, J.—Heard Mr. Mulgaonkar, learned Counsel appearing on behalf of the petitioners and Mr. Usgaonkar, learned Counsel appearing on behalf of the respondents No. 1, 2, 4 and 5.

2. By this Petition, the petitioners have challenged the order dated 14/02/2013 passed by the learned District Judge I, North Goa at Panaji (First Appellate Court) in Miscellaneous Civil Appeal No. 185 of 2010.

3. Inventory Proceedings No. 47/1997/B for partitioning the estate of the deceased Reginaldo Baptist Lobo and his wife Felicidade Fernandes, were instituted in the Court of learned Civil Judge, Senior Division, Mapusa (Trial Court), by their son Shri Vitorino Jose Mariano Lobo, since deceased. Prior to the impugned order, the petitioner No. 1 was the Cabeça de casal (administrator) in the said Inventory proceedings whereas as the other petitioners and the respondents were the interested parties. In the course of the proceedings, Cabeça de Casal listed certain properties as belonging to the deceased grand parents. The respondents No. 1 to 5 raised objections alleging that none of the properties listed in the list of assets belong to the estate- leavers and that the

properties at serial nos. 1 to 5 belong to the estate of late Aleixo Mariano Lobo and his wife Luizinha Inacina D'Souza, the parents and parents-in-law of the said objectors. The respondents No. 1 to 5 demanded that inquiry be held in terms of Article 2087 of Portuguese Civil Code. Accordingly, an inquiry was held by the Trial Court.

4. The Trial Court, upon consideration of the material on record, partly allowed the objections of the interested parties and held that the properties at items No. 1 to 5 are the properties belonging to late Reginaldo Baptist Lobo and are to be included in the list of assets and that the properties at items No. 1 to 14 are to be excluded from the said list.

5. Aggrieved by the said order dated 13/08/2009, the said objectors preferred Miscellaneous Civil Appeal No. 185 of 2010 before the District Court, North Goa at Panaji. By impugned order dated 14/02/2013, the learned First Appellate Court set aside the order passed by the Trial Court insofar as it held that items No. 1 to 5 are to be included in the list of assets. The order of the Trial Court insofar as it held that items No. 1 to 14 are to be excluded was confirmed. Therefore, the petitioners have filed the present Writ Petition.

6. Insofar as the items No. 1 and 5 are concerned, the learned Counsel appearing on behalf of the petitioners submitted that there was no land registration document of inscription and description, however, there were survey records in Forms No. I and XIV in respect of the said items which were in the name of the mother of the petitioners. He invited my attention to Article 1370 of the CPC and submitted that there is presumption of truth in respect of the declarations made by the administrator and the contrary has to be proved by the objectors. He submitted that the declaration made by Cabeça de Casal, in respect of items No. 1 and 5, was not in the own interest of the petitioner No.1 and therefore the same was proved. According to him, the presumption under Article 1370 cannot be rebutted by the presumption which arises from Section 105 of the Land Revenue Code. He pointed out to the objections raised by the objectors, wherein it is not stated that the administrator has made declaration in his own interest. He then read out the provisions of Articles 1377, 1379 and 1380 of the Portuguese Code of Civil Procedure. According to him, therefore, the finding by the First Appellate Court that the Cabeça de Casal had not been able to rebut the presumption in respect of the entries in the survey records with regard to the item nos. 1 to 5 is erroneous.

7. With regard to the items No. 2, 3 and 4, the learned Counsel appearing on behalf of the petitioners submitted that Cabeça de Casal had produced the description and inscription documents. He contended that the Inventory Proceedings are not like adversarial suit. He submitted that there is no dispute regarding the documents of registration of inscription and description. He submitted that the boundaries have been mentioned regarding the said items No. 2, 3 and 4. He pointed out that the said Registration Certificates are in the name of late Reginaldo Baptist Lobo which clearly indicate that he was the owner of the

said properties. He submitted that the objectors had not produced any title documents pertaining to the said properties. He, therefore, urged that order of the Trial Court holding that the properties at items No. 1 to 5 are properties belonging to late Reginaldo Baptist Lobo and that the said properties are required to be included in the list of assets was unassailable and that First Appellate Court has committed an error in setting aside the said well-reasoned order. According to him, the impugned order is perverse and liable to be set aside.

