

(2015) 03 BOM CK 0055

In the Bombay High Court

Case No : Appeal From Order No. 82 of 2009 with Cross Objection No. 02 of 2010

Sgn. Ldn. A.P. Fernandes

APPELLANT

Vs

Annette Blunt Finch and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 5 ALLMR 823 : (2015) 6 MhLj 717

Hon'ble Judges : F.M. Reis, J.; R.M. Borde, J.

Bench : Division Bench

Advocate : A.F. Diniz, for the Appellant; Nigel Da Costa Frias, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

1. The above Appeal was taken up by the Division Bench in view of the directions of the Hon'ble Chief Justice dated 02.10.2014 in terms of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960.

2. We have heard Mr. A.F. Diniz, learned counsel appearing for the Appellant, Mr. Nigel Da Costa Frias, learned counsel appearing for the Respondents and we have heard Shri M.B.D." Costa, learned Senior Counsel, who sought leave to address the Court.

3. Shri A.F. Diniz, learned Counsel appearing for the Appellant, has pointed out that the Appellant had initiated Inventory Proceedings in the year 2000 to partition the asset of his father namely Alex Francis Xavier Fernandes. Learned Counsel further pointed out that the list of assets was filed by the Cabeca de Casal on 02.01.2001 and objections to such list were filed on 18.01.2002 by the interest parties. Thereafter, the mother of the Appellant expired on 17.06.2004 and the Inventory Proceedings continued also to partition the estate of the said deceased mother and, consequently, an additional list of assets was filed by the Cabeca de Casal on 10.07.2007. Additional objections to the list of assets was

filed by the interested parties on 25.01.2008 and thereafter the impugned Order was passed on 22.09.2009. Shri A.F. Diniz, learned Counsel further pointed out that the learned Judge has erroneously excluded the immoveable property and item nos. 10 to 12 of the list of assets on the ground that the said properties were situated at Mumbai. Learned Counsel further submits that the Judgment passed by the learned Single Judge of this Court reported in Maria Luiza Valentina Pereira and Another Vs. Jose Paulo Coutinho and Others, , does not lay down the correct position of law, inter alia, as it has misinterpreted Article 24 of the Portuguese Civil Code and proceeded on the wrong footing in equating Mumbai to a foreign territory vis a vis Goa, because of the prevailing Portuguese laws forgetting that Goa and Mumbai are part of the same country. Learned Counsel further submits that the learned Inventory Court has committed a legal error in holding that the property situated outside Goa cannot form part of the Inventory Proceedings initiation in the State of Goa. Learned Counsel further submits that the learned Inventory Court has failed to apply the provisions of Article 1370 of the Portuguese Civil Code which states that the inheritance comprises of all the properties of the estate leaver. Learned Counsel further submitted that the legitime of the parties cannot be in any way affected by any acts of the parties. Learned Counsel further submits that the disposable quota of the deceased consists of half of all the properties of the estate leaver. Learned Counsel further pointed out that in such circumstances, in case part of the properties belonging to the estate leaver are excluded, grave prejudice would occasion to the legitime which has to be inherited mandatorily by the descendants. The learned Counsel has thereafter taken us through the provisions of Article 1790 to point out how the calculations of the disposable quota is to be effected and pointed out that the learned Single Judge whilst passing the said Judgment has not at all examined this aspect of the case. Learned Counsel further pointed out that in case the properties at Mumbai or located outside Goa are excluded, there would be grave prejudice to the legitime and, consequently, a disparity in the right of inheritance of the descendants. Learned Counsel thereafter has taken us through the Judgment of the learned Single Judge and pointed out that the relevant provisions have not at all been examined by the learned Judge and that the commentaries of Dr. Cunha Gonsalves have been misread by the learned Single Judge whilst coming to the conclusion that the properties located outside Goa have to be excluded. Learned Counsel has pointed out that another Single Judge whilst disposing off the Appeal From Order in the case reported in 2001(0) BCI 130 in the case of Shri G. Rama Rao vs. Shri Shri Joseph de Souza and Ors., when a similar issue came for consideration whether the assets which have accrued in Mumbai could be enlisted in the proceedings initiated in the State of Goa has held that the properties in Mumbai could be enlisted in Goa in the proceedings initiated in Goa. Learned Counsel further pointed out that the said Judgment of the learned Single Judge was upheld by the Apex Court as Leave to Appeal came to be rejected. Learned Counsel further pointed out that the import of the said Judgment in the case of Shri G. Rama Rao vs. Shri Shri Joseph de Souza and Ors., (supra), was that the properties which

