



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1379 OF 2024 (FILING NO.)

Ms. Papiya Sarkar,Petitioners
Widow of Som. Subhra Sarkar,
69 years of age, Housewife,
Married, Indian National,
Residing at House No.B,
784, Sushant Lok Phase-1,
Galleria, DLF IV, S.O., Gurgaon, Haryana
122009.

2. Mr. Yzudhamanyue Sarkar
Son of Late Som. Subhra Sarkar,
43 years of age, Business,
Single, Indian National,
Residing at House No.B,
784, Sushant Lok Phase-1,
Galleria, DLF IV, S.O., Gurgaon, Haryana
122009.

v/s.

Mr. Som Subhra Sarkar (since deceased)Respondent
Son of Late Mohit Chandra Sarkar,
Married, Indian National,
Resident of House No.B,
784, Sushant Lok Phase-1,
Galleria, DLF IV, S.O.,
Gurgaon, Haryana 122009.

Mr. Iftikhar Agha with Ms. Valencia Fernandes, Advocates for the
Petitioners.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: **10th July,2024.**

PRONOUNCED ON: **01st August, 2024**

JUDGMENT :

1. Rule. Rule is made returnable forthwith.

2. The matter is taken up for final disposal at the admission stage as it is necessary to decide the question of Forum before whom applications under Section 372 r/w. Section 370 of the Indian Succession Act, 1925 would lie for the grant of Certificate of Succession.

3. Heard Mr. Iftikar Agha, learned Counsel appearing for the Petitioners.

4. The application was filed before the learned Civil Judge, Senior Division, Bicholim for grant of Heirship Certificate under the provisions of Indian Succession Act. Though such application was entertained, it was rejected only on the ground that such applications are dealt with by the District Court.

5. Mr. Agha placed some of the orders on record passed by the Civil Court and more specifically in Vasco wherein such applications for grant of Succession Certificate were entertained and disposed of by the Civil Judge Senior Division. He would submit that the provisions of the Indian Succession Act, 1925 are not brought into force in Goa till date and therefore the Forum provided under the said Act for the purpose of grant of Succession Certificate cannot be applied to the Courts in Goa. He submits that Section 371 of the Indian Succession Act

provide that the District Judge within whose jurisdiction the deceased ordinarily resides at the time of his death or if at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a Certificate under the said Act, would mean that the Court of competent jurisdiction dealing with succession in the State of Goa.

6. Mr. Agha would submit that the party cannot have a right to choose Forum and it is as per the local laws which are prevalent in the State of Goa, the jurisdiction would be conferred on such Courts to decide the matters regarding succession.

7. Mr. Agha would further states that in the State of Goa the The Goa Succession, Special Notaries and Inventory Proceeding Act,2012 provides different procedure wherein there is no question of grant of Succession Certificate but a succession is decided during inventory proceedings. He submits that the effect of deciding succession during inventory proceedings would clearly mean that the competent Court upon the valuation of the inventory will have power to decide such issue.

8. Mr. Agha would further submit that the Civil Courts are empowered to deal with the inventory proceedings which

include succession and therefore the Civil Courts in Goa will have jurisdiction to grant Succession Certificate as if the same is provided for the parties who are not governed by the Goan laws. He submits that parties carry their own personal laws and therefore the Petitioners in the present matter being non-goan and Hindus, are entitled to apply for Succession Certificate on the ground that the deceased lastly resided or left immovable properties within the jurisdiction of the concerned Civil Court.

9. Mr. Agha would submit that the learned trial Court, while rejecting the application, considered the decision in the case of **Monica Variato v/s. Thomas Variato** [2000(2) Goa L.T. 149], but failed to consider its ratio properly.

10. The Petitioners preferred an application for grant of Succession Certificate under the provisions of Section 372 r/w. 370 of the Indian Succession Act 1925. In the said application it is specifically claimed that they and the deceased are non-Goans Hindus by religion. It is also claimed that the deceased by name Som Subhra Sarkar left property situated in Naneli of Satari taluka which he purchased somewhere in the year 2000. Such property is situated within the territorial jurisdiction of the Civil Court at Bicholim. The Application further disclosed that all the

Applicants are having equal right, title and interest in the property left by the deceased and since there is no conflict between the legal heirs, Certificate to that effect be issued. The Applicant also claimed that the learned Civil Court is having jurisdiction to grant such Certificate.

11. Since there is no contesting party in such proceedings, the only question before the Court is whether the parties applying for succession are entitled to such Certificate under the Indian Succession Act and whether the deceased left properties within the jurisdiction of the concerned Court.

12. By the impugned order, though the learned trial Court considered the fact that the parties are non-Goan and they are governed by the Indian Succession Act, dismissed such application only on the premise that in the State of Goa Succession Certificate are issued by the District Court and therefore the Civil Court is having no jurisdiction.

13. The learned trial Court in paragraph 10 considered the decision in the case of **Monica Variato** (supra) which was cited by the learned Counsel stating that the Court has got jurisdiction, but there is no discussion on this judgment. The application was rejected only on the ground that such

proceedings were taken up by the District Court in the State of Goa.

