



**Relevant provisions of family law relating to inventory proceedings.**

# What is inventory proceedings

- ❑ Inventory proceedings are like that of succession
- ❑ It deals with the succession, partition among the legal heirs
- ❑ The purpose and the object of the inventory proceedings is that the property be retained in the family and the strangers should not create any interest in the property left by the deceased member of the family.

# What is inventory proceedings

- ❑ Disposition of the estate of the deceased person can be done by way of inventory.
- ❑ Unlike rest of the India, where the law of succession is contained in the independent Acts.
- ❑ The succession law in Goa is part of Portuguese civil code of 1867, amended in 1939.

# Source of Law

- As per [Section 5\(1\)](#) of the Goa, Daman and Diu Administration Act, 1962 -----"All laws in force immediately before the appointed date in Goa, Daman and Diu or any part thereof, shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority."
- In view this provision, all the articles of Portuguese civil code relating to inventory was made enforceable even after liberation of Goa.

The Portuguese Civil Procedure Code is commonly known as "The Code Napoleon".

- ❑ It is stated that the Code is the outcome of teachings of the contemporaneous French, German and Italian jurists.
- ❑ Civil Code regulates matter relating to family, contracts, succession and property.
- ❑ This was universally followed by all communities, Hindus, Muslims and Christians is coined as Uniform Civil Code.

# Uniform Civil Code

- ❑ This Code has the unique distinction and the privilege of already having a "Uniform Civil Code" in the State of Goa as envisaged by the Founding Fathers of the Constitution under Article 44 of the Constitution of India, which equally governs and regulates the juridical relations of its citizens, irrespective of their race, sex, caste or creed.
- ❑ The Inventory Proceeding is not akin to the provisions of other enactments, except in the territory of Goa.

# Family laws as followed in the State of Goa

- ❑ The Family Laws which were in force during pre-liberation in Goa, Daman and Diu relating to marriage, divorce, children and succession are still in force.
- ❑ The Family Laws are primarily contained in [the Civil Code of 1867.](#)
- ❑ It is a self-contained Code containing the substantive law on the Civil Side.
- ❑ Inventory is the procedure for claiming inheritance to the estate of the deceased and also for getting it partitioned amongst the heirs.

Articles 1369 to 1447, coming under Chapter XVII, deal with inventory proceedings.

- ❑ Inventory proceedings are not suits and they are distinct and separate proceedings from a suit , as understood under the Civil Procedure Code.
- ❑ In suits, there are parties opposing each other, in inventory proceedings all are only interested parties and either they are heirs or legal representatives or beneficiaries under gift or legatees under a Will.
- ❑ In Inventory, there is no decree passed, as in a suit.

Inventario proceedings are proceedings instituted for the administration of the estate of the deceased person

- ❑ They provide for
  - ❑ the preparation of the list of assets of the deceased,
  - ❑ payment of debts,
  - ❑ collection of credits of the estate,
  - ❑ payment of legacies, distribution of liquid assets etc.
- ❑ These various steps cannot be carried out under the procedure laid down under [the Indian Code, for suits](#).

# Parties to Inventory proceedings

- Inventory proceedings safeguards the interest of the all heirs and successors to the estate of the deceased. There are interested parties:
  - heirs,
  - moiety holders,
  - persons benefited by the usufruct to a part of the inheritance,
  - legatees and
  - creditors.

# Article 2012

- ❑ As per Article 2012 of the Portuguese Civil Code the Inventory is compulsory when any of the heirs is a minor or interdictate or an absentee or unknown person and the inventory shall be concluded within 60 days from the date of its institution.

# Article 2013 and 2065

- ❑ As per Article 2013 and 2065 of the Portuguese Civil Code, when the heirs are major, inventory is optional and
  - ❑ the major heir may seek partition either by executing deed of partition or document duly stamped and registered,
  - ❑ or By applying for judicial inventory.

# Article 2009 -Opening of inheritance

- ❑ On the death of the estate leaver, inheritance Opens,
- ❑ The inventory to be initiated on death of the estate leaver and to be concluded within 60 days from the date of its institution.
- ❑ Inventory is compulsory in case of minor heirs and absentee or unknown person.
- ❑ Inventory is optional in case of major heirs.
- ❑ Partition can be effected by major heirs either by executing stamped and registered document or by judicial inventory.

# Opening of inheritance

- ❑ Article 2009 of Chapter IV of the family Laws Volume II specifies that the inheritance opens on the death of the estate leaver and the place of opening of the inheritance is established
  - ❑ from the domicile of the deceased, or
  - ❑ at the place where immoveable properties of the deceased are situated or
  - ❑ where the place in which greater part of the properties are found or place where the deceased died.