were situated in Mumbai were allowed to be enlisted in the Inventory Proceedings initiated in the State of Goa. Learned Counsel has also brought to out notice the Judgment of the High Court of Porto, Portugal, dated 09.11.2007, to point out that in view of the principle of unity and universality of the inheritance, the properties of the deceased situated in a foreign place should be described and partitioned in the Inventory Proceedings in Portugal. Learned Counsel as such pointed out that the impugned Judgment passed by the learned Trial Judge, deserves to be quashed and set aside.

4. On the other hand, Shri Nigel Da Costa Frias, learned Counsel appearing for the Respondents, has supported the impugned Order. Learned Counsel has further pointed out that the learned Single Judge after examining the relevant provisions of law has come to the conclusion that the properties located in Mumbai cannot be enlisted in Inventory Proceedings in the State of Goa. Learned Counsel further pointed out that though the subject matter was an asset from Mumbai was allowed to be enlisted in the State of Goa in the case of Shri G. Rama Rao vs. Shri Shri Joseph de Souza and Ors., (supra), nevertheless, there is no discussion of the relevant provisions of law at all. Learned Counsel as such submits that the Appeal be rejected.

5. Shri M.B.D." Costa, learned Senior Counsel, who was permitted to address the Court considering the import of the rival contentions, has submitted that there is no reason whatsoever why assets situated outside Goa and within India cannot be enlisted in the proceedings in Goa. The learned Senior Advocate has further pointed out that the provisions of Article 24 of the Portuguese Civil Code will have to be read in conjunction and harmoniously with the Hague Convention on the Conflict of Laws dated 17.09.1905 which Portugal signed and approved on 17.09.1908. Learned Senior Advocate further pointed out that as such the rights to inheritance, the order in which they are called to succeed to the shares that belong to them, collations, the disposable portion and the legitime, are subject to the national law of the deceased, whatever may be the nature of the assets and the country in which they are located. The learned Senior Advocate has also brought to our notice the Treaties by Dr. Cunha Gonsalves Vol, 1 page 704 to point out that this aspect of succession in respect of the properties located outside Portugal territory have been clearly stated therein. Learned Senior Advocate has also brought to out notice the commentary by Joao Baptista Machado with regard to succession to point out that the learned Single Judge has erroneously come to the conclusion in the case of Maria Luiza Valentina Pereira and anr. (supra) that the properties outside Goa cannot be enlisted in the Inventory Proceedings in Goa. Learned Senior Advocate has also brought to our notice the commentaries in the Book Partilhas Judiciais Teoria e Pratica Vol. 1, 1954 (Judicial Partitions Theory and Practice) by the jurist Joao Antonio Lopes Cardoso, in support of his submission that the properties outside Goa can also be enlisted in the proceedings in the State of Goa. The learned Senior Advocate has further submitted that in case the properties outside Goa are not enlisted in the State of Goa, the legitime would be greatly prejudiced to the detriment of the

right of the descendants to inherit the assets of their parents. Learned Senior Advocate has also given an example that in case properties in Mumbai are bequeathed to one heir and the Estate Leaver has assets of lower value in the State of Goa, in case the property in Mumbai is not enlisted in Goa, the heir who is not a beneficiary of such disposition would be gravely deprived of the legitime of the deceased parents. The learned Senior Advocate also pointed out that the Order of Succession as well as the concept of legitime are not found in the succession law in force outside the State of Goa. Learned Senior Advocate as such pointed out that the Judgment of the learned Single Judge is not good law as the relevant provisions of law have not at all been examined whilst passing the said Judgment.

