

indrawati and Others Vs. Virender Kumar and Others

indrawati and Others Vs. Virender Kumar and Others

SooperKanoon Citation : sooperkanoon.com/948993

Court : Delhi

Decided On : Apr-30-2012

Judge : Sunil Gaur

Appeal No. : LA.APP No. 599 of 2009

Appellant : indrawati and Others

Respondent : Virender Kumar and Others

Judgement :

ORDER

1. In this appeal, relating to the apportionment of the compensation assessed in respect of acquired land i.e. Khasra no. 55/2/2 (1-5), 3 (4-16) and 8/1(2-8) measuring 8 bighas and 9 biswas in the revenue estate of Village -Sanoth in pursuance to Notification under Section 4 of Land Acquisition Act, 1894, appellants and the first respondent are the claimants/ Interested Parties (hereinafter referred to as IPs).

2. Reference Court vide impugned judgment of 28th August, 2009 has granted the entire amount of compensation to the first respondent herein, who was IP No. 1 before the Reference Court and the appellants were IP No. 2 to 6, who have come up in this appeal.

3. Impugned judgment, while treating the Relinquishment Deed of 22nd July, 2000 by IP No. 6 in favour of IP No. 1 in respect of the acquired subject land to be a Gift Deed, has granted the entire compensation amount to the first respondent/IP No. 1. To do so, Reference Court in the impugned judgment has relied upon decision of the Apex Court in 'T. Mammo Vs. K. Ramunni' AIR 1966 SC 337.

4. At the hearing of this appeal, it was vehemently contended by Mr.V.K. Sood, learned counsel for the appellants that the plea of the Relinquishment Deed (EX. IP W1/3), being a Gift Deed, was never taken by the respondents, nor any evidence in this regard was led and so, the trial court has gravely erred in treating the Relinquishment Deed (EX. IP W1/3) as Gift Deed, as it is impermissible in law to do so. To support this submission, reliance was placed upon unreported decision of the Apex Court in Appeal (Civil) No. 6191/2001 'Anthula Sudhakar Vs. P. Buchi Reddy', rendered on 25th March, 2008.

5. On the issue of validity of the Deed in question as Gift Deed, it was asserted by learned counsel for the appellants that the Gift Deed must be registered, duly stamped, free from consideration, having acceptance by the donee and it should be proved as required by Section 68 of the Evidence Act and to assert so, reliance is placed upon decisions in 'Asokan Vs. Lakshmikutty and Ors.' (2007) 13 SCC 210 and 'Ku.Sonia Bhatia Vs. State of UP and Ors.' AIR 1981 SC 1274.

6. It was pointed out by learned counsel for the appellants that the first respondent - Virender Kumar had admitted in his evidence that in lieu of the released land in question, one acre of land was given to Ajay Kumar, son of appellant- Prem Chand, prior to 22nd July, 2000 and so, the consideration for the land in question stands established, which prohibits the Deed in question to be treated as Gift Deed.

7. It was asserted by learned counsel for the appellants that upon acquisition the possession of the land in question was taken over by the Government on 7th August, 2000 and so, mutation of the land in question on 8th August, 2000 in favour of the first respondent on the strength of Deed in question of 22nd July, 2000, becomes suspect. The contradiction in the deposition of first respondent- Virender Kumar pointed out by learned counsel for the appellants, is that at one

place the first respondent had deposed that he had come into possession of the land in question on the basis of the Relinquishment Deed and at another place, he had stated that he was in possession of the land in question after the sanction of mutation and in cross-examination, that he was in possession of the land in question from the last three-four years i.e. prior to May, 2005

8. The infirmity pointed out in the Deed in question (Ex. IPW1/3) by learned counsel for the appellants is that it is not duly attested by two witnesses and none of the witness has come forward to prove this document, which is otherwise inadmissible in evidence being a photocopy and on account of it being insufficiently stamped. Reliance is placed upon decision in 'Hariom Agrawal Vs. Prakash Chand Malviya' (2007) 8 SCC 514 to contend that photocopy of original instrument can neither be validated by impounding nor could it be admitted as secondary evidence under the Stamp Act, 1899.