# Opening of inheritance

- ❑ The major heir in whose possession, the estate of the deceased or part thereof is found and if he wishes to accept it under benefit of inventory,
  - ❑ he shall apply to the competent court within 10 days from the death of estate leaver who dies in his Company.
  - ❑ Or within 20 days from the time of the knowledge of death if the deceased was not living with him, to initiate Inventory.
  - ❑ In case of testamentary heir the period shall be reckoned from the time of knowledge of the Will.

# Opening of inheritance

- Article 2045 deals with counting of time in case the heir is not in possession of inheritance or estate of the deceased until his right is not lost by prescription or until he has not made declaration under Article 2041 that he accepts or renounce his inheritance in an application filed to the Court after expiry of 90 days from the date of opening of inheritance and within 30 days fixed by the Court for making such declaration, failing which the inheritance shall be deemed as accepted.

## Article 1369 of the Code of Civil Procedure 1939

- ❑ The proceeding of inventory shall be admitted only on the basis of the respective death certificate and upon the application of any party , or of the Public Prosecutor in orphan's case.
- ❑ In case, death is not registered or death certificate is not available, then the proof of death admissible is by producing burial certificate issued by Church Authority or by filing affidavits as per Indian Evidence Act, 1872.

# Format of the application.

- ❑ The cause title of the Inventory petition should mention the name and address of the heir applying for inventory proceedings.
- ❑ And also the name of the deceased, the date and place of his death and his relationship, status of connection of the applicant to the deceased or to the inheritance.

## Procedure on receiving the application.

- On the first date of hearing, Court appoints the administrator who is named as Cabesa -de- Casal upon making inquiry that he deems fit and with satisfaction that the office of Cabesa- de-Casal devolves on him as competent person as per Article 2068 of the civil Code.

## Procedure on receiving the application.

- Article 2067 defines administrator as the person entrusted with the listing and presenting for description and partition the properties of the inheritance.
- Article 2068 suggest on whom the office of administrator is devolved upon.

# On whom the office of Caves-de-casal devolves under Article 2068.

- ❑ 1)the surviving spouse 2) sons without disability and in their absence other descendants without disability.
- ❑ The legitimate son is preferred over illegitimate son
- ❑ if there are no sons then heir leaving with the deceased preferable with others male preferred over females and elder has preference if there are more than one in same circumstance.
- ❑ As per para 2 of Article 2068, the one who was residing permanently in the domicile and the company of same deceased shall be deemed to be the heir living with the deceased.

# On whom the office of Cables-de-casal devolves

- ❑ As per Article 2069 the office of Administrator devolves on guardian of person under disability if there are no surviving spouse or heirs named in the Article 2068.
- ❑ As per Article 2070 the co-heir who is in possession of certain properties of the inheritance on the date of opening of inheritance, he is deemed to be the Administrator in respect of the said property.

# Oath to be administered to C.C. to carry out his functions faithfully

- ❑ After the Administrator is appointed by the Court he shall be notified to take an oath to carry out his or her functions scrupulously and faithfully as per Article 1369 of the Court. The Cabesa de Casal is also notified to furnish declaration as required under Article 2072.
- ❑ The Family Council has to be convened, if the inventory is relating to orphans.
- ❑ To the declaration, the Cabesa de Casal has to annexe all the documents relevant to the inventory.
- ❑ The Cabesa de Casal has to present list of assets as per Article 2073 describing all the properties of inheritance faithfully and on oath.

## The description of the movable and immovable property.

- ❑ Immoveable properties are required to be described with reference to their boundaries, name and numbers appurtenances and easements.
- ❑ The description of the movable and immovable, passive and active debts and the consolidated funds has to be declared by the Cabesa de Casal as per Article 2073, 2074 ,2075 , 2076, 2077 and Article 1370.
- ❑ The declaration made by the Administrator are deemed to be true until contrary is proved.

# Procedure on receiving the application

- ❑ The Inventory proceedings to be dropped or closed when it is found that there are no grounds to hold inventory as per the declaration of Cabesa de Casal.
- ❑ The notices are issued to the interested parties, legatees and creditors if any as disclosed in the statement on oath given by the Cabesa de Casal.
- ❑ If these interested parties remains absent on due service of notice and they do not appoint any agent or advocate and resides outside the jurisdiction of the court and do not choose to reside within the jurisdiction of the Court, they shall be treated as exparte and shall not be further notified.

