
(2012) 03 BOM CK 0164
In the Bombay High Court
Case No : First Appeal No. 253 of 2003

Damodar Ramkrishna Kamat, (Since Deceased by Lrs) and Others APPELLANT

Vs

Smt. Alda Gonsalves and Others RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Evidence Act, 1872 — Section 110
Land Acquisition Act, 1894 — Section 30, 4(1)
Land Revenue Code, 1968 — Section 105, 107

Citation : (2012) 03 BOM CK 0164

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Sudesh Usgaonkar, for the Appellant; Shivan Desai, for the Respondent

Final Decision : Dismissed

Judgement

U.V. Bakre, J.—This Appeal arises out of the Judgment and award date 20/02/2002 passed by the learned District Judge, South Goa, Margao (Reference Court) in Land Acquisition Case No. 140/1989. The parties shall hereinafter be referred to in the manner in which they appear in the cause title of the said Land Acquisition Case No. 140/89.

2. Facts giving rise to the appeal, in short, may be stated as under :

Vide notification issued u/s 4(1) of the Land Acquisition Act, 1894 ("said Act", for short) and published in Official Gazette dated 22/03/1984, land admeasuring 700 square metres from the property bearing survey No. 64/2 situated at village Sancoale of Marmugao Taluka was acquired for the purpose of construction of road from Palem to Alto-Verna Junction of National Highway No. 17. An amount of Rs. 12,137.80 has been awarded by the learned Land Acquisition Officer as compensation payable for the said acquired land. Since there was dispute between the parties, the learned Land Acquisition Officer made reference to the

Reference Court u/s 30 of the said Act.

3. The case of the applicant was as follows:

Land under survey No. 64/2 forms part of the property known as "Sundolem" situated in the village of Sancoale and bounded on the east by the property of Sazro Xete, on the west by the moroda of Sebastiao Gonsalves, on the north by rivulet and on the south by the slope of descending water. The said property belonging to and in possession of the applicant is described in the Land Registration Office under No. 9887 and in the matriz records under No. 95.

4. The case of the respondent was as follows:

Since the applicant failed to prove that the said property bearing survey No. 64/2 was exclusively belonging to him, the Land Acquisition Officer had referred the case to the Reference Court. The property bearing survey No. 64/2 belongs to the respondent only. The applicant holds the adjoining property under survey No. 64/3. Though the applicant has given the description number and matriz number, he, however, has failed to give the name of the person in whose favour the said property stands inscribed in the Land Registration Office.

5. The Original Applicant examined himself as AW1, a neighbour by name Vijay Kossambe as AW2 and an agricultural labourer by name Thomas Gama as AW 3. The respondent examined her Power of Attorney holder by name Nuno Gonsalves as DW1.

6. The learned Reference Court found that the name of the respondent has been shown in the occupant's column of survey No. 64/1 and that of one Narayan Raya Naik in the tenant's column. He further found that the Form No. I and XIV of survey No. 64/2 shows the name of the applicant only in the occupant's column, and likewise, survey No. 64/3 shows the name of the applicant only. The Reference Court, however, found that survey No. 64/5 still shows the name of the applicant as well as of the respondent in the occupant's column and the name of said Narayan Raya Naik is shown in the tenant's column. The Reference Court has held that though the applicant got the name of the respondent deleted from the survey record of Form No. I and XIV of survey No. 64/2, however the applicant has not taken steps to change Form No. I and XIV of survey No. 64/5 which continues to be in the joint names of the applicant and respondent and this destroys the case of the applicant. Considering the boundaries of the properties claimed by both the parties and certain admissions which have come on record, the learned Reference Court came to the conclusion that the applicant, with a view to claim the compensation, in this case, got the name of the respondent deleted in respect of Survey No. 64/2 without taking any action in respect of survey no, 64/5 or for that matter southern part of survey No. 64/1 which the appellant has intention to claim from the respondent. The learned Reference Court found too many discrepancies in the affidavit of the applicant himself as compared to the documents produced by both the parties and therefore he held that the applicant's claim that the property surveyed under No.

