

A CRITICAL EVALUATION ON INVENTORY PROCEEDINGS IN THE REALM OF FAMILY LAWS IN GOA

Nagesh S. Colvalkar¹ & Gouresh Gurudas Bugde²

¹Associate Professor, V. M. Salgaocar College of Law, Miramar, Panaji, Goa, India

²Research Scholar, V. M. Salgaocar College of Law, Miramar, Panaji, Goa, India

ABSTRACT

Inventory Proceedings play a very important role in the devolution of Heirship in Goa. The Inheritance in Goa can be partitioned by way of drawing of a instrument called Deed of Qualification of Heirs which is drawn before the Special Notary or by way of instating of a suit before the Courts which is called as Inventory Proceeding. The article looks at some of the key points which govern the aspect of Inventory Proceedings in Goa along with the role of the Head of the Family. The Article also takes a glance at the procedure followed in such Proceedings and the duties to be played by the Head of the Family. The Article also puts light on some judicial pronouncements in the field of Goan Family Law. The Article further tries to highlight the importance of uniform civil code as envisaged by our Constitution.

KEYWORDS: *Realm of Family Laws*

Article History

Received: 31 Oct 2019 / Revised: 02 Jan 2020 / Accepted: 31 Jan 2020

INTRODUCTION

"The Code Napoleon" as it is popularly being referred to, has its source in the teachings of French, German and Italian Jurists. Civil Code governs the realm concerned with family, contracts, succession and property laws and universally followed by all faiths and communities without any bias.

This Code has the special and unique feature of incorporating within itself the directive given by Article 44 of the Constitution of India i.e. Uniform Civil Code thereby having a sense of equality in the matters concerning Family Law without any distinction with respect to religion, caste, race, creed, gender. Times have changed and in Goa, the Goa Succession, Special Notaries and Inventory Proceeding Act 2012 has now been enacted which substantially replaces the Portuguese Civil Code of 1867 and Civil Procedure Code of 1939.

Importance of the Civil Code in Goa

Article 44 of our Constitution under Chapter gives stress for founding of a Uniform Civil Code for India of India which would be governing its subjects without any distinction and bias.

In the words of the Hon'ble then Chief Justice of India, Shri Y.V. Chandrachud at the occasion of presenting the Inaugural Speech at the Conference held by the Goa, Daman and Diu Advocates Association on 'The Family Laws of Goa, Daman and Diu', expressed his views of the Uniform Civil Code by saying that:-

"It is heartening to find that the dream of uniform Civil Code in the country finds the realization in the Union Territory of Goa, Daman and Diu only."

After Goa attained liberation from the colonial rule of the Portuguese, the Parliament passed the Goa, Daman and Diu Administration Act of 1962, By virtue of which all the laws in force before 20th December 1961 in any part of Goa, Daman, Diu were continued to be in force until amended by competent authority.

The Civil Code of 1867 embodied in itself as a self contained code governing its subjects in the realm of Marriage, Divorce, Law relating to Children, Succession. By enactment of the Goa Succession, Special Notaries and Inventory Proceeding Act 2012, the law relating to Succession and Heirship is now governed by the latter Act.

The Civil Code, 1867 was in force with effect from 1st August 1870 and incorporating the provisions of the law relating to succession, notaries and inventory proceeding. The Civil Procedure Code of 1939, which was in force from 1st January, 1941 contained the procedural aspects relating to the law contained in the Civil Code of 1867. The Notarial Decree which was in force from 14th November, 1952 governed aspects relating to notarial acts including Wills, Succession Deeds, Ante Nuptial Deeds, Adoption Deeds, Relinquishment Deeds. Section 5 of the Goa, Daman and Diu (Administration) Act, 1962 authorized these enactments to continue to govern the subjects till it is modified by competent authority. Presently, the provisions contained in the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 governs matters relating to the Succession, Special Notary and Inventory Proceedings in Goa.

