

(2008) 07 BOM CK 0148

In the Bombay High Court

Case No : Appeal from Order No's. 64 and 65 of 2008

Suresh alias Prabhakar Lawanis and Others

APPELLANT

Vs

Arun Gajanan Lavanis and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2008) 6 MhLj 754

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : Valmiki Menezes, for the Appellant; A.J. Kenkre, for Respondent Nos. 10 and 11, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Challenge in these appeals is to the Order dated 26-3-2008 of the learned Civil Judge, Senior Division, at Bicholim.

By the said order, the learned Civil Judge, Senior Division, has rejected the application filed by Suresh Lavanis, Rajnikant Lavanis and Anil Lavanis, to exclude seven properties referred to in para 5(i) to (vii) of the List of Assets filed by the Administrator/Cabeca de Casal in the Inventory Proceedings No. 23/2000, which are pending before the said Court upon the death of the Inventoried/inventariados Govind Atmaram Lavanis and his wife Sitabai Govind Lavanis.

Some more facts are required to be stated to dispose off the present appeal

2. The said Govind and Sitabai had four sons and one daughter and the latter has relinquished her share in the estate in favour of her four brothers, namely Gajanan, Kashinath, Sripad and Mohan. The said Gajanan died first and upon his death his son Arun initiated Inventory Proceedings bearing No. 31/96 and in the said inventory proceedings Suresh, being the Administrator/Cabeca de Casal, enlisted 7 properties which properties are sought to be excluded in the Inventory Proceedings No. 31/96, claiming that the said 7 properties exclusively belonged to Gajanan Govind Lavanis and not to his parents, the said Govind and Sitabai

Lavanis. The Family Tree of Govind and Sitabai as well as the said Gajanan is produced hereinbelow and it is as follows:

3. An inquiry was held into said claim for exclusion, filed by Suresh Gajanan Lavanis. In the said inquiry the said Suresh examined himself and closed his case. No other witnesses were examined. Upon considering the evidence produced in the inquiry, the learned Civil Judge, by the impugned order, held that the said 7 properties could not be excluded as they were the assets left behind by Govind Atmaram Lavanis. In other words, the learned Civil Judge, Senior Division did not accept the claim of said Suresh Gajanan Lavanis that they were the exclusive assets of his parents, namely the said Gajanan.

4. In coming to the said conclusion, the learned Civil Judge observed that the said Suresh was unable to produce any documents to show that the said 7 properties belonged to his parents or any other documents to show as to how his parents have acquired the 7 properties. The learned Civil Judge also observed that the said Suresh also could not say how the name of his father came to be shown in the Survey Records in relation to the said 7 properties. Learned Civil Judge, Senior Division also noted that the said Suresh Gajanan Lavanis had not produced any document of title, but had produced only Forms No. I and XIV, in respect of the said 7 properties.

Shri Menezes, learned Counsel on behalf of the appellants/the said Suresh Gajanan Lavanis concedes that the appellants were unable to show that the appellants' father had purchased the said 7 properties, but submits that the appellants' father had possessory title in respect of the said 7 properties and therefore they had to be excluded from the Inventory Proceedings bearing No. 23/2000. Learned Counsel further submits that the appellants had produced a Deed of Succession executed in favour of Govind by which 15 properties out of 27 properties were shown as belonging to the said Govind Atmaram Lavanis and the appellants had no objection even in case the other 5 properties were enlisted in the said inventory proceedings.

5. Learned Counsel further submits that when one of the 7 properties was acquired, compensation in respect thereof was received by his father, the said Gajanan Govind Lavanis. Learned Counsel also submits that the properties have been surveyed in the name of the said Gajanan Govind Lavanis and this is sufficient to show that the said properties exclusively belonged to the said Gajanan Govind Lavanis.

On the other hand, Shri Kenkre learned Counsel on behalf of the respondents No. 10 and 11 has submitted that Suresh Gajanan Lavanis, who is the Administrator in the Inventory Proceedings No. 31/1996 has in his application dated 16-3-2001 has stated that the said Gajanan Govind Lavanis was enjoying the said 7 properties, out of 27, on account of his 1/4th share and therefore the said statement is nothing but an admission that all the 27 properties belonged to deceased Govind Atmaram Lavanis. Learned Counsel further submits that the

burden was entirely on the appellants to prove that the said 7 properties exclusively belonged to his father, the said Gajanan Govind Lavanis and not to his grandfather Govind Atmaram Lavanis. Shri Kenkre has also placed reliance on Articles 2011 and 2078 of the Civil Code, 1867.

6. Article 2011 provides that the transmission of ownership and possession of inheritance to the heirs whether instituted or legal, takes place from the moment of the death of the estate-leaver. Article 2078 provides that where there are in the inheritance some properties belonging to a third person or which devolve to any heir in preferential manner, they shall be listed separately, along with the respective documents. The sole paragraph thereof further provides that the properties belonging to a third person shall not be delivered to him, when there are some doubts, unless the said third persons proves his right.

In my view, the conclusions arrived at by the Ld. Civil Judge could not be faulted. The controversy can also be decided from another angle.

7. In terms of Article 2073 of the Civil Code, 1867 the Administrator is required to describe or enlist the properties belonging to the estate, under oath. Article 1370 of Civil Procedure Code, 1939 reads as follows:

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 facts for which the law requires certain manner of proof or the agreement of all or of majority of the parties.

In other words, the declaration made by the Administrator was required to be accepted as true until the contrary was proved. In other words, the onus was entirely on Suresh Gajanan Lavanis to prove that they belonged exclusively to Gajanan. There is no dispute that the only living son of Govind and Sitabai, namely Mohan Govind Lavanis has been appointed as Administrator in Inventory Proceedings No. 23/2000 and it is he who has enlisted all the 27 properties belonging to the inventoried Govind and Sitabai Lavanis. It is the said Suresh Gajanan Lavanis, who filed the application for exclusion of the 7 properties as not belonging to the inventoried Govind and Sitabai Lavanis but to his father Gajanan Govind Lavanis. As rightly conceded on behalf of appellants, it was not their case that the seven properties were acquired by Gajanan during his lifetime and being so the inference which would follow is that they were ancestral properties. Moreover, there was an admission by Suresh that he had no document to show that the said properties belonged to his parents. On the contrary there was also an admission that Gajanan was enjoying the said seven properties on account of his 1/4th share.

8. It was not his case that there was any division. All that the said Administrator Suresh Gajanan Lavanis was able to prove was that the said properties were in possession of his late father Gajanan Govind Lavanis, as they were recorded in his name in the Survey Records, which cannot be considered as evidence of title. It was not the said case of said Suresh Gajanan Lavanis that the said 7

properties were acquired by the said Gajanan Govind Lavanis during his lifetime inasmuch as, he was unable to produce any document for such acquisition. As per the Administrator Mohan Govind Lavanis all the 27 properties belonged to the Inventariados Govind and Sitabai Lavanis. That the appellant was able to demonstrate that there was a Deed of Succession in favour of the said Govind Atmaram Lavanis in respect of 15 of the properties does not necessarily mean that the properties under dispute did not belong to the inventoried Govind and Sitabai Lavanis. The declaration of Administrator Mohan Govind Lavanis had to be presumed to be true, until the contrary was proved. Mere production of the Survey Records or the bare claim that his father was in possession of the disputed 7 properties for 30 years without any further plea or evidence was insufficient to rebut the said presumption.

9. There is no merit in this appeal and consequently the same is hereby dismissed.