9. It was urged by learned counsel for the appellants that the Deed in question does not become per se admissible in evidence merely because it has been signed by the appellant- Prem Chand as that by itself would not amount to execution of the document and that registration of a document does not dispense with the necessity of proving execution of the document when it is denied. In support of the aforesaid submission, reliance was placed upon decisions in 'Dattatray Narayan Aher Vs. Bhaskar Narayan Aher' III 2011 CLT 212 and 'Mostt. Rajwati Devi and Anr. Vs. the Joint Director, Consolidation, Government of Bihar, Patna and Ors.' AIR 1989 Patna 66.

10. So far as the revenue record i.e. mutation entries in favour of the first respondent is concerned, it is asserted by learned counsel for the appellants that the said revenue record has not been duly proved and in any case it does not confer any title. To contend so, reliance is placed upon the decision in 'Suraj Bhan and Ors. Vs. Financial Commissioner and Ors.' (2007) 6 SCC 186.

11. On behalf of the appellants, reliance was also placed upon the decision in 'Smt. Renu Gupta and Anr. Vs. Government. of NCT of Delhi and Anr. 2004' (II) AD Delhi 463 to contend that appeal against mutation order in favour of the first respondent was not maintainable as the possession of the land in question was

taken over, upon its acquisition by the Government. To contend that mere assertion of bhumidari rights by a party in proceedings under Sections 30 and 31 of Land Acquisition Act would not entitle such a party to claim compensation, reliance was placed upon decision in 'Hardwari Lal (deceased) Vs. Rai Singh (deceased)' 155 (2008) DLT 678(DB). Thus, it was contended on behalf of the appellants that upon execution of the Deed in question (Ex. IPW1/3), the compensation amount ought to have been released to the appellants by the Reference Court and since the impugned judgment is unsustainable on facts and law, therefore, it ought to be set aside and the claim petition of the appellants deserves to be allowed.

12. To the contrary is the assertion of learned Senior counsel for the first respondent, who had drawn the attention of this Court to the status report of 21st May, 2001 (Ex.PW-1/6) of the concerned SDM, which was filed in the proceedings under Section 30-31 of the Land Acquisition Act, to assert that it is evidenced from aforesaid report (Ex.PW-1/6) that the possession of the land in question upon its acquisition, was taken by the Government from the first respondent.

13. The contention advanced by learned Senior counsel for the first respondent is that appellant-Prem Chand claims to be illiterate, but he had signed the claim petition in English and had failed to prove that any fraud or cheating was done by the first respondent to obtain the Deed in question (Ex.IPW1/3) from appellant-Prem Chand. It was pointed out by learned Senior Counsel for the first respondent that appellant-Prem Chand had applied for "No Objection Certificate" in favour of the first respondent in respect of the land in question and infact appellant-Prem Chand as well as his son Ajay Kumar, who is a witness to the Deed in question had appeared before the Revenue Authorities on 8th August, 2000, and had given no objection to the mutation being done in respect of the land in question in favour of the first respondent. Attention of this Court was drawn to the deposition of the concerned official (IP1/W3), who had deposed that the 'No Objection Certificate' in question was issued on 24th July, 2000. Thus, it is contended on behalf of the first respondent that the impugned judgment suffers from no infirmity and thus deserves to be upheld.

14. Rival submissions advanced, evidence led, decisions cited and the trial Court record has been duly considered and thereafter it becomes evident that the entitlement to compensation awarded cannot be determined merely on the basis of the revenue record alone which of course is in favour of the first respondent but the presumption of correctness of the revenue record remains un-rebutted. Rather, certified copies of the revenue record including the statement (Ex.IPW1/10) and mutation order (Ex.IPW1/12) in respect of the land in question in favour of the first respondent reveals that prior to mutation being effected in favour of the first respondent, statement of appellant-Prem Chand was recorded by the concerned revenue officials and by way of the aforesaid detailed statement (Ex.1PW1/10), no objection was given by appellant- Prem Chand to the mutation of the land in question in favour of the first respondent. In the aforesaid statement (Ex.IPW1/10), it was clarified by appellant- Prem Chand that upon mutual settlement arrived at between him and the first respondent, the possession of the subject land has been handed over to the first respondent.

