

IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 111 OF 2002.

1. Smt. Maria Antoneta Gomes
e Fernandes, wife of late
Angelico Cruz Fernandes,
housewife,
2. Mrs. Cristalina Brizida
Fernandes, housewife, daughter
of late Angelico Cruz Fernandes,
3. Miss Cefila Cipriana Fernandes,
student, daughter of late Angelico
Cruz Fernandes,
4. Miss Mericia Fernandes,
student, daughter of late Angelico
Cruz Fernandes,
All r/o House No. 375, Agonda,
Canacona, Goa. ... Applicants.

Versus

1. Mrs. Cristalina Amelina Fernandes,
housewife, r/o H.No.5, Banda, Assolna,
Salcete, Goa.
2. State of Goa, represented by
Chief Secretary, Secretariat,
Panaji.
3. The Police Inspector/Officer-in-
Charge, Cuncolim Police Station,
Cuncolim, Goa. ... Respondents.

Mr. Nitin Sardessai, Advocate for the Applicants.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de
Sa, Advocate for the Respondent No. 1.

Mr. V.P. Thali, Additional Advocate General with Miss
S. Linhares, Addl. Govt. Advocate for the
Respondent No. 2.

Coram: P.V. HARDAS, J.

Date: 4th April 2002.

ORAL ORDER.

By consent of parties, this Civil Revision
Application is taken up for final disposal.

2. The learned Ist Additional Civil Judge,
Senior Division, Margao, was called upon to decide, on
the suit instituted by the present applicants, and the
counter-claim filed by the present respondent no. 1,
the question of the custody of the dead body of

Angelico Cruz Fernandes, who expired in the Hospicio Hospital, Margao, on 19th January 2002. The learned Ist Additional Civil Judge, Senior Division, Margao, dismissed the application of the present applicants and allowed the application of the present respondent no. 1. By his Order dated 30th March 2002, the learned Ist Additional Civil Judge, Senior Division, Margao, came to the conclusion that the respondent no. 1 herein was entitled to the custody of the dead body of Angelico Cruz Fernandes and the respondent no. 1 herein was entitled to perform the last rites.

3. Criminal Writ Petition No. 8 of 2002 had been filed by the respondent no. 1 herein and this Court, by its Judgment dated 15th March 2002, had directed the learned Ist Additional Civil Judge, Senior Division, Margao, to hear the parties on or before 27th March 2002 and decide the application for interim direction on or before 30th March 2002. It must be said to the credit of the Ist Additional Civil Judge, Senior Division, Margao, that he has heard the learned counsel for the parties and has decided the application within the time stipulated by this Court. It must be also said to the credit of the learned Ist Additional

Civil Judge, Senior Division, Margao, that he was called upon to decide a controversy not so much enmeshed in legal intricacies but a dispute pivoting on sentiments. The learned trial Judge has endeavoured to decide the dispute expeditiously, looking to the urgency of the matter.

4. The present applicants/original plaintiffs, being aggrieved by the aforesaid Order of the Ist Additional Civil Judge, Senior Division, Margao, have filed the present application.

5. Mr. Nitin Sardessai, the learned counsel appearing for the applicants, commenced his arguments and, on the request of the Court, agreed to sit across the table with Mr. S.G. Dessai, the learned senior advocate appearing for the respondent no. 1, to resolve the conflict, if possible. Mr. Dessai has reported to the Court that the parties have amicably decided on a course of action which, according to me, would resolve unnecessary acrimonious legal battle, which has ensued between the applicant no. 1 and the respondent no. 1, who are the first and second wives of the deceased Angelico Cruz Fernandes.

6. This Court wishes to place on record its deep sense of appreciation for the efforts taken by the

learned counsel appearing for the parties and this Court is aware that, had it not been for the efforts of the learned counsel for the parties, an amicable settlement would not be possible. The applicant no. 1 and the respondent no. 1 are present in person in Court and in whose presence a settlement has been arrived at with the intervention of their counsel. The terms of the settlement between the parties is now being reproduced in open Court before the respective parties and their learned counsel.

7. The parties have arrived at an amicable settlements as under:-

(1) The dead body of late Angelico Cruz Fernandes, at present kept in the morgue of the Hospital, shall be taken possession of by the respondent no. 1 on 5th April 2002.

(2) The respondent no. 1 shall then arrange to take the dead body to the residential house of the present applicant no. 1, which is said to be situated at House No. 375, Igrejavaddo, Agonda, Canacona.

(3) The parties agree that the dead body shall be kept at the aforesaid residential house at Agonda, Canacona, for one hour and shall thereafter be

transported by the respondent no. 1 to her residential house, where the deceased last resided, at House No. 5, Banda, Assolna.

(4) The dead body shall be kept at the residential house at Assolna for one hour and shall thereafter be taken by the respondent no. 1 to the Church at Assolna.

(5) The last rites or the religious rites shall be performed by the applicants 2, 3 and 4, who are the daughters of the deceased Angelico Cruz Fernandes. The applicant no. 1 and the respondent no. 1 shall supervise the performance of the religious rites etc..

(6) The dead body, as per the wishes of the deceased, shall be buried in the cemetery at Assolna.

(7) The parties agree that the cost of the transportation of the dead body from the morgue to the residential house at Agonda, Canacona and thereafter to the residential house at Assolna and the funeral expenses will be borne by the respondent no. 1.

8. Mr. Dessai, the learned senior advocate appearing for the respondent no. 1 and Mr. Sardesai,

the learned counsel appearing for the applicants, have requested this Court that, in order to avoid any untoward incident, it is necessary and expedient to request the Police Inspectors of the Canacona and Cuncolim Police Stations to provide adequate protection till the funeral is over.

9. Mr. V.P. Thali, learned Additional Advocate General appearing for the State, who has assisted the Court and the learned counsel for the parties in bringing about a settlement to this unsavoury dispute, undertakes to inform the concerned Police Inspectors regarding the directions of this Court.

10. By consent, therefore, the Order impugned in this revision stands modified on the above terms. The police to provide adequate protection from the time the dead body is taken from the hospital till the funeral is performed.

11. On the above directions, this Civil Revision Application is partly allowed and the Order of the Ist Additional Civil Judge, Senior Division, Margao, stands modified. No costs.

ed's. P.V.HARDAS, J.