



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.303 OF 2025

1. MARIA MARTA VAZ, aged 66 years,
Indian; r/o. 147/2, Rodrigues vaddo,
Sodiem, Siolim, Goa - 403 517.

2. AGNELO CONSTANCIO VAZ,
aged 68 years, Indian; r/o. 147/2,
Rodrigues vaddo, Sodiem, Siolim, Goa -
403 517.

.... Petitioners

Versus

1. JACINTA PEREIRA, aged 70 years,
Indian, r/o. H. No. 133, Ribandar
Patto, Ilhas, Goa - 403 006

2. AGNES FERNANDES, aged 65 years,
Indian, r/o. H. No. 133, Ribandar
Patto, Ilhas, Goa - 403 006

3. JOHN EDMUND FERNANDES, major
of age, Indian, r/o. H. No. V/92/A/I
Tivim, Bardez, Goa - 403 502

4. FRANCISCA FERNANDES,
aged 55 years, Indian, r/o. H. No.
V/92/A/I Tivim, Bardez, Goa-403 502

.... Respondents

Mr. Nuno Noronha, Advocate with Mr Gautam Gaonkar, Advocate for
Petitioners.

Mr Yadunath H. Sirsat, Advocate for Respondent No.3.

CORAM: VALMIKI MENEZES, J.

DATED: 08th DECEMBER, 2025.

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the parties, Petition is disposed of finally.

2. The Petition challenges an order dated 15.10.2022 passed by the Civil Judge Senior Division at Mapusa in Inventory Proceedings Case No.154/2007/C/A whereby the Civil Court has re-opened the said Inventory Proceedings, purporting to exercise powers under Section 446 of the Goa Succession, Special Notaries And Inventory Proceeding Act, 2012 ('The Act'). The second order which is impugned herein is an order of the District Court dated 05.04.2025 by which an Appeal filed by the Petitioner against an application for declaring a Will dated 15.06.2007 of the deceased Blandina Fernandes to be a nullity, has been dismissed; the trial Court, i.e. the Inventory Court, without holding an inquiry, had held by its order dated 29.05.2024 that the Petitioner had failed to prove that the said Will was void or a nullity.

3. The aforementioned Inventory Proceedings was filed in the year 2007 to allot the estate of late Victor Sebastiao Fernandes, the estate leaver. In that Inventory Proceedings, the wife of Victor, Blandina Fernandes was arrayed as an interested party, being moiety, having a share of half of the undivided estate. Victor and Blandina had four children, namely, (i) Jacinta (Respondent No.1), (ii) Agnes (Respondent No.2), (ii) John Edmund Fernandes (Respondent

No.3), his wife Francisca (Respondent No.4) and (iv) Maria Martha Vaz, who is the Petitioner herein, married to Agnelo Vaz.

4. The Inventory Proceedings of Victor was concluded in the year 2015, prior to which Blandina passed away in the year 2012. The Inventory Proceedings culminated in an equal share being allotted by the Court to the four siblings, and accordingly the Chart of Partition was drawn up on 12.03.2015, disposing of Inventory Proceedings, allotting one quarter undivided share to each of the children.

5. The Petitioner, Maria, filed a Partition Suit in the year 2018, bearing No.RCS/91/2018/B before the Court of Civil Judge Senior Division, Mapusa, seeking partition of the quarter share of the undivided estate allotted to her in the Inventory Proceedings by separating the same by metes and bounds from the undivided share of the remaining siblings; in this Suit, the Respondent No.3 and 4 filed a counter-claim on 26.10.2018, in which they claim that before her demise, Blandina had executed and registered a Will dated 15.06.2007, by which she had bequeathed her undivided disposable share in the estate to John (Respondent No.3). The counter-claim raised a challenge to the Chart of Partition/Allotment in the Inventory Proceedings claiming that the same was seeking a declaration that the Judgment and Decree dated 12.03.2015 and the Chart of Allotment dated 23.02.2015 passed by the Inventory Court in Inventory Proceedings No.154/2007/C was null and void. In other words, the

said John challenged the allotment in the Inventory Proceedings on the ground that the Will was not taken into consideration, rendering the Decree passed by the Inventory Court a nullity, and claiming that he was bequeathed an additional share by his mother, Blandina, to the extent of her disposable quota in the moiety share. This suit and counter-claim are pending disposal.