15. Now appellant-Prem Chand has tried to wriggle out of the Deed in question (Ex.IPW1/3) by asserting in the claim petition that he is an illiterate person who had trust in his real nephew Virender Kumar i.e. the first respondent, who had taken loan of ` one lac from him in May, 2000 and the first respondent was also pursuing the case pertaining to the consolidation proceedings as appellant-Prem Chand had dispute with his father and in trust he had been signing papers at the instance of the first respondent. To explain the execution of the registered Relinquishment Deed (Ex.IPW1/3) on 22nd July, 2000, the stand of appellant-Prem Chand was that the first respondent had got the loan repaid through his friend Jitender, who had issued a cheque of ` one lac in favour of appellant-Prem Chand who in token thereof had signed various papers upon being told by the first respondent that the statements are to be filed before the Consolidation and Land Acquisition Authorities and later on appellant-Prem Chand had come to know that he was made to sign some documents on 22nd July, 2000 before the authorities concerned, which in fact was Relinquishment Deed (Ex.IPW1/3), followed by mutation proceedings.

16. Relevantly, appellant- Prem Chand in his evidence before the Reference Court has categorically deposed that he had never received any kind of consideration from IP No.1 i.e. the first respondent in respect of the land in question, whose possession had remained with him till it was taken over by the Government in the land acquisition proceedings. Appellant-Prem Chand in his deposition had gone to the extent of stating that his signatures had been forged in the mutation proceedings and his son had been made a witness to the Relinquishment Deed and in lieu thereof, IP No.1 has relinquished land measuring 4 bighas and 16 biswas out of khasra No.27/18 vide Relinquishment Deed (Ex.IPW1/4) of even date in favour of Ajay Kumar, son of appellant-Prem Chand and that too without consideration.

17. Afore-noted stand taken by appellant-Prem Chand cannot be accepted on the face of it, as the true picture emerges from the cross-examination of appellant-Prem Chand. In the cross-examination, appellant-Prem Chand had admitted that upon coming to know in January, 2001 of the execution of the Relinquishment Deed (Ex.IPW1/3) in favour of his nephew- Virender Kumar i.e. the first respondent, he had not challenged the Relinquishment Deed before the Civil Court nor had lodged any report with the police regarding his signatures being forged on the aforesaid Relinquishment Deed. Appellant-Prem Chand had simply stated in the cross-examination that he has no such good relations with son Ajay Kumar but had good relations with his another son Gajender.

18. It appears to be least probable that appellant- Prem Chand would not confide to his son Gajender about executing some documents before the concerned officials on 22nd July 2000, particularly when it is not his case that his another son Ajay Kumar with whom he was not having good relations, had accompanied him to the government office for execution of some documents. Not only this, even the version put forward by appellant-Prem Chand of first respondent's friend- Jitender repaying the loan on behalf of the first respondent before the officials concerned remains unsubstantiated. In fact appellant- Prem Chand had admitted in his cross-examination that no document was executed when the loan was purportedly given by him to first respondent. Interestingly, appellant- Prem Chand admits that he had not withdrawn ` one lac from the bank to give it as loan to the first respondent.

Appellant- Prem Chand does not even disclose as to from where he had got ` one lac.

19. A scrutiny of the deposition of the first respondent-Virender Kumar reveals that he has been subjected to the detailed cross-examination in which it has emerged that infact there was exchange of land between the parties on 22nd July, 2000 by a simultaneous execution of two Relinquishment Deeds i.e. Ex.IPW1/3 and Ex.IPW1/4 respectively. Relinquishment Deed (Ex.IPW1/3) in respect of the land in question was executed by appellant-Prem Chand in favour of first respondent-Virender Kumar on 22nd July, 2000 and on the same day another Relinquishment Deed (Ex.IPW1/4) was executed by first respondent- Virender Kumar and his brother Jitender in favour of Ajay Kumar, son of appellant-Prem Chand, vide which land measuring 4 bighas and 16 biswas out of khasra No.27/18 was transferred by Virender Kumar and his brother Jitender and this Relinquishment Deed (Ex.IPW1/4) is witnessed by appellant- Prem Chand and likewise Relinquishment Deed (Ex.IPW1/3) is witnessed by Ajay Kumar son of appellant- Prem Chand.

