

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.68 OF 2001

1. Praveen P. Malgaonkar,
son of Smt.Laxmi P.
Malgaonkar, major of age,
resident of Fatorda,
Margao, Goa;

2. Priya Malgaonkar,
wife of Praveen P.
Malgaonkar, major of age,
resident of Fatorda,
Margao, Goa

...APPELLANTS.

VERSUS

1. Smt. Laxmi Prabhakar
Malgaonkar, of major age,
widow of late Prabhakar
T. Malgaonkar,
residing at Margao,Goa;

2. Smt. Nanda Pragati
Premanand Wadkar, of
major age, daughter of
Smt.Laxmi Prabhakar
Malgaonkar, residing
at Margao, Goa;

3. Shri Premanand Ramchandra
Wadkar, of major age,
husband of Smt. Nanda
Pragati Premanand Wadkar,
residing at Margao,Goa;

4. Meena (Anuradha)Devrai
Borkar, of major age,
daughter of Smt.Laxmi
Prabhakar Malgaonkar,
residing at Margao,Goa;

5. Devrai Hiru Borkar, of
major age, husband of
Meena Devrai Borkar,
residing at Margao,Goa;

6. Sheetal (Laksha)
Laxmikant Salgaonkar,
of major age, daughter of
Smt. Laxmi Prabhakar
Malgaonkar, residing
at Margao, Goa;

7. Laxmikant Salgaonkar,
of major age, husband of

Sheetal Laxmikant
Salgaonkar, residing at
Margao, Goa;

8. Prasad P. Malgaonkar,
of major age, son of
Laxmi P. Malgaonkar,
residing at Margao, Goa;

9. Harish P. Malgaonkar,
of major age, son of
Laxmi P. Malgaonkar,
residing at Margao, Goa ...RESPONDENTS.

Shri A.S. Salkar, with Shri J.J. De Souza,
Advocates for the Appellants.

Shri S.S. Kakodkar, with Shri A. Redkar,
Advocates for Respondents No.1, 2, 4, 6, 8 and 9.

CORAM : A.S. AGUIAR, J.

DATED : 28TH FEBRUARY, 2002.

ORAL ORDER

Heard the learned Advocates.

2. The Appellants in this Appeal from Order seek quashing of the Order dated 1st September, 2001 along with the Final Schedule of Partition passed by the Comarca Judge, Salcete, Margao, in Inventory Proceedings No.171/99/M and for a direction to the said Comarca Judge to re-initiate the inventory proceedings on the basis of the application dated 1-9-1999 filed by the Respondent No.1 before the said Court, after

quashing the said Order dated 1-9-1999.

3. It is the contention of the Appellants that the impugned Order is passed ex-parte in their absence, although they were not served with notice as required under Article 1374 of the Portuguese Civil Procedure Code and were not present at any stage of the proceedings before the inventory Court. The said Order has been passed without following the procedure prescribed under Articles 1374, 1390 and 1414 of the Portuguese Civil Procedure Code, 1939.

4. On merits, it is the contention of the Appellants that although the list of assets included the good will of the Shop No.35 wherein the Appellant No.1 and the Respondent No.9 are carrying on partnership business under the name and style of "M/s. P.T. Malgaonkar", the good will of the other Shop No.5 wherein the partnership business of Respondent No.1 and Respondent No.8 is carried on under the name and style of "M/s. Shoe Craze", was not included. It is the contention of the Appellants that Shop No.5 also forms part of the estate of the deceased Prabhakar T. Malgaonkar.

5. Learned Advocate for the Respondents, however, points out that the Appellants herein were served with Notice under Article 1374 to interested parties dated 31st October, 2000, receipt of which was duly acknowledged by the Appellants as is manifest from the copies of acknowledgements which are at page 27 of the Petition. Receipt of the said notice addressed to the Appellants at the said Shop No.35, New Market, Margao, Goa has been duly acknowledged. Since the Notices were posted at the registered address of the partnership and receipt acknowledged, there is a presumption that the same were served upon the Appellants. It is further pointed out that after the receipt of the Notices, the Appellants have appeared before the Comarca Court as is apparent from Roznamas dated 29-11-2000, 15-2-2001 and 2-3-2001. This is denied by the Appellants, who stated that they were never present at any stage of the proceedings. The Appellants have on oath denied that they were present on the said dates.

6. The Roznama dated 29-11-2000 specifically records the presence of Praveen Malgaonkar, Appellant No.1 but not of Appellant No.2. The Roznama dated 15-2-2001 does not

specify the name of either Appellant No.1 or Appellant No.2. Similarly, Roznama dated 2-3-2001 does not mention the name of either Appellant as being present in Court.

7. In his Order dated 2-3-2001 the Comarca Judge has recorded that all the interested parties, except Praveen and Priya, i.e. the Appellants, were present and was pleased to direct that the matter proceed ex parte against the said Praveen and Priya. Accordingly, the matter proceeded ex parte and the impugned Order came to be passed. However before the Order was passed on 2-3-2001, no notice was given to the Appellants informing them that the matter would proceed ex parte. Thereby, the Appellants have been deprived of reasonable opportunity for filing objections to the list of assets filed by the Respondents. The Appellants claim they came to know of the said ex parte Order and the list of assets only after receipt of letter dated 5th October, 2001 from the Advocate for the Respondents.

8. The Appellants have denied the signatures on the acknowledgements of notices as their signatures. There is no conclusive proof that the Respondents were served with the said

notices under Article 1374 of the Code. There is no conclusive proof that the Appellants remained present at any stage of the inventory proceedings. Reasonable opportunity ought to have been given to the Appellants to file their objections to the list of assets filed by the Respondents. In view thereof, the Appeal is allowed. The impugned Order dated 1st October, 2001 is set aside. The learned Comarca Judge is directed to permit the Appellants to file their objections to the list of assets and thereafter re-initiate the Inventory Proceedings on the basis of the Application dated 1-11-1999 filed by Respondent No.1. The inventory Court to dispose of the proceedings within three months.

9. Appeal stands disposed of.

(A.S. AGUIAR)
JUDGE.

ac.