6. In the meantime, the said John filed an application purporting to invoke powers under Section 446 of the Act, before the Inventory Court, seeking its re-opening and seeking an amendment to the partition of the quarter undivided share to each of his siblings, on the premise that he would be entitled to a higher share under the Will. He placed reliance on the Will. This application came to be filed on 05.08.2021 (Exhibit-I of the record of the Inventory Court).

This application came to be opposed by the Petitioner Maria Martha Vaz and her husband, who filed an application for dismissal of John's application, and for a declaration that the Will was null and void.

7. It is this application that was allowed by the Inventory Court vide impugned order dated 15.10.2022, purporting to exercise powers under the proviso under Section 446 of the Act.

8. In a separate order which is dated 29.05.2024, the Inventory Court dismissed the Petitioner's application to declare the Will to be a nullity after

holding an inquiry, and this Order came to be challenged by the Petitioners before the District Court in Civil Miscellaneous Application No.74/2024_which was dismissed on 05.04.2025, which Order is also challenged in this Petition.

9. The question that falls for my determination in this Petition is whether the Order dated 15.10.2022 passed by the Inventory Court is without jurisdiction and whether the Inventory Court, in the circumstances of this case, has improperly exercised jurisdiction under Section 446 of the Act.

10. At the outset, there is no doubt that a remedy was provided under the Act to the Petitioner to challenge the Order dated 15.10.2022 in appeal before the District Court, which was not availed. Nevertheless, the only ground on which the Order is assailed in this Petition, invoking this Court's supervisory jurisdiction under Article 227 of the Constitution of India, was that the Court is totally devoid of jurisdiction under Section 446 to re-open the Inventory Proceedings and to grant a fresh partition on the basis of the facts which were before the Inventory Court. It is in the light of this ground, since the jurisdiction of this Court itself has been called into question, that I have entertained the Petition in challenge to the Order of 15.10.2022.

11. For easy reference, I have quoted below three provisions of the Act which are of relevance to the disposal of this Petition.

“445. Fresh partition.— When, as a result of a decision in a appeal or a suit, it is necessary to make a fresh partition, the head of the family shall immediately be put in possession of the properties which no longer belong to the party who has received it. The inventory shall be corrected only to the extent it is strictly necessary to implement the decision and the valuation and description of the assets shall be maintained, notwithstanding that there is a complete substitution of the heirs.

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446. Amendment of partition.— The partition may be amended, even after it has become final and no appeal has been preferred, in the very same inventory proceeding by agreement of the parties or their representatives, where there is a mistake of facts in the list of assets or in the classification of the assets or any other error, which vitiates the will of the parties:

Provided that where in the order there are clerical or arithmetical mistakes or any material errors arising from accidental slip or omission, they may be corrected at any time by the court, either of its own motion or on application of any of the parties.

447. Suit for amendment of partition.— A party may file a suit for amendment of the partition, when subsequent to the final order the party acquires knowledge of a mistake of fact or classification or other error which vitiates the will of the party, and the other parties are not in agreement to have the partition amended, amicable.”

12. Section 446 provides that a partition may be amended, even after it becomes final, in the same inventory, by agreement of the parties. Invocation of powers under Section 446, by the very language employed therein, requires the consent of all the parties for amendment of the final partition in an inventory proceeding.

13. In the present case, the application which was filed by John was not one for amendment of the final partition but was for claiming a higher share in the

entire estate on the strength of the Will in his favour, executed by Blandina on 15.06.2007. The application was vehemently opposed by the Petitioner Maria Martha Vaz, which resulted in a contest on the amendment of the partition. This resulted in a complete reopening of the inventory proceedings, where what was sought effectively was a fresh inventory proceedings to consider the effect of the Will. To top it all, the petitioner Maria also filed an application to declare the Will a nullity, which, after the evidence was led by the parties and a full-scale inquiry was held by the Inventory Court, such declaration was refused to the Petitioner.

14. The Appellate Court, considering the evidence, has rejected the Appeal which is now challenged before this Court in the present Petition. No doubt, if the order dated 15.10.2022 directing re-opening of the inventory proceedings is set aside, the question remains as to what was the jurisdiction of the Inventory Court to enter into a full-scale inquiry on the validity of the Will; however, the Petitioner having chosen at that point of time not to challenge the Order dated 15.10.2022, of re-opening the inventory proceedings and having further chosen to lead evidence in challenge to the validity of the Will, must accept the order passed by the Inventory Court rejecting the application. Considering that the Appellate Court has re-appreciated the evidence and arrived at findings which cannot be considered to be perverse or contrary to the enquiry conducted on record, I decline to interfere with the findings of the Inventory Court in the validity of the Will dated 15.06.2007 executed by Blandina.