64/2 is part of his property, as per documents at Exh. 35, cannot be accepted. The learned Reference Court further found that the deposition of RW1, the brother and Power of Attorney holder of the respondent is in conformity with the applicant's document at Exhibit 35 and the respondent's document Exhibit 45, and therefore his testimony is bound to be accepted. Consequently, the Reference Court held that the compensation due on account of the acquisition of the land along with the accrued interest shall be paid to the respondent.

7. The applicant is aggrieved by the impugned judgment and award.

8. Learned Advocate Shri S. Usgaonkar, argued on behalf of the applicants whereas learned Advocate Shri S. Dessai, argued on behalf of the respondent.

9. Shri S. Usgaonkar, the learned counsel for the applicants, has contended that the acquired land bearing survey No. 64/2 was recorded in the name of the applicant in the survey records and this survey was promulgated and therefore there was presumption u/s 105 of the Land Revenue Code, in favour of the applicant. He further argued that unless the said presumption is rebutted by making out a case of better title, the applicant could not have been denied the compensation. Relying upon the case of "M/s. Deeksha Holdings" [1998 (2) Goa L.T. 443], he argued that the matrix record had no value once there is promulgated recent survey record in favour of the applicant. The grievance of Shri Usgaonkar, the learned Counsel for the applicant, is that the Reference Court has, without any reason dwelled into his title, without the other party bringing any better title on record. He pointed out that the respondent had not contested the proceedings before the Mamlatdar. He argued that these are not parallel proceedings to say that if the applicant wins, the respondent loses and vice-versa. According to the learned counsel for the applicant, the Reference Court has given findings based on surmises and conjunctures. He also argued that the oral evidence of the applicant and his witnesses duly proves the possession of the applicant, which has also been discarded by the learned Reference Court. The learned counsel submitted that in terms of section 110 of the Evidence Act, the burden of proving that the applicant is not the owner was on the respondent which the respondent has failed. He relied upon Chief Conservator of Forests, Govt. of A.P. Vs. The Collector and Others, . He questioned as to how without holding that the respondent is the owner, he could be held to be entitled to compensation. He also argued that in addition to promulgated survey record, the applicant has the backing of the title document that is auction certificate.

10. Per contra, Shri S. Dessai, learned counsel for the respondent, argued that initially the entire property was bearing survey No. 64/1 which was jointly surveyed in the name of the applicant and the respondent. He pointed out that presently the said survey No. 64/1 is in the name of the respondent; survey no 64/2 is in the name of the applicant, survey No. 64/3 is in the name of the applicant whereas survey No. 64/5 is in the name of applicant as well as respondent. He pointed out that the applicant does not claim ownership of survey

No. 64/5. According to him therefore on the face of the survey records, they are not correct, and hence the presumption u/s 105 has been rebutted. The learned counsel for the respondent argued that the applicant has admitted that on his western side lies the property of the respondent. He invited my attention to the plan at Exhibit 46 which shows that on the western side of survey No. 64/3 lies the survey no 64/2. He argued that the witnesses of the applicant have not corroborated each other and have also not given correct position. According to him, by an admission that on the western side of the applicant's property lies the property of defendant, the ownership of the defendant to the said property on the western side is established and therefore there is no need of any other title document. Shri Dessai, the learned counsel for the respondent, argued that considering the matrix document at Exhibit 45 for the purposes of identification by means of boundaries, the Reference Court has rightly held that the compensation in respect the acquired land should be entirely paid to the respondent.

11. Perused the entire material on record in the light of the arguments advanced by both the parties.

12. In the case of "Chief Conservator of Forests"(supra), it has been held that Section 110 of the Evidence Act, embodies the principle that possession of a property furnishes prima facie proof of ownership of the possessor and casts burden on the party who denies his ownership and that the presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title. In the case of "M/s. Deeksha Holding"(supra), it has been held that once the records in terms of the provisions of the Land Revenue Code, 1968 are prepared and once the presumption u/s 105 of the Code is available from the records prepared under the said Code, the presumption, if any, arising under the old existing records ceases to have any value and this position is apparent from the reading of Section 107 of the said Code. The principles laid down in the above cases are well settled. However, they are not applicable to the present case. It is seen from the entire evidence on record that indisputably, the applicant as well as the respondent have their property at the site, which is known as "Sundolem" and which is part of survey no 64. In such circumstances, the question of proving better title by any party does not arise. The question is identification of the property of both the parties.