6. We have carefully considered the submissions of the learned Counsel and with their assistance, we have also gone through the relevant provisions of law. None of the laws in force in India were applicable to persons whatever their religion in the State of Goa or the Union Territory of Daman and Diu before the territory became part of India as these areas were governed by the Portuguese Civil Code 1867. Therefore, law of succession contained therein continued to govern the succession as the various Indian laws extended to the territory did not include any laws relating to succession. After the liberation of Goa, under the Goa Daman and Diu Administration Act, 1962 and the subsequent Regulations many Indian laws were extended to the State of Goa and the corresponding laws earlier in force have been repeated but, however, the laws which were not extended include the Indian Succession Act, 1925, the Hindu Succession Act, the Indian Divorce Act, 1865, etc., with the result that the rights of all persons with regard to succession were governed by the provisions of the Portuguese Civil Code, 1867, in the State of Goa and the Union Territory of Daman and Diu. The substantive law of succession as in force as on 20.12.1961 in the State of Goa is contained in the provisions of Article 1735 to 2166 of the Portuguese Civil Code. It applies to all the Goans irrespective of the community they belong. It deals with preliminary provisions, testamentary successions, execution of Wills legitime and unofficious dispositions, common provisions to various forms of Wills, legitimate succession, provisions common to testamentary successions and successions under the law, opening of inheritance its acceptance and repudiation. It also contains some provisions regarding partition, Inventories are particularly governed by the provisions of the Portuguese Civil Code. It is to be noted that under the succession law in the State of Goa, a portion of the assets of an estate leaver have to necessarily be allotted to his heirs in his straight line descendants or ascendants as provided in Article 1784 of the Portuguese Civil Code. Under its Para 1, such portion consists of half of the estate of the estate leaver, except in cases of illegitimate children and the person leaving upon his death ascendants who are not his parents in which case the undisposable portion is less than one half. Since a portion of the assets of the estate leaver have under the succession law to necessarily go to the heirs in direct descending or ascending line, any disposition to the contrary has an effect that the party benefiting has to return to

the inheritance whatever the party received in excess of the right of the said descendant or ascendant.

7. Thus, the estate of the estate leaver can be considered to be divided into two parts one which the testator can freely dispose of which is referred to as a disposable part and the other which he cannot dispose of which the law terms as legitime. The legitime is as per Article 1784 of the Civil Code, the part of the assets of the estate leaver which he cannot dispose of because the law destines them for the heirs in the direct ascending or descending line. Thus, it becomes clear that the legitime is a restriction imposed by law of succession on the estate leaver's power of testamentary disposition and the mandatory succession is governed by Rules found in the chapter on testamentary successions. The heirs to the legitime are called compulsory and mandatory heirs. As pointed out herein above, as per Article 1784 of the Civil Code, the legitime is half of the estate leaver's assets subject to the provisions of Article 1785 part 2 and Article 1787 of the Civil Code. The legitime is not at all divided equally between the various mandatory heirs as the law also takes into account about the legitimacy or illegitimacy of issues in mandatory succession. As far as the disposable portion of the estate leaver is concerned, Article 1790 of the Civil Code, *inter alia*, provides that for the purpose of reduction for inofficiousness or inofficious gift or bequest the calculation of disposable portion is to be carried out in the manner indicated in paragraphs 1, 2 and 3 of the said Article. There are also safeguards of the Civil Code to ensure that the mandatory heirs cannot be defrauded by, *inter alia*, providing in paragraph 1 of Article 1749 of the Civil Code that the value of the assets left by the estate leaver is after deduction of the debts of the estate leaver.

8. We shall now examine the relevant provisions of the Civil Code to find out the manner in which the disposable share and mandatory share is to be ascertained. Article 2098 of the Civil Code, *inter alia*, provides that collation is the restitution which the mandatory heirs, who wishes to inherit, must make to the mass of succession of the sums received from the deceased in Order to calculate such half and to balance the division thereof. This is based on a particular presumption that if the deceased made *inter vivos* gifts to any presumptive heir, he did not intend this act to be a special benefit to such heir to the detriment of the others but merely intended to advance part of the share of the estate to which he would be entitled to. In such circumstances, the donee is, therefore, subsequently obliged to make good the excess by restituting the excess given to him so that there is equality in the division of the estate between him and the other descendants.

9. Now, we shall also examine which assets are to be considered so as to ascertain the disposable and the mandatory part. The Order of succession to the inheritance of the estate leaver is provided under Article 1969. The legitime which governs the right of a married couple is provided in Article 1108 of the Civil Code. Under Article 1737 of the Civil Code, the inheritance comprises of all the property rights and obligations of the deceased which are not merely

personal or excluded by depositions of the estate leaver or by law. Article 1736 of the Civil Code provides that the heir is a person who succeeds to the totality of the inheritance whereas the legatee is a person in whose favour the testator disposes of a specific object or a certain part thereof. Article 2009 of the Civil Code further provides that the inheritance opens upon the death of the estate leaver and Article 2011 of the Civil Code provides that the transmission of ownership and possession of the heirs whether instituted or legal, takes place from the moment of the death of the estate leaver. Article 2016 of the Civil Code further provides that each of the co-heir may demand the totality of the estate to which he along with the others are entitled without the person demanded against being able to raise objections that the estate does not entirely belong to him.