Key Terms Relating to Succession Law in Goa

- **Inventory Proceeding:** It relates to the procedure followed by way of court proceedings in order to get the inheritance of the estate leave partitioned among his heirs. It also includes the order from the court to allocate the inheritance among the heirs
- **Mandatory Inventory:** When the moiety holder or the heir apparent is interdict, absent person, unknown, or minor then the inheritance cannot be partitioned by way of drawing a deed of qualification of heirs and it is compulsory to file inventory proceedings in the competent Court. The court case so filed is termed as Mandatory Inventory Proceedings.
- **Estate leaver:** He is the person whose inheritance is to be partitioned after his death among his legal successors.
- **Legal or intestate succession:** When the estate leaver does not specify his legal heir by way of instrument like a Will, the inheritance is partitioned by operation of law which is referred to as Legal or Intestate Succession. It means absence of any testamentary document drawn under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 to determine the heir in the family.
- **Matrimonial regime:** When the husband and wife are getting married they have the option to choose the system which they want to adhere to and which will determine their rights and duties as regards the matrimonial property. The system that they choose is called the Matrimonial Regime.
- **Moiety holder:** The spouse of the estate leaver is called Moiety Holder. The Moiety holder has equal share to the assets of the couple.

- Right of representation: The Right to representation is a legal right which certain dead relatives of estate leaver have and which enables him to succeed to the inheritance even if the heir is dead at the time of partition of the inheritance.
- Renunciation or repudiation of heirship: The right that is exercised by the heir whereby he releases his share in the inheritance left by the estate leaver and which he was entitled to inherit in the absence of such renunciation.
- Forced heir: Except as provided under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, the Estate Leaver cannot deny certain mandatory share to his legal heirs after his death. Such an heir is called Forced Heir who has a right to acquire the guaranteed minimum right to inherit as fixed by law.
- Head of the family: He is also referred to as the Cabeça de Casal and he is responsible to look after the inheritance for safeguarding the same till the same is partitioned. The Head of the Family is responsible to furnish honestly under oath the list of assets and liabilities of the inheritance of the estate leaver.
- In officious gift or will: Any gift/will made by the estate leaver whereby the mandatory share of any of the other heirs is affected thereby resulting in encroachment on the legitime of any of the mandatory heir is called as an Inofficiously gift or will.
- Interested party: An interested party includes the heir of the estate leave or his moiety holder. In case where the estate leaver had executed a will, it includes the executor when there are any minor, interdict, unknown heirs or legatees. Further, it includes the persons who have right to usufruct partly to the inheritance though without determining its value and also includes the Executor.

Provisions Governing Inventory Proceedings in Goa

Opening of the Succession

When a person dies, his legal successors steps into his shoes and thus the inheritance opens when the estate leaver dies. The jurisdiction for the opening of the succession is ascertained as follows:

When estate leaver abode was in Goa, the inheritance would open where he resided permanently.

If the estate leaver had certain immovable properties in Goa but did not permanently abode in the State of Goa then the succession would open at the place where his immovable properties are situated in Goa and when the said properties are spread in different parts of the state then the inheritance would open at the place where the majority of the properties are situated based on the its value.

When the estate leaver has immovable properties situated in rest of India apart from Goa, the inheritance opens in Goa even if the value of immovable properties in rest of India is more as compared to them in Goa.

If the estate leaver dies outside Goa without permanent abode in Goa and did not held any immovable properties in Goa but has movable properties in Goa, his inheritance would open where his major part of movable properties are located in Goa. In case the estate leaver neither resided permanently in Goa nor held immovable properties in Goa, his inheritance would open at the place of his death in Goa.

Unless the marriage between the spouses is governed by absolute separation of assets, the court in which the inventory proceedings of one spouses was filed shall also have jurisdiction to entertain any inventory proceedings that may

be filed after the death of the moiety holder i.e. the other surviving spouse.

Who can Succeed as an Heir

Except as provided expressly by the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, any person born or conceived at the time when inheritance opens is competent to succeed. This rule however does not apply to the State as a successor.