13. The question for consideration is whether the acquired land from survey No. 64/2 forms part of the property of the applicant or whether the same is part of the property of the respondent.

14. AW1, the original applicant, has stated that originally, the entire property was surveyed under one number that is 64/1. He has stated that on account of his application before the survey authorities, the said survey no 64/2 was further divided and different numbers were allotted to sub-divisions. At one stage, AW1 claimed to be the owner of survey nos. 64/3 and 64/5(part) without naming survey No. 64/2. However at the other stage, AW1 has stated that his property is

surveyed under nos. 64/2 and 64/3. If the applicant claims to be the owner of the property bearing survey nos. 64/2 and 64/3. then there is no explanation as to how and why the survey No. 64/5 is jointly recorded in the names of the applicant and the respondent. If the applicant had purchased one single unit in the Court Auction, then the question arises as to why there are various subdivisions in the survey record. It cannot be the case of any of the parties that the survey has been correctly done. The survey record, though promulgated, however, is erroneous, on the face of it. Hence the presumption u/s 105 of the Land Revenue Code stands rebutted.

15. The property purchased by the applicant in Court Auction, vide the document at Exhibit 35 is a coconut grove known as "Sundolem", bounded on the east, inclusive of Gally, by Xira Sazora Xete, on the west by moroda of Sebastiao Gonsalves, on the north by rivulet and on the south by slope of descending waters. But, in his deposition, AW1 has stated that his property is bounded on the east by the property of Kossambe, on the west by the property of the respondent and one Ratnakar Naik, on the north by stream and on the south by top of the hill. Slope of descending water cannot be equated with the top of the hill. The boundaries mentioned in the document at Exhibit 35 cannot be of any property situated on the top of the hill. AW1 has stated that survey no 64/2 is a Galle i. e. partly paddy field and partly cashew plantation. In fact, Galle means entirely a paddy field. Be that as it may, by the document at Exhibit 35, the applicant has purchased a coconut grove. Admittedly, survey no 64/2 lies on a plateau, on the top of the hill. AW1 has stated that his property adjoins the property of the respondent. He has stated that the property of the respondent is bounded on the east by his property and on the south by the property of Arjun Naik who is survived by Ratnakar Naik. AW1 has further stated that the western boundary of survey No. 64/3 is the property of the respondent. In fact, the western boundary of survey no 64/3 is also survey No. 64/2. Matriz certificate Exhibit 45 of the respondent supports the case of the respondents. Some of the boundaries mentioned therein are in common with those mentioned in the document at Exhibit 35. The documents at exhibits 35, 45 and 46 show that the property of the applicant as well as the respondent has rivulet on the north. Admittedly, the property of the applicant is bounded towards east by the property of Kossambe i.e. of AW2 which bears survey No. 64/4. Again, admittedly, the property of the applicant is bounded towards west by the property of the respondent. At the cost of repetition, I may say that AW1 has stated that the respondent's property adjoins survey No. 64/3. The own document of the applicant which is at Exhibit 35 shows that the property of the applicant, towards south, does not extend beyond the slope of the descending waters whereas the document of the respondent at Exhibit 45 shows that the property of the respondent, towards south, goes upto the top of the hill. The disputed portion of survey No. 64/2 is on the top of the hill. The learned Reference Court has rightly held that the extent of the property purchased by the applicant does not include the "Gal", which is situated on the plateau.

16. The oral evidence of RW1, read with the documents produced and proved by him namely the matríz certificate Exhibit 45 and the plan Exhibit 46, and read with the evidence of the applicant and his document at Exhibit 35, sufficiently establishes that the respondent has succeeded to prove her ownership to the acquired land from survey No. 64/2. Hence it is the respondent who is entitled to receive the compensation

17. The impugned judgment and award is in accordance with the settled principles of law based on the correct appreciation of evidence on record. No interference is called for. Hence, I pass the following:

ORDER

Appeal is dismissed. No order as to costs.