10. Reading the said provisions of the Civil Code, the heirs of the estate leaver succeed to the totality of the estate belonging to the estate leaver and not to only part of the assets. Totality of the estate would include all the assets belonging to the deceased which would include the assets of the estate leaver wherever they are located. Thus, in order to determine the mandatory share of the deceased, which has to be necessarily inherited by the descendants and/or ascendants as pointed out herein above, all the assets of the estate leaver would have to be taken into consideration to work out such mandatory share in terms of the provisions of the Civil Code as enumerated herein above. In such circumstances, in case the properties which are located outside the State of Goa are excluded from the Inventory Proceedings, the determination of the mandatory share of the estate leaver, which has to necessarily belong to the descendants or ascendants as provided herein above, would be severely and detrimentally affected.

11. In the present case, it is not in dispute that the parents of the Appellants who were the estate leavers were domiciled and belong to the State of Goa and their succession is governed by the law of succession as provided in the provisions of the said Civil Code.

12. The Treaties by Dr. Cunha Gonsalves on Civil Code, whilst dealing with the provisions of Article 24 of the Code, in Vol. 1 at page 704, has observed as translated thus:

"In modern times, a strong trend has set in towards unity of succession and of the national law of the deceased. Because succession, does not involve only the question of the capacity of the estate leaver and of the heirs, but also derives, in a large measure, from family relations, legitimate succession being based almost exclusively on relationship. The Institute of International Law in the 7th of its famous Oxford Rules, voted that "succession or an inheritance, considered as one unit, as regards the determination of the persons called to succeed, the ambit of their rights, to the disposable portion and the legitime, to the validity of testamentary conditions, should be regulated by the laws of the States to which the deceased belongs or alternatively (where the nationality is not known) by the law of domicile, whatever the nature or location of the assets." So also, the 4th

Conference of Hague in 1904, a Bill of a treaty on successions and wills, was partially voted, starting by affirming the unity of succession, comprising movables and immovables, and applying the national law of the deceased to the rights of the heirs, to the share of legitime, to representation etc."

13. In such circumstances, considering the said observations as far as succession is concerned, they are governed by the National Laws of the deceased which in the present case would be the succession law as provided in the provisions of the said Civil Code.

14. The jurist Joao Batista Machado whilst referring to the Private International law and dealing with the aspect of unity of succession has observed at page 435 as translated thus:

"On the other hand, only the system of unity of succession is in conformity with the view of the material law, inspired by the Roman principle of universality of succession, and guarantees unity of succession (that is, the devolution of the entire inheritance according to the same rules) which this principle postulates. Besides, the person of the estate leaver, the interests and, therefore, the real or hypothetical will of the person whose inheritance is at issue, and so also the interests of the family are elements of prime importance in the chapter of successions upon death.

(Emphasis supplied).

Now, all these elements point decisively to the inclusion of succession on death within the ambit of personal law."

15. Another jurist Joao Anton Lopes Cardozo in his book *Partilhas Judiciais Teoria e Pratica* Vol. 1954, (Judicial Partitions Theory and Practice), who is a well known author of law of Inventories, has discussed this aspect at page 398, 400, 402 and 403 as translated thus:

"Page 398:

"It is no less important to underline that only one inventory should be instituted upon the death of a person, who leaves successors subject to orphan's jurisdiction. In principle, unity of inheritance and of domicile of the estate leaver implies unity of inventory, whether the assets are all in the country of the deceased, within different jurisdictions, whether some of the, or even if the greater part is in a foreign country."

"Page 400

"The Hague Convention dated September 17, 1905, which Portugal signed and approved on September 17, 1908 provides in Article 1 that "Successions, as regards the persons who have the right to inherit, the order in which they are called to succeed to the shares that belong to them, collations, to the disposable portion and the legitime, are subject to the national law of the deceased, whatever may be the nature of the assets and the country in which are located.