## Procedure on receiving the application.

- ❑ Filing of list of assets by C.C.
- ❑ Once the list of properties is given by the Administrator within the time fixed by the Court, initialed and signed by the Administrator or by his advocate, all the interested parties are called upon to give their objections if any.

## Procedure on receiving the application.

- ❑ As per Article 1378, the Administrator has to indicate the value of the listed assets. The lack of description of properties complained of has to be decided as per Article 1380 and if the dispute cannot be summarily decided and larger investigation is required, the parties to be directed to pursue ordinary remedies as per Article 1384 of the Civil Code.
- ❑ Once the description given by the Administrator attains finality, the same has to be appraised by appointing the appraiser.

# Removal of Cables de casal

- ❑ under Article 1439 the Administrator may be removed when he delays the proceedings and fails to fulfill his duty and badly administers the properties of inheritance.
- ❑ After removal of Administrator another Administrator has to be appointed.

## Procedure on receiving the application.

- ❑ After the appraisal (valuation of the assets) is finalized within 8 days the office has to draw the final description of assets. In case of the minors the family council has to be convened and family council meeting has to be held prior to licitation.
- ❑ As per Article 1391 when there is excessive valuation the application to convene the conference and to make declaration of licitation (auction) indicating the offer of bid made over and above the valuation.

# Procedure for licitation

- ❑ Within 48 hours of finalisation of description of assets the application for licitation has to be made and the time limit cannot be extended .
- ❑ As per Article 1404 when there is place for conference of family council on behalf of person under disability can declare orally that he intends to have licitation in specified properties.

# Procedure for licitation

- ❑ As per Article 1411, the licitation shall take place if possible on the same day of the conference of the parties and immediately thereafter. It is lawful to withdraw the declaration of desire to offer a bid till the respective item is put to be, but in such an event any other party shall be allowed to apply for licitation on the same item.

# Procedure for licitation

- Article 1412 deals with as to how the licitation is done. The licitation is an auction to which only heirs and the moiety holder spouse are admitted, and also in some cases donee and legatees are also admitted. Licitation falls over the properties of inheritance not necessarily to be allotted to any particular party. Each item mentioned in the list of assets shall be put to bid separately.

# Procedure for licitation

- The annulment of licitation can be done by the public prosecutor by applying immediately or within 5 days from the date of licitation, setting out grounds of his challenge and on hearing the same has to be decided. At the end of licitation of each day, the public prosecutor may declare that he shall not apply for annulment of what has been done on that day

# Procedure for licitation

- ❑ As per Article 1414 after the licitation within period of 15 days, The Administrator has to file the proposed chart of partition and all the questions relating to participation even by holding inquiry by leading evidence.
- ❑ When question are required larger investigation parties are directed to pursue normal remedy. The questions required to be decided in the normal course of inventory, shall not be left to be decided at the time of passing order to as to how the partition should be effected.

# Failure to deposit money

The scheme of the inventory proceedings is that the successful bidder fails to deposit the money within 5 days, the auction held earlier in his favour is cancelled and his right extinguishes. Consequently, debars him from participation in licitation. Property comes back to others, debarring his participation in auction.

# Procedure to draw chart of allotment

- ❑ As per Article 1416 after receiving the proposed chart of allotment or partition or project, the office has to draw the final chart of partition within 8 days in accordance with the same order and in accordance with the provisions of Article 1414,1415 and 1416.
- ❑ provision of Article 1417 has also to be taken into consideration when the gifted properties or the auction properties exceeds the share of the party.

# Procedure to draw chart of allotment

- ❑ After the chart is drawn by the office, the parties may apply for rectification or raise any objection and such objections to be decided within subsequent 8 days and the conference of the parties may be convened in case any objection is founded on inequity of the lots. New chart if required has also to be drawn . This is as per Article 1418.
- ❑ The cost of inventory has to be paid by the heirs and moiety holders in proportion of what they receive as per article 1424.

# Final order confirming chart of allotment

- ❑ Thereafter within 48 years the judgment should be passed homologating the partition according to the chart which is finalised.
- ❑ The cost of the inventory proceedings shall be paid by the heirs and the moiety holder to what they have received. Where the inheritance has been distributed among the legatees, the liability to pay costs shall be of the legatees in the same proportion. (Article 1422 Portuguese CPC).

# APPEAL

- ❑ Articles 1414, 1421, 1435 and 733 of portuguese civil code deals with the appeals.
- ❑ In circulated decision of Hon'ble High Court of bombay at Goa in case of **Mrs. Bharati Parkar V/S Mr. Vilas Mahadev Pilankar and others, dated 22/2/2015**, it is held that :-
- ❑ First appeal would lie in terms of section 96 of Indian C.P.C. read with provisions of the civil courts act against a final judgment homologating the partition in the inventory proceedings and thereafter a right of second appeal would follow in terms of section 100 of I.P.C.