In case the estate leaver had executed a testamentary instrument as regards his heir, then even the person who is yet to born can be a heir to the inheritance. Also, the entities have juridical identity can also be Heir to the inheritance.

Petition for instituting/ filing of Inventory Proceedings:

Inventory Proceeding can be filed by an interested party or his attorney by way of filing a petition before the court having jurisdiction in the matter. If any party is under disability his personal representative can file the petition on behalf of the said disabled person. The petition should be accompanied with the death certificate of estate leaver. If the death certificate of the estate leaver is not registered, then the petitioner can produce other admissible evidence to prove the death of the estate leaver. The petition filed for instituting the Inventory Proceeding must include name, address, locus standi of the applicant along with the name of the estate leaver whose succession is opened. It shall also include the Jurisdiction clause supported by facts, the value of the succession opened, the details of person who will discharge the duty of Cabeça de Casal. The applicant shall also disclose whether there are any minors in the line of succession and whether the Inventory Proceedings so filed comes under the purview of Orphans jurisdiction.

Appointment of the Head of the Family/Cabeça de Casal

The Court in which the Inventory Proceeding is filed has the power to decide as to whom to assign the role of Head of the Family/Cabeça de Casal. If necessary, the Court may conduct an inquiry in the matter to determine the same on the basis of all the documents filed as regards the Inventory Proceeding. On appointment of any person to be the Head of the Family/Cabeça de Casal, he is duty bound to discharge his duties with utmost care, diligently and faithfully. The Head of the family is required to produce all the relevant papers which may affect the Succession and it required to make a declaration which includes the details of estate leaver and his heirs like name, date and place of death, marital status and whether there was any pre-nuptial agreement between the estate leaver and his spouse. The details would further include the details of any will or gift done by the estate leaver. The Cabeça de Casal shall also suggest the names to constitute family council if the Inventory Proceeding comes under orphan jurisdiction. The declaration of the Head of the Family would also include details of assets of the estate leaver along with the details of the legatee and creditors. The copy of any information supplied by way of declaration along with the supporting documents is required to be supplied to the interested parties as well.

Declaration of the Head of the Family

The Head of the Family is duty bound to conduct his role faithfully and without any bias. He is supposed to depose before the Court impartially and fairly. His statements have great value before the Court and are presumed to be true and if any person has any objection to the same, then the onus is on the said person to prove that the statement of the Head of the Family is false. However, this rule will not apply when the statement made by the Head of the Family pertains to his own interest in respect to the inheritance and when the law mandates a particular procedure to prove certain facts.

Rights and Duties of the Head of the Family

The head of the family performs the role of the estate manager pertaining to the inheritance. It is his duty to receive the income, profits from the assets and to meet the general liabilities pertaining to the estate. He is also duty bound to keep record of the finances and submit the same annually to the Court in case the usufruct of the inheritance properties does not belong to him. The head of the family shall meet the expenses which includes amount given to any of the heirs and the balance amount pertaining to the inheritance is to be deposited in a Nationalized Bank.

The Head of the Family is only like the manager of the inheritance till the Inventory Proceeding is finalized having limited powers with respect to the properties of the inheritance. The Head of the Family in no stretch of imagination is the owner of the properties and cannot alienate the same except when they are of perishable nature. Even if the Head of the Family creates a lease of a temporary nature, it will be in effect till the Inventory Proceedings are finalized. The Head of the family is duty bound to take all necessary steps to safeguard the inheritance. Also, when there are any debts which may become time barred, the Head of the Family has the duty to act in the matter so that the interest of the Inheritance is protected. The Head of the Family is entitled for reimbursement along with accruing interest thereon in respect of the expenses incurred by him to manage the inheritance. However, he is not duty bound to pay any interest for the amount which he has received in respect of the inheritance unless in case of default on his part.