The same rule applies to the intrinsic validity and the consequences of testamentary dispositions.

"Page 402

Despite the decisions which are noted, we do not see any reason to reverse our path, given the fact that we are firmly convinced that they do not run contrary in essence, to the principle of unity of inventory, the rules which determine the ascertainment of the disposable quota, the right of sovereignty of the Portuguese State and the norm in Article 24 of the Civil Code."

Page 403

"Strictly, in law there is no justification for the Portuguese Courts not to describe assets which the estate leaver owns beyond the boundaries, in that the inheritance is constituted of all the assets (situated within or outside the geographical boundaries)-Civil Code Art. 1737-and it is having all of them in regard that the disposable portion is determined.

Now, the deceased has only one disposable portion and, consequently, it cannot be permitted that in an inventory instituted in Portugal this portion be ascertained only in respect of assets situated here, allowing the other quota to be determined in respect of assets situated abroad and subject to inventory there.

The conclusion is only one and self evidence: in an inventory instituted in Portugal all the assets of the estate leaver are listed, whether or not situated in the country."

16. The learned Single Judge while examining whether the assets outside Goa can be enlisted in the Inventory proceedings filed in the State of Goa has overlooked the aspects of unity of Succession and the universality of succession as well as the relevant provisions referred to herein above and the principles therefrom whilst holding that the properties outside Goa would be governed by the Indian Succession Act. The learned Judge has relied upon the provisions of Article 24 of the Civil Code whilst coming to such conclusion. Article 24 of the Civil Code reads thus:

"Portuguese citizens, who travel or reside in foreign country, continue to be subject to Portuguese laws as regards their civil capacity, their status and immovable properties situated in the country, in respect of facts which will produce effects therein. However, the external form of the acts shall be governed by the law of the country, where they were celebrated, except in cases where there is provision to the contrary."

17. The learned Single Judge while relying upon the observations in the said Treaties of Dr. Cunha Gonsalves in the Judgment in the case of Maria Luiza Valentina Pereira (supra) has noted an illustration therein to hold that the principles of *lex rei sitae* are application to successions. The illustrations referred

to is in the context of examining a positive conflict of laws as at page 642 of the same Volume 1 of the said Treaties, it is stated as translated thus:

"The *lex rei sitae*, however, is only applicable to the property in itself, and not to the personal rights that may be exercised in the things, or any, to the capacity to acquire them, possess, encumber and alienate, nor to the contracts, to the external form of the respective acts, to the relationship between the spouses, to the successions, etc."

(Emphasis supplied)"

18. The provision of Article 24 of the said Civil Code has been expressly taken note of by the said Jurists in the said commentary whilst examining the aspect of unity of succession to which the descendants are entitled to succeed to the assets of the estate leaver. It further observes that there is no justification not to describe the assets which an estate leaver owns beyond the boundaries of the State as the inheritance is constituted of all the assets situated within or outside the geographical boundaries in terms of Article 1737 of the said Civil Code.

19. The said provisions of the Civil Code thus recognise that for the purpose of succession, there can be within political units as many domiciles as there are systems of laws. Thus, in such circumstances, the Constitution recognises that each State might have its own law on the subject of succession and thus there could be different domiciles for different States. As such, the National law of the estate leaver would govern his rights and effects of his succession. In the present case, as already pointed out herein above, the parents of the Appellants were admittedly from Goa and were governed by the law of succession as in force in the State. Hence, the succession of the estate leaver in the present case would have to be examined in terms of the provisions of the Civil Code as enumerated herein above. Principally, law of succession is a law of entitlement and also of status. It is self evident on reading the provisions of law referred to herein above that for achieving these objectives the descendants and ascendants of the estate leaver are entitled to, the mandatory share which they have to succeed as it would support its continuity and unity in the family by retaining its economic as well as juridical identify. Hence, the succession of the estate of the estate leaver in the present case would open in favour of the descendants both in ownership and possession subject to the provisions of law.