# Miscellaneous Appeals

- ❑ All other orders passed in inventory proceedings can be challenged by filing appeals as per section 104 r/w order 43 of C.P.C.
- ❑ Orders not challenged earlier and affecting the final decision can be challenged along with the final judgment homologating the inventory proceedings.
- ❑ Court fee is fixed payable in declaration of rights proceedings.

Amendment in the inventory proceedings can be allowed after finalization.

- ❑ The correction of the inventory can be done as per Article 1424 ,1425, 1426 of the Court.
- ❑ Article 1427 deals with the recision of the partition.
- ❑ Article 1429 deals with the bringing on record the heirs of deceased interested parties.
- ❑ The questions decided in the inventory proceedings attains finality.

# Law of prescription under the Portuguese civil code.

- ❑ The right of prescription is explained in Article 505 of the Portuguese Civil Code.
- ❑ The article 2017 of the Portuguese Civil Code states that the petition of inheritance stands prescribed with lapse of 30 years.
- ❑ “things and rights are acquired by virtue of possession just as obligations are extinguished by the fact of not demanding their fulfillment. The law lays down the conditions and period of time i.e necessary for one as well as for the others. This is called prescription.”

# Article 529

- Article 529 of the Portuguese civil code which reads as follows:- “whenever the possession of corporeal immovable or incorporeal immovables mentioned in the preceding article, has lasted for 30 years, prescription shall operate, regardless of bad faith or lack of title, except what is provided in Article 510”.

# Effect of partition and execution of partition

- ❑ The estate of the deceased gets partitioned and crystalised on the heirs entitled to.
- ❑ Effect of partition is to get the actual physical possession and determination of abstract or notional shares of the heirs to the inheritance.
- ❑ The order confirming partition is executable and it is governed by the procedure of Portuguese Civil Code. (Zacarious D.D.Pereira V/S Camilo Pereira, 1984 Bom285)

Shri Damodar Ramnath Alve vs Shri Gokuldas Ramnath Alve .  
citations: 1997 (4) BomCR 653

Zacarias Durate Pereira v/s. Camilo Pereira  
{1990(1) Goa L.T.174}

- Once it is held that that part of the Portuguese Civil P.C. dealing with Inventory proceedings survives and does not stand repealed, then in the matter of execution of the final order arising under that part of the Portuguese Code, if a reference is required to be made to other Articles outside the aforementioned Chapter XVII of the Portuguese Civil P.C., it must be held that such Articles of the Portuguese civil P.C. shall be deemed to not have been repealed by the Extension Act of 1965.

Zacarias Durate Pereira v/s. Camilo Pereira  
{1990(1) Goa L.T.174}

- To sum, up it is clear that once the Inventory proceedings are culminated by a final order any application to enforce said order or to move an execution for obtaining the assets by the person to whom they are allotted such a proceeding will fall under the provisions of the Portuguese Civil P.C. which deal with execution and to that extent they are deemed not to have been repealed.

Cruz Fernandes and anr. v/s. Gregorina  
Fernandes and ors. { 1991(2) Goa L.T. 42 }

- ❑ No suit for physical partition of the common and undivided property lies unless previously the rights of the parties have been- -established and determined by a competent public deed or by judicial decree in the competent inventory proceedings.

# Anthony Drago v/s. Piedade Drago e Diniz { 2001(1) Goa L.T.494}

- ❑ Scope of the inventory proceedings is only to decide shares of the parties and finalize the list of properties and partitions. There can be no division of the properties by meats and bounds when one of the parties objects to the same.

Baburao Karhkar v. Vilas Atmaram Bandodkar  
{ MANU/SC/0939/2014 }

- The purport and meaning of Article 1417(c) is clear and unambiguous. After a chart of partition is drawn up and approved by the Court, under Clause (c) of Article 1417, a duty is cast on the Court to identify all the parties who had not taken part in the family auction and ensure service of notice on such person(s) so that within 3 days of receipt of such notice, the said parties i.e. creditors can raise a demand for payment, if they so wish. Once such a demand is raised the auction purchaser/successful bidder is duty bound to pay the amount, failing which the licitation will cease to have any legal effect. No time limit for payment by the auction purchaser is specified.

Baburao Karhkar v. Vilas Atmaram Bandodkar  
{ MANU/SC/0939/2014 }

- Article 1417(c) does not contemplate invalidity of the licitation on failure to deposit the amount demanded by the creditor within 3 days. The period of 3 days has been stipulated for raising a demand by the creditor after such creditor receives the notice that he may raise a demand for payment.