Conduct of Inventory Proceeding

As in any general court proceedings, the Inventory Proceedings are held in open court. The court proceedings in the course of hearing are recorded in the form of Roznama. The Chart of Partition prepared in the course of Inventory Proceedings including the Preliminary Chart, the copy is provided to the parties or their legal representatives as soon as possible preferably on the very next hearing date. Also, the various copies of list of assets filed, any applications, replies, objections, etc. filed by parties is also to be provided to the other parties to the Inventory Proceedings and the other parties are duty bound to acknowledge receipt of the same.

At the stage of filing of the suit and on first hearing, if the Court is satisfied that the proceedings are maintainable, the Court will then direct the Cabeça de Casal to submit the list of assets and any other required documents not produced earlier. It is noteworthy to mention that in case first summons is not served on the heirs, moiety holder or such other parties which are required to be served by law result in the entire subsequent Inventory Proceedings to be null and void and the nullity can be brought to the notice of the Court any subsequent stage of the said Inventory Proceedings.

When the Inventory Proceeding is filed before the Court where any interested party is under disability, a personal representative is appointed by the Court for the incapacitated interested party and then the Court proceeds with the issuance of first summons in the Inventory Proceeding.

The first summon issued by the Court contains the next date of hearing in the Inventory Proceeding filed before it. The interested parties can file their objections on the next date of hearing. The summons issued by the Court shall also contain annexure submitted by the Cabeça de Casal pertaining to the declaration pertaining to the list of assets of the estate leaver.

IMPORTANT JUDICIAL PRONOUNCEMENTS RELATING TO INVENTORY PROCEEDINGS UNDER THE FAMILY LAWS IN GOA

Zacarias Durate Domingos Pereira v. Camilo Inacio Evaristo Pereira

The Court has held that the Inventory Proceedings will be governed by the Portuguese Civil Code and there is no corresponding provision in other statutes which can overrule this procedural law in the matters of Inventory Proceedings.

Smt. Premavati Basu Naik and Others Vs. Shri Suresh Basu Naik and Another

Article 1565 safeguards the interest of heir whereby he cannot be denied his lawful share in the inheritance of the parents. This provision itself provides a right to the heir to protect him even when the parents are alive and they cannot sell the legitimate share without the consent of all the children. The transactions are void and can be challenged in the lifetime of the parents.

E. Nunes of Bicholim v. P Nicolau Fernandes of Merces

The Marriage Decree of 1946 contained a provision whereby divorce could not be granted to the spouse. The Court, in 1974 struck down the provision as being unconstitutional and violative of the provisions of the Constitution of India.

Jose Paulo Coutinho v. Maria Luiza Valentina Pereira & Another

The Hon'ble Supreme Court of India has laid down in the present case that when a Goan is domiciled in outside state and has immovable properties outside Goa, then the immovable properties cannot be partitioned according to the law applicable in that other state but will be governed by the Goan Civil Code and the inheritance in Inventory Proceedings would be calculated taking into consideration the properties situated outside Goa as well.

CONCLUSIONS

To sum up, it would be apt to say that the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012 has benefited the entire state of Goa by putting the entire law relating to Inventory Proceedings in a systematic manner so that there cannot be any ambiguity in the application of the same to the subjects it governs.

The Family Law applicable to the state of Goa guarantees uniformity to its subjects irrespective of any distinction on the basis of caste, creed, religion, sex, etc. The Justice is applied uniformly and fairly.

The provisions of law also appear to be modernistic in nature and confirms to the present society norms and living environment.

With the enactment of the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, it is yet another step towards bringing the law more closer to the people so that maximum people can be benefited by it. The barrier of language that was prevalent with the Portuguese language in the Civil Code of 1867 is also taken away with the enactment of the said legislation which can be understood by the common man.

The proceedings regarding conduct of Inventory Proceedings are also unambiguous and simple which can be understood by a common man. The law also aims at disposal of the proceedings in a time bound manner.

The law can be very beneficial to the entire state of Goa if implemented in a logical and systematic manner.