20. In this connection, an observation in the book Conflict of Laws by Dicey and Morris tenth Edition at page 613 would also be relevant. It reads thus:

"..... This rule made some sense before 1926 when there were two systems of intestate succession in English domestic law, one for realty and the other for personalty. It makes less sense today when England, and most, if not all, other countries have adopted one system of intestate succession for all kinds of property. Moreover, outside the common law world the *lex situs* rule for intestate succession has been abandoned almost everywhere except in Austria Belgium and France. It has therefore been suggested that the *lex situs* rule has outlived

its usefulness and should be abandoned in favour of the law of the intestate's domicile. In modern law it is a quite unnecessary complication to have different conflict rules for intestate succession to movables and immovables..... "

21. Even assuming that the Courts in the State of Goa may not have territorial jurisdiction over the immoveable properties situated outside the State, nevertheless, the rights of succession can be exercised in persona against the legal heirs within its jurisdiction as it is a right which has devolved by succession over an immoveable property. Thus, the Courts in Goa can pass appropriate Orders regarding the properties of the deceased including immoveable properties situated outside the State of Goa as they can make the Order effective in persona.

22. As such, we are of the considered opinion that reading the said provisions of law and in view of the discussions herein above the properties which are located outside the State of Goa would also have to be enlisted in the Inventory Proceedings filed in the State of Goa to be distributed to the descendants and other successors in accordance with law. The learned Single Judge has also overlooked the fact that in case the properties outside Goa are not enlisted in any Inventory Proceedings in the State of Goa, grave prejudice would occasion to the mandatory share which has to devolve upon the descendants and ascendants as the case may be. The learned Single Judge has also assumed that the provisions of Article 24 of the Civil Code refers only to the properties in the State of Goa though Goa is also part of India and, as such, it is not possible to assume that Goa is not part of the same Country. The Judgments relied upon by the learned Single Judge was only in the context of the forum to obtain a divorce in the State of Goa by persons who are married outside the State and are now resident in the State of Goa. These principles cannot be followed to examine the devolution of rights by succession. The provisions of the Civil Code and the principles referred to herein above, point decisively to the inclusion of Succession on death within the ambit of personal law. As such, we find that the Judgment of the learned Single Judge in the case of Maria Luiza Valentina Pereira (supra) with respect does not examine the aspects referred to herein above whilst coming to the conclusion that the properties outside Goa cannot be enlisted in an Inventory Proceeding in the State of Goa and, consequently, cannot be treated to be the correct position of law.

23. In the present case, the list of assets filed by the Cabeça de Casal dated 02.04.2001 and the objections to such lost by the interest parties at exhibit 6 as well as the additional list of assets at exhibit 26 and the objections filed thereto at exhibit 27, have been disposed of by the impugned Order. The learned Judge has partly allowed the objections of the interested parties and, inter alia, directed the enlistment of some moveable properties referred to in the impugned Order. There are also directions to the interested parties to deposit the fixed deposit amount together with interest. The claim to enlist item nos. 10 to 12 which were not located in Mumbai were not permitted to be enlisted in the Inventory

Proceedings. The objections to enlist item nos. 10 to 12 were accepted based on the Judgment of the learned Single Judge in the case of Maria Luiza Valentina Pereira and anr. vs. Jose Paulo Coutinho and Ors (supra).

24. The Respondent no. 1 has also filed Cross Objections, inter alia, seeking a relief to the extent, inter alia, challenging the direction to the Respondent no. 1 to deposit the fixed deposit amount of Rs. 2,28,520/- along with interest thereon in the Court within a specific period of time.

25. Taking note of the view taken by us herein above, wherein we have come to the conclusion that the said Judgment of the learned Single Judge came to be passed by overlooking to the relevant provisions of law as well as the principles referred to herein above, we find it appropriate to partly allow the above Appeal and quash and set aside the part of the Order dated 22.09.2009 with regard to the refusal to enlist item nos. 10 to 12 as well as the directions to deposit the amount challenged by the Respondent no. 1 herein and remand the matter to learned Inventory Court to decide the said disputes afresh after hearing the parties in accordance with law.

26. In view of the above, I pass the following:

ORDER

(i) The Appeal and the Cross Objections are partly allowed.

(ii) The impugned Judgment dated 22.09.2009 is quashed and set aside to the extent of refusing to include the properties at item nos. 10 to 12 and the directions to the Respondent no. 1 to deposit the amount of Rs. 2,28,520/- along with interest thereon.

(iii) The learned Judge is directed to decide the objections in connection with the properties at item nos. 10 to 12 as well as the dispute with regard to the said sum of Rs. 2,28,520/- afresh in the light of the observations made herein above after hearing the parties in accordance with law.

(iv) Appeal stands disposed of accordingly with no orders as to costs.