8. On the other hand, Mr. Usgaonkar, learned Counsel appearing on behalf of the objectors, submitted that the initial burden to prove that the properties belong to the estate-leaver is on the Cabeça de Casal (head of the family). He read out Article 2075 of the Portuguese Civil Code which provides for description of the immovable properties. He submitted that only if and after the initial burden was discharged by the head of the family, the onus would have shifted to the objectors. He pointed out that there are interested parties in the inventory proceedings who have no right to the properties of the parents of the objectors and petitioners, and, therefore, when the items No. 1 and 5 are surveyed in the name of mother of the objectors and when there are no corresponding title documents produced by the Cabeça de Casal, the question of listing the said properties does not arise. He, therefore, submitted that though it may be true that the objectors did not dispute the land registration document of description and inscription however, he added that the said land registration documents do not pertain to the items No. 2, 3 and 4 and since boundaries as mentioned in the registration documents and in the survey records do not tally, it is not at all proved that the properties bearing the said land registration numbers are the same which are bearing survey nos. 198/14, 203/1 and 2/21. He relied upon the judgment of this Court in the case of "Pedro Joaquim de Rosario Vaz V/s. Marta Vaz alias Marta Furtado", reported in [1996 (2) Goa L.T. 263].

9. I have gone through the material on record. I have considered the arguments advanced by the learned Counsel for the parties and also have gone through the judgment cited by the learned Counsel appearing on behalf of the respondents No. 1, 2, 4 and 5.

10. At the outset, let us see what the various relevant provisions of law lay down.

(a).- Article 1370 of the Portuguese CPC pertains to the declarations made by the Cabeça de Casal. It reads as under :

ARTICLE 1370 (Credit worthiness of the declarations of the administrator)

The declarations of the administrator, the initial and the subsequent as well are, deemed to be true until the contrary is proved, save when they are made in his own interest, or they relate to facts for which the law requires certain manner of proof or the agreement of all or of majority of the parties.

(b).- Article 1377 of the Portuguese CPC provides for the manner in which the properties are to be listed. It states as under:

## ARTICLE 1377 (List of properties)

The administrator shall submit the list of properties within the time which may be fixed.

The properties shall be listed itemwise with reference to numbers starting with active debts, securities, actionable claims, and then the money, foreign coins, and objects of gold, silver and precious metals and similar, thereafter all the remaining movables, and self moving movables, the immovables and finally the passive debts. In between each item a space of five lines shall be kept open.

Separate list shall be made of the properties which are to be appraised by different persons and means.

The lists shall be initialed and signed by the administrator, or by another person at his request, when he does not know and cannot write.

Paragraph 1: The indication of the properties shall be done with reference to all the particulars necessary for their identification.

As to the immovable registered in the Land Registration Office, the serial number of description shall be mentioned.

Paragraph 2: All the shares and the securities of the same type with their respective numbers shall be included in one item, except those which have been issued by different entities. Also there shall be one item of movables of the same nature to which on account of their material, utility and their condition ought to be given the same value.

Paragraph 3: The improvements belonging to the inheritance shall be described in kind when they can be separated from the property where they were introduced, and, if not, as active debts.

The improvements made by third party in the property of the inheritance shall be described as passive debt when they cannot be removed by one who made them.

(c).- Article 1379 of the Portuguese CPC speaks about examination and inspection of the file, after the list is filed. It provides as under:

## ARTICLE 1379 (Examination and inspection of the file)

Once the lists of the properties have been submitted or the time limit within which they should have been submitted has expired, the file shall be made available, for examination, for forty-eight hours, to each of the heirs who have appointed advocate, as per order of their appointment, thereafter to the advocate of the donee and of the administrator, and finally inspection shall be given, for the same period to the Public Prosecutor, when the inventory is of orphan's jurisdiction.

During the period of examination or inspection the advocates and the Public Prosecutor may complain about lack of description of the properties, or give their

say in case the administrator or the donee deny the existence of the properties in their possession or the duty to bring them under collation, or raise question as to which properties he received and has obligation to collate.

The same thing may be done, by application, till the time of the end of examination, by the heirs and moiety holder who have not appointed 11 advocates.

Sole paragraph: The lack of description of the properties may be raised subsequently at any time; but one who raises it shall satisfy that he got the knowledge of the existence of the properties only on the date he presented the application. There upon the procedure described in the next Article shall be followed.

(d).- Article 1380 of the Portuguese CPC provides for steps to be taken when lack of description of properties is complained of. This provision lays down as follows:

ARTICLE 1380 (Steps to be taken when lack of description of properties is complained of.)

Where there is complaint about the lack of description of the properties, notice shall be given to the administrator or to the donee to describe the properties or give their say.

If one who has been served with the notice, admits the existence of the properties and acknowledges that they belong to the inheritance, but is unable to describe them at once, he may apply that time be granted for the purpose of description.

In the event he denies the existence of the properties or declares that they do not belong to the inheritance, the judge shall invite the parties to lead the evidence they desire, hold the inquiry he deems necessary and finally decide whether the properties should be described.

Where the dispute cannot be summarily decided in terms above, because there is necessity of a larger investigation the parties shall be directed to pursue ordinary remedy, and the inventory shall proceed in respect of other properties.

Sole paragraph: The failure to file the reply within time, the notice having been served in person, amounts, for all purposes, to an admission of the existence of the properties and of the duty to describe them.

(e).- Article 2075 of the Portuguese Civil Code envisages as to how the immovable properties are to be described.