REFERENCES

1. *The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012*
2. <http://www.thehindu.com/news/national/other-states/goa-passes-bill-to-replaceportugese-succession-law/article8955082.ece>.
3. *Usgaocar M.S., Family Laws of Goa, Daman and Diu Volume I (4th Edition, Vela Associates, 2009)*
4. *Usgaocar M.S., Family Laws of Goa, Daman and Diu Volume II (2nd Reprint, Vela Associates, 1994)*
5. *Da Costa Mario Bruto, Law of Succession, (Published by Mario Bruto da Costa, Panjim Goa)*
6. *Da Costa Mario Bruto, Matrimonial Regimes and Inventory, (Published by Mario Bruto da Costa, Panjim Goa, 2000)*
7. *Afonso Ave Cleto, The 'Portuguese' Law of Goa (Succession and Inventory, (Broadway Book Centre, Goa, 2009)*
8. *Translation by Ferro Miguel, Family Succession Law in the Portuguese Civil Code of 1867: A 21st Century Approach, (AAFDL, Alameda da Universidade-1649-014 LISBOA, 2008)*
9. *Prasad V., Indian Succession Act, (3rd Edition, Allahabad Law Agency, Faridabad (Haryana) 1999)*
10. *Singh Shiv Sahai, Unification of Divorce Law in India (Deep & Deep Publications, New Delhi, 1993)*
11. *Mathew Babu and others, Cases and Materials on Family Law – I (Revised Edition, National Law School of India University Bangalore, Oct. 1994)*
12. *Singh Chauhan S.P., Sources & Framing of the Constitution of India, (Universal Law Publishing Co. Pvt. Ltd., 2015)*
13. *Chawla Monica, Gender Justice-Women and Law in India, (Deep & Deep Publications, New Delhi, 2006)*
14. *Pandey J.N., The Constitutional Law of India, (50th Edition, Central Law Agency, Allahabad, 2013)*
15. *Bakshi P.M., The Constitution of India, (11th Edition, Universal Law Publishing Co., New Delhi, 2011)*
16. *Noronha F.E., Portuguese Civil Code, 1867, (Published by F.E. Noronha, Padmavati Towers, Panaji Goa, 2016)*
17. *Kohli Hari Dev, Supreme Court on Hindu Law (Universal Law Publishing Co. Pvt. Ltd., 2010)*
18. *Nazare B.D. & Awasthi S.K., Goa Law Digest, (Valsad Book House-Goa Law Reporter, Panaji Goa, 2014)*
19. *Constitutional Law of India, (4th Edition (Reprint), Universal Law Publishing Co., New Delhi, 2012)*
20. *Colvalkar, Nagesh S. A critical study of Criminal Justice System during Colonial Era and Post Liberation of Goa. Diss. Goa University, 2010.*
21. *Oyekunle, Olubunmi Simeon, Alamu, Olufemi Akinyinka & Soladoye, Ayodele Olufemi, "NA+/K+-ATPase Activities in Normotensive Human Subjects with and without Family History of Hypertension in South-West Nigeria "International Journal of Applied and Natural Sciences(IJANS)(2014): 25-32*
22. *Joyce Waringa Manyara, S.W. Mwangi & Fm Apollos, "Changing Family Structures and their Implications on the Gender Roles in Nakuru Municipality, Nakuru County, Kenya" IMPACT: International Journal of Research in Applied, Natural and Social Sciences(IMPACT : IJRANSS)(2016) 73-94*

23. P. O. Dania & S. Obro, "The Efficacy of Social Studies Education in Promoting Family Values" *International Journal of Educational Science and Research* (2013) 59-64
24. Hemavathy, V, and Ajitha Nancy Rani. "A Study to Determine the Level of Family Burden of Family Members of Depressive Patient at Selected Hospital in Chennai" *Best: International Journal of Humanities, Arts, Medicine and Sciences (BEST: IJHAMS)*(2016): 15-18
25. Sudarsan Sahoo, "Disintegration and Devaluation of American Family: Sam Shepard's Buried Child" *BEST : International Journal of Humanities , Arts, Medicine and Sciences(BEST : IJHAMS)*(2016): 25-28