In the case of

[Zacarias Durate Domingos Pereira v. Camilo Inacio Evaristo Pereira, 1990\(1\) Goa Law Times, 174, Hon'ble Mr. Justice G.D. Kamat](#)

- ❑ Held- Inventory Proceedings as contained in Chapter XVII vide Articles 1369 to 1447 of the Portuguese Civil Procedure Code are not analogous to any proceedings under the Indian Code and [Succession Act](#). There is no part [of the Indian Code](#) which can correspond to that part of the Portuguese Civil Procedure Code which lays down the procedure for Inventory.

## Case laws

- In the case of **Zackrias Boratu Domingos Pereira Vs. Camilo Inacio Everesto Pereira, 1990 (1) GLT 174** it has been held that inventory proceedings are non-suits.
- In the case of **Custodiano of Branches of Banco National Altra Marino Vs. Nalinibai Naik, AIR 1989 SC 1589** it has been held that under Portuguese law of inheritance widow acquires meeira rights whereby she gets half share against the estate left by the deceased.

# Case laws

- In the case of **Shri Cruz Fernandes and his wife Vs. Smt. Gregoriano Estafania Sofia, 1991 (2) GLT 42** it has been held that no suit for physical partition of a common and undivided property lies unless previously the rights of the parties have been established and determined by a competent public deed of partition or by judicial decree in competent inventory proceedings.

- In the case of **Shri Damodar Ramnath Alve Vs. Shri Gokuldas Ramnath Alve and others, 1996 (3) ALL MR 522** it has been held that highest bidder has to deposit oyalty amount within 5 days of the auction proceedings. Such time can be extended only with the consent of the parties.
- In the case of **Vilas Atmaram Bandodkar Vs. Atmaram P. Bandodkar and another, 2010 (1) GLR 175** it has been held that auction becomes void if oyalty amount is not paid within three days.

# Decisions

- In the case of **Shri Bossuit S. Dias Vs. Smt. Dabidinha Dias, 1997 (1) GLT 18** it has been held that a suit for injunction simplicitor by one spouse against the other spouse would not be maintainable in the absence of judicial separation of the properties.
- In the case of **Shri Chandrakant Harmalkar and another Vs. Smt. Sumati Sagun Harmalkar, 1998 (2) GLT 350** it has been held that a gift made by father is valid to the extent of 1/4<sup>th</sup> of the property.

## Case laws

- In the case of **Smt. Sunita Shambu Shirodkar Vs. Shri Madhukar Lotlikar, 1998 (2) GLT 350** it has been held that under Article 1867 nominee is merely representative of lawful successor of the deceased and does not step in the shoes of the legal heirs of the deceased.

## Case laws

- In the case of **Ranjit Satardekar Vs. Smt. Clotildes Fernandes and others, 2006 (1) GLT 556** it has been held that only heirs and moiety holder of the deceased are entitled to participate in licitation. Licitation is an option to which only heirs and the moiety holder spouse are admitted, except the cases where a donee or the legatee is entitled to participate.

# Case laws

- In the case of **Smt. Premavati Basu Naik and others Vs. Suresh Basu Naik and another, 2012 (2) GLR 282** it has been held that there is no express bar whereby the parents cannot sell immovable property of the children without the consent of all the children.



**Relevant provisions of family law  
relating to inventory proceedings.**

**Shri Pramod V Kamat,  
District Judge-1 and Additional Sessions  
Judge, Panaji**

**Shri Irshad Aga District Judge-2 and  
Additional Sessions Judge Ponda**

**Smt. Vijaya Ambre Adhoc District Judge FTC  
I Panaji**

**Shri Ashley Noronha CJM Panaji**

**Shri Sandeep Natekar Senior Civil judge  
Ponda**

**Shri Devidas Kerkar Secretary Legal  
Services Authority**

**Shri Ram Prabhudessai Ad-hoc Senior Civil  
Judge Panaji**

**Smt. Apurva Nagvekar Junor Civil Judge,  
Ponda**

**Smt. Sayee Prabhudessai Junior Civil  
Judge, Panaji**

**Miss Vaishali Lotlikar Junior Civil Judge,  
Panaji**

THANK YOU

A decorative graphic featuring the words "THANK YOU" in a stylized, pink, 3D font. The text is set against a dark, textured background. The letters are surrounded by several pink roses and green leaves, creating a floral and celebratory theme. The roses are in various stages of bloom, and the leaves are detailed with veins. The overall composition is centered and visually appealing.