ARTICLE 2075 (Description of immovables)

The immoveable properties shall be described with reference to their boundaries, names, appurtenances and easements, and, whenever they devolve in preferential manner, the improvements which were introduced therein which were separable shall be listed.

(f).- Article 2087 of the Portuguese Civil Code lays down as under:

ARTICLE 2087 (Questions which cannot be decided by inspection of certain documents.)

The disputes which may arise in respect of qualification of the heirs indicated by the administrator, or those who applied to be joined as parties to the inventory, in respect of ownership of the properties of the inheritance or of their non partible nature, which cannot be decided by simple perusal of the authentic or authenticated documents, shall be decided by ordinary remedies without prejudice to the continuation of the inventory and partition.

11. In the present case, the declaration of the administrator in respect of the items No. 1 and 5 relate to immovable properties for which the law requires the proof of title by way of title documents and in the absence of the same the agreement of all or majority of the parties. Admittedly, insofar as the items No. 1 and 5 are concerned, there are no title documents in the form of inscription and description certificates. Shri Reginaldo Lobo, the Cabeça de Casal, has stated in his cross-examination that he could not trace the document of description and inscription relating to items no 1 and 5. Only the Forms No. I and XIV are on record. According to Reginaldo, item No. 1 bears survey No. 202/1. As per Form No. I & XIV, the said property stands in the name of Luicinha Inacinha D'Souza. Similarly the survey holding No. 198/8 also stands exclusively in the name of Luicinha Inacinha D'Souza in the Form No. I & XIV. Shri Reginlado Lobo has specifically admitted in the cross-examination that in Forms No. I & XIV, the items No. 1 and 5 are in the name of his mother and not in the name of late Reginaldo Lobo. Admittedly, interested parties No. 1 to 5 have not agreed that the said items no 1 and 5 are ancestral properties belonging to late Reginaldo Lobo. On the contrary, according to them the said properties belong to their mother namely late Luicinha Inacinha D'Souza. As has been rightly contended by the learned Counsel appearing on behalf of the respondents No. 1, 2, 4 and 5, the initial burden so as to raise presumption under Article 1370 has not been discharged by Cabeça de Casal. As has been rightly held by the Appellate Court, survey records have presumptive value u/s 105 of the Land Revenue Code and the said presumption which is rebuttable, has not been rebutted by way of production of any better document of title or otherwise. In such circumstances, mere declaration of the administrator will not serve the purpose. The Trial Court had not considered this aspect in the right perspective and the order of the First Appellate Court in this regard is correct.

12. Now coming to items No. 2, 3 and 4, according to the learned counsel for the petitioners, there are inscription and description certificates. The cabeça de casal has stated that the description of item No. 3 is 25485 and that of item No. 4 is 20088. But he has further stated that item No. 3 bears survey No. 198/14 and item No. 4 bears survey No. 2/21 and item No. 2 bears survey No. 203/1. In Form No. I & XIV, the survey No. 198/14 stands exclusively in the name of Luicinha Inacinha D'Souza whereas Survey No. 203/1 stands in the names of

Luicinha Inacinha D'Souza and three others. Item No. 4 bearing survey No. 2/21 has been shown as passive debt in the list of assets dated 4/12/2009. The interested parties no 1 to 5 have denied that the said properties are ancestral properties.

13. As has been rightly held by the First Appellate Court, the boundaries mentioned in the documents of registration of description do not tally with the boundaries mentioned in the survey records. The discrepancies in the boundaries have been specifically mentioned by the First Appellate Court in the impugned judgment, which are not disputed. In such circumstances, the order of the Trial Court holding that there is no dispute regarding the title documents namely the document of description and inscription has no substance because of discrepancies in the boundaries, as pointed out by the First appellate Court and because of the specific objection of the respondents No. 1 to 5 that the said documents do not pertain to those particular survey numbers. The Cabeça de Casal wants the said particular survey nos. 198/14, 203/1 and 2/21 to be included as assets of late Reginaldo Lobo. It is not at all proved that the said survey holdings which are sought to be included in the list correspond to the properties mentioned in the documents of description and inscription. The impugned order passed by the Appellate Court in this regard therefore is correct.

14. No perversity is pointed out by the learned Counsel appearing on behalf of the petitioners in the impugned order. In the case of "Pedro Joaquim de Rosario Vaz" (supra), it has been held that when list of assets is submitted in terms of article 1377 of the Code, burden of proving existence of such assets lies on the person who claims existence of the same. Existence of properties can be cogently proved only by way of proper identification vis-?-vis title documents. Article 1380 of the Portuguese Civil Code widely empowers the Court to call upon the interested party to prove existence of the assets described in the list.

15. In all the circumstances above, the present writ petition does not bear any substance and deserves to be dismissed.

16. In the result, the petition is dismissed. However in the facts and circumstances of the case parties to bear their own costs.