20. On conjecture and surmises, one cannot jump to a conclusion that merely because equivalent land was not exchanged by the parties, the transaction gets vitiated. There is no basis to arrive at such a conclusion as the evidence on this vital aspect is lacking.

21. Since there is no basis to conclude that there was exercise of any undue influence by the first respondent- Virender Kumar upon his real uncle i.e. appellant- Prem Chand to execute Relinquishment Deed (Ex.IPW1/3), therefore, in the light of the decisions cited, it emerges that the nomenclature of a document alone is not to be seen and its contents are to be seen, to reach to a conclusion as to what is the nature of the said document. Here is a document (Ex.IPW1/3) which certainly cannot be treated as Relinquishment Deed but in view of the deposition of the first respondent-Virender Kumar, this document (Ex.IPW1/3) cannot be labelled as Gift Deed as has been done by the Reference Court. In fact this document (Ex.IPW1/3) has to be considered not in isolation but in the context of simultaneous execution of another document (Ex.IPW1/4) and when it is so done then it clearly emerges that there was an exchange of land though not strictly

between the contesting parties, which was promptly acted upon and the mutation in respect of the subject land was carried out upon an application (Ex.IPW1/13) made by the first respondent on the same date which was followed by recording of the statement of appellant- Prem Chand (Ex.IPW1/10) by the revenue officials vide which no objection was given by appellant-Prem Chand to the mutation being done in favour of the first respondent in respect of the land in question.

22. Not much will depend upon the fact as to when the first respondent- Virender Kumar came into possession of the subject land as the revenue record from the year 1999-2000 supports the stand of the first respondent-Virender Kumar being in possession of the land in question and as per document (Ex.IPW1/6) upon its acquisition, the possession of the land in question was taken from the first respondent by the Government on 17th May 2001. Such a view is being taken as a Division Bench of this Court in 'Kalawati Vs. Union of India and Ors.' 157 (2009) DLT 112 (DB) had in proceedings under Sections 30 and 31 of the Land Acquisition Act, taken note of the fact that the acquired land stood mutated in the name of the respondent and had thus held that the compensation under the Land Acquisition Act is payable to the bhumidars declared as such under the Land Reforms Act. In the instant case, undisputedly the first respondent is the declared bhumidar of the acquired subject land.

23. When considered in the aforesaid perspective, there remains no doubt that the nature of transaction in question between the parties was an exchange of land, which was voluntary one and thus first respondent- Virender Kumar who is the recorded owner of the subject land is entitled to the compensation amount. So far as the document (Ex.IPW1/3) being insufficiently stamped is concerned, it is a curable defect. It appears that in all probability, original Relinquishment Deed was filed before the Revenue Authorities during mutation proceedings. After Relinquishment Deed has been acted upon by the Revenue Authorities, technical curable defect of its being insufficiently stamped, cannot be raised by appellants without getting original Relinquishment Deed produced on record.

24. Since the original of the document (Ex.IPW1/3) was not in possession of the first respondent, as it was got prepared by appellant- Prem Chand, therefore, on

account of non-production of the original of the document (Ex.IPW1/3), legitimate claim of the first respondent cannot be defeated as the deposition of the first respondent regarding appellant- Prem Chand getting this document (Ex.IPW1/3) prepared, remains unshaken. Therefore, reliance placed by appellant's counsel upon the decision in Hari Om Aggarwal (Supra), regarding photocopy of an original instrument been inadmissible, is of no avail as the first respondent has relied upon certified copy of the document (Ex.IPW1/3) in question, whose valid execution is not in dispute. What was disputed in respect of this document (Ex.IPW1/3) is its being vitiated by undue influence, which does not stand established from the evidence on record.

25. Consequently, I find no merit in this appeal as the conclusion arrived at by the Reference Court of first respondent being entitled to the compensation amount is sustainable. Accordingly, this appeal is dismissed, leaving the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com