14. First of all the observations of the learned trial Court that such applications are entertained only by the District Court is not supported by any material. Even otherwise, the learned Civil Court could have allowed the parties to approach the District Court by filing an application for transfer instead of dismissing such application. Be that as it may, decision in the case of **Monica Variato**(supra) would clearly go to show that the Civil Court who is dealing with the succession matters in the inventory proceedings, is the Competent Court to grant such Certificate. This fact has not been considered by the learned trial Court and accordingly passed the impugned order.

15. In the case of **Monica Variato**(supra), it was observed that the provisions of Special Marriage Act,1954 was not extended to the State of Goa. Similar is the fact with the Indian Succession Act,1925. The discussion as to which Court is having jurisdiction to entertain the application under the Special Marriage Act was considered and finally it has been observed in paragraph 13, 14 and 15 as under:

“13. Having said so, considering the facts of this case, we will have to answer the question as to which is the law the appellant and the respondent would be governed by. The marriage admittedly was solemnized under the Special Marriage Act at Mumbai. The appellant and respondent thereafter are domiciled and/or have their habitual residence in Goa. If the tests of Private International Law are applied, the law to be applied would be the law as applicable in the State of Goa. In that situation the Special Marriage Act would not apply. The view above would be the view if principles of English Private International Law are made applicable and some observations of the Apex Court. The principles of Private International Law are not universal. They vary from State to State. What may be applicable in one State may not be applicable in another State. In the instant case we are not really concerned with a marriage that took place in a foreign country. We are concerned with a marriage that took place in a Constituent State of the Union. Each community based on their religion have their own personal laws in the rest of the country except where these laws are not extended. Goa is one such place. For the purpose of Private International Law the marriage solemnized at Mumbai can be said to be a marriage in a foreign country. If the rules of Private International Law are to be applied, then if parties are domiciled and/or have their habitual residence in Goa, proceedings for divorce would be as per the law in force in the State of Goa. That would create difficulties insofar as marriages performed under personal laws prevailing in the Constituent States of the Union. Personal Laws of each community are recognised. To that extent Private International Law insofar as marriage or divorce is concerned, would be the personal law and it is that personal law which would be applicable. This approach has been considered amongst Hindus governed by the Mitakshera or Dayabhag School. In such a situation

insofar as appellant and respondent are concerned, it would be the Special Marriage Act. Such a view has been taken by the Rajasthan High Court in a case where marriage was solemnized in England but the husband came to reside in Rajasthan. The appellant, however, has approached this Court on the ground that they are domiciled in Goa and as such the Goan law would apply. Alternatively it was contended that the respondent was of Goan origin. Being of Goan origin irrespective of the fact that he was residing in Mumbai he would still be governed by the Portuguese Law of Divorce applicable to the State of Goa. There is no evidence on record to give any finding on that count. To give a finding it would have to be considered whether the respondent at the time of his marriage was a citizen of India or had continued to maintain Portuguese nationality at the time of Liberation or when the Citizenship Order conferring citizenship to Portuguese nationals of Goan origin was passed. In that kind of situation, it would be the Law of Divorce as prevailing in the State of Goa. Insofar as residence of the wife is concerned, it would be immaterial as in Indian Law the domicile of the husband would be the domicile of the wife.

14. The Special Marriage Act has, however, not been extended to the State of Goa. What then would be the forum to decide the issue in the State of Goa. There can be no vested right in a forum. Private International Law accepts that the forum and procedure as to the extent applicable will be the law of domicile. In that view of the matter it will be the civil Court exercising jurisdiction in divorce matters in the State of Goa that will hear and decide the petition.

15. With that the answers to the questions formulated are as under:-

(1). If the Special Marriage Act applies, it is the competent Court of civil jurisdiction deciding matrimonial matters which is the Court in which the petition would be filed.

(2)(a). We hold that even applying the principles of Private International Law, bearing in mind various personal laws in this country, even though the spouses are domiciled in Goa in respect of a marriage performed outside Goa but in any other State of the Union they would be governed by their personal laws insofar as dissolution of marriage is concerned.

(2)(b). There is no material on record to hold that at the time of marriage the respondent was governed by the personal law in force in Goa including divorce.

(3). Consent for granting divorce by mutual consent must not only exist at the time when presenting the petition and at the passing of the provisional Decree, it must also continue till the date of the final decree. If any party remains absent or withdraws the consent, the Court would have no jurisdiction to grant decree of divorce by mutual consent.”

16. The matter with regard to succession are admittedly considered by Civil Courts in the State of Goa and more particularly during the inventory proceedings, thus the question of jurisdiction of Civil Court will have to be considered in the light of above observations and the fact that there cannot be vested right in a Forum. The Forum and the procedure as to the extent applicable will be the law of domicile. Accordingly, the

matter will have to be entertained by the Civil Court exercising jurisdiction in succession matters in the State of Goa.

17. Rule is made absolute in the above terms.

18. The parties are directed to appear before the concerned Court at Bicholim on 19/08/2024 at 10.00am for the purpose of deciding the matter afresh and on its own merits.

19. Copies of this judgment to be forwarded to the Principal District Judges for the purpose of implementation.

BHARAT P. DESHPANDE, J.