

(2014) 07 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 89 of 2005

Reshma Sadanand Vete

APPELLANT

Vs

Pandurang Vishwanath Nevgi

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 6 BomCR 199

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Sudesh Usgaonkar and Rosette Pereira, Advocate for the Appellant

Judgement

F.M. Reis, J.—Heard Shri Sudesh Usgaonkar, learned Counsel appearing for the petitioners. The above petition challenges an Order passed by the courts below whereby an application filed by the petitioners to recall the Orders disposing of the final homologation of partition proceedings in Inventory Proceeding No. 57/1995/A, came to be rejected.

2. During the course of the hearing of the above petition, though Mr. Usgaonkar, learned Counsel appearing for the petitioners has vehemently raised different contentions with regard to the legality and propriety of the findings of the courts below whilst passing the impugned order, a point came for consideration whether the application filed by the applicants before the Inventory Court itself was maintainable. It is not in dispute that the final Order of Partition was already passed by the Inventory Court when the petition filed the application to recall such Orders. The remedies available to the petitioners in such circumstances is to seek rescission of such partition in terms of Article 1427 of the Portuguese Civil Procedure Code. Another challenge to such final Order of partition is to prefer an appeal in terms of Article 1435 of the Portuguese Civil Procedure Code. In the present case, the application filed before the Inventory Court is not in terms of Article 1427 of the Portuguese Civil Procedure Code nor the petitioners availed of the remedy in terms of Article 1435 of the said Code. Hence, the

application itself was not maintainable and consequently the question of interfering with the impugned order passed by the courts below in exercise of jurisdiction under Article 227 of the Constitution of India, does not arise.

3. As the application itself was not maintainable, the question of examining the contention of Shri Usgaonkar, learned Counsel appearing for the petitioners, on merits would not arise. For the aforesaid reasons, the petition stands rejected.