15. This brings me back to the question whether the proviso to Section 446 empowers the Inventory Court to re-open the Inventory Proceedings, especially in the facts and circumstances of this case.

16. The application for re-opening was filed after the Interested Party, John had already filed a counter-claim to the Partition Suit way back in the year 2018. In the counter-claim, John had specifically pleaded in paragraph 3 thereof that the shares determined in the Inventory Proceeding are incorrect in the light of the fact that the testamentary disposition/Will left behind by Blandina has not been reflected in the Inventory Proceedings. On the basis of these pleadings, a specific relief was sought in the counter-claim to declare the Order dated 22.03.2015 and the Chart of Allotment dated 22.03.2015 passed by the Inventory Court in Inventory Proceedings No.154/2007/C to be null and void. In substance, the Interested Party John had specifically challenged the Decree passed in Inventory Proceedings on the basis that it had not considered the bequest of Blandina and the entire Chart of Partition stood vitiated. This is exactly what is contemplated in Section 447 of the Act, which requires a party to file a suit for amendment of the Partition in an inventory proceeding which has attained finality. Section 447 permits such party to file a suit to amend the decree when the subsequent fact (which, in this case, was the Will of Blandina of 2007) vitiates the Partition. Section 447 also contemplates a situation where

the parties are not willing to consent to an amendment of the partition (as contemplated under Section 446), leaving it to such party to contest the final partition, to file a suit for amendment. The counter-claim filed by John in Special Civil Suit No.91/2018/B is precisely the suit contemplated under Section 447. Having exercised this option by filing a counter-claim, the Inventory Court ought not to have entertained any application under Section 446 of the Act and ought to have relegated the parties to the decision in the Suit. If the party John succeeds in the Suit, the final Chart of Partition in Inventory Proceedings would have to be corrected and a fresh partition in terms of Section 445 of the Act be directed by the Court. Section 445 contemplates a fresh partition when a decision in a Suit affects the original partition, and such correction is required to be made by the Inventory Court to give effect to a decree of the Court.

17. Even otherwise, reading the proviso to Section 446 meaningfully, the powers under Section 446 to an Inventory Court are to correct a clerical or arithmetical mistake for any material error arising from an accidental slip or omission. Slip or omission or clerical or arithmetical error is one committed by the Court, and it is in view of the well-settled principle that the Court can always correct its own mistakes, that such powers are vested in it to correct the final partition in the inventory proceeding by amending the same. This, however, does not permit an Inventory Court to re-open the entire inventory proceeding

and to create a fresh allotment, more so when the parties have not recorded consent for such amendment. The moment parties dispute the amendment claimed by any one of them, correction/amendment of the partition can be realised only by filing a Suit under Section 447, which remedy the Interested Party John has already availed of.

18. In this view of the matter, this is a case which squarely falls within the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, which calls for correction of the impugned Order dated 15.10.2022, since the same has been passed without jurisdiction vested in the Inventory Court under Section 446 of the Act. Consequently, for the reasons stated above, the Order dated 15.10.2022 shall stand quashed and set aside as being beyond the powers vested in the Inventory Court under Section 446 of the Act. The Inventory Proceedings No. 154 of 2007/C/A shall be considered as closed, however, subject to the outcome of the contesting position in Regular Civil Suit No.91/2018/B pending before the Civil Judge Senior Division at Mapusa. The Civil Court at Mapusa is requested to complete the trial in Regular Civil Suit No.91/2018/B within a period of one year from the date of this Order. Needless to state that the outcome of the aforementioned Suit, subject to any Appeal that may be filed therein would materially affect the Chart of Partition in Inventory Proceedings No.154/2007/C, if this be so, the parties would be at liberty to then move an application under Section 445 of the Act to correct the Inventory Proceedings to give effect to the Decree passed in the Suit.

19. The Petition is partly allowed. Rule is made absolute insofar as the challenge to Order dated 15.10.2022 succeeds and the said Order stands quashed and set aside and the Inventory Proceedings No.154/2007/C/A shall be treated as closed. The trial Court shall proceed to record the evidence of Plaintiff Maria Martha Vaz on the next date of hearing when the Plaintiff shall file the affidavit in evidence. The Plaintiff shall complete her evidence within four months from today, followed by the evidence of the Respondent, John Edmund Fernandes. The Inventory Proceedings shall be disposed of preferably within one year from the date of passing of this Order.

VALMIKI MENEZES, J.