

(1991) 08 KAR CK 0011

In the Karnataka High Court

Case No : Regular Second Appeal No. 39 of 1980

Earappa and others

APPELLANT

Vs

Nanjappa and others

RESPONDENT

Date of Decision : 27-08-1991

Acts Referred:

Defence of India Act, 1939 — Section 9

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 19, 8 (1), 8 (1) (f)

Citation : AIR 1992 Kar 287 : (1992) ILR (Kar) 905 : (1991) 3 KarLJ 700

Hon'ble Judges : D.P. Hiremath, J

Bench : Single Bench

Advocate : Mr. R.C. Suresh for Mr. C.R.V. Swamy, for the Appellant; Mr. M.S. Gopal, for the Respondent

Judgement

1. The plaintiffs in the original suit are the appellants in (his appeal. They and the respondent were members of a joint family tracing its origin to one Earappa. They are from different branches. There was partition among all these members of the joint family on 2-6-1959 under a registered partition deed. By that time S. Nos. 222 and 117/9 of Yelvara village were acquired by the Central Government for the formation of an aerodrome. It also appears the compensation to be paid for this acquisition was not determined at the time of partition. However, later under the award in AC 38/64-65 Rs. 8233.30 p. was the compensation amount determined and to be paid to those interested in the land acquired. It is not in dispute that 10 guntas of land in all was acquired. The plaintiffs claimed Rs. 6174-96 p. out of this compensation amount contending that 1/8th out of the said amount should go to plaintiffs 1 and 2 and 1/4th to plaintiffs 3 and 4 and defendant each as agreed at the time of partition. In the suit they alleged that because the respondent defendant represented the family in all the acquisition proceedings, the award was drawn in his name but on behalf of the appellants. Rest of the allegations in the plaint are not material for the disposal of this appeal.

2. The written statement of defendant respondent contained a two fold averment. Firstly that subsequent to the family partition the plaintiffs amicably settled the claim for compensation and because of the settlement they did not put forth any claim before the competent authority or the arbitrator appointed under the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act 30 of 1952) (to be referred to hereafter as "the Act"). This is how the respondent became the absolute owner of the properties claimed in the suit. It was also contended that the suit is not maintainable in the Civil Court in view of bar under Sections 19 and 8(l)(f) of the Act. It appears the statements were being filed from time to time and in the last written statement filed a contention was raised that the plaintiffs had given up their rights by executing a document in favour of the respondent. The trial Court decreed the suit negating the contentions of the respondent and finding that the document of relinquishment marked as Ex.D-1 was not proved and further holding that the Civil Court had jurisdiction to determine the compensation payable especially in view of the agreement between the parties at the time of partition. The Appellate Court which heard the appeal preferred by the respondent allowed the appeal and found that Ex.D-1 is proved and also found that the Civil Court has no jurisdiction to entertain the suit. Consequently allowing the appeal, it dismissed the suit of the plaintiff.

3. In this appeal preferred by the appellants, the following substantial questions of law have been set down for determination :

(1) Whether the appellate Court having regard to the facts of the case, was justified in holding that the Civil Court has no jurisdiction to decide the dispute regarding payment of compensation?

(2) Whether the appellate Court was justified in holding that Ex.D-1 was held proved on the evidence of the case?

4. Taking the question of jurisdiction of the Civil Courts in the first instance it is not disputed that the acquisition was under the Act of 1952 referred to above. Section 8(1) of the Act to which reference has been made by both the Courts below states that where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles set down in various clauses under this subsection. Section 8(1)(f) is material which requires mention in the instant case. It says that where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons. Now, the question of appointment of an arbitrator would arise u/s 8(1)(b) in case there is no agreement between the parties with regard to the compensation to be paid. Under clause (a) of sub-section (1) it is clearly provided that where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. In my view these are the only two clauses that are relevant for

the present purpose. Section 19 refers to bar of jurisdiction of Civil Courts which states that save as otherwise expressly provided in the Act, no civil Court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. Therefore, necessarily we have again to go back to Section 8 with regard to the powers and functions of the arbitrator under the Act.

5. As already referred to above, clause (f) refers to the dispute as to the person or persons who are entitled to the compensation which again has to be resolved by the arbitrator if any such dispute arises. That being so it is urged on behalf of the appellants now in this Court that what compensation should be paid and who should receive has been agreed upon by the parties as per the recitals stated in the partition deed and accordingly 1st and 2nd plaintiffs are entitled to 1/4 share together and rest of the plaintiffs and defendants are entitled to 1/4 share each. Therefore, according to the learned Counsel for the appellants, when the parties have agreed, then an arbitrator has nothing to decide. It is noteworthy and should not be ignored that when the proceedings were before the arbitrator, the plaintiffs also filed their own applications for payment of compensation. Ex.P-2 is the certified copy of the application filed by the respondent and it is not disputed. It therefore, follows that the appellants in fact approached the arbitrator in the proceedings pending before him for apportionment of compensation. It is also noteworthy that when the partition was effected in the year 1959, i.e. on 2-6-1959 the lands S. Nos. 222 and 117 were acquired and were not available for division. It is for this reason that they agreed what should be the compensation amount that each of the parties entitled to the shares in the family properties should take. The trial Court has referred to a decision of the Patna High Court in the case of Raja Ram Singh and Others Vs. Kishori Saran Singh and Others, wherein the Division Bench of the Patna High Court held that suit for declaration that plaintiffs are entitled to one-half of compensation money allowed in land acquisition proceeding in respect of land acquired under S. 9 of the Defence of India Act is barred before the Civil Court. The fact that arbitrator in his award kept open question of title of plaintiffs' ancestors cannot confer jurisdiction on the Civil Court. It should be noticed that the argument as to what should be the compensation amount to be received by each of the sharers was very much reached even before the arbitrator decided the dispute between the parties. As I have already referred to above, clause (a) of Section 8(1) refers to such an agreement and where the amount of compensation can be fixed by agreement, the same shall be paid in accordance with such agreement. The question of appointment of an arbitrator may not arise at all. Therefore, when the plaintiffs had admittedly approached the arbitrator while determining the compensation amount, they had opportunity to put forward before the arbitrator the agreement they had reached under the partition deed. It was then competent for the arbitrator and it was his, duty to look into the agreement and

determine which of the parties should be paid what compensation amount. It is not clear whether this agreement was produced before the arbitrator and whether the arbitrator did consider this agreement at all. It however follows that the plaintiffs did approach the arbitrator and their claim was perhaps negated or was not considered, but at any rate it is now an admitted position that it was the defendant respondent in whose favour an order has been made that the compensation amount should be paid. In this situation, the plaintiffs' contention that the respondent was agitating for the payment of compensation before the arbitrator as a manager of the family does not deserve merit. They have not stated what happened to the applications they filed for claiming compensation. After the agreement was brought to the notice of the arbitrator, he could have acted under clause (a) and if no such agreement was brought to his notice but independently the appellants agitated before the arbitrator as to what they should receive from the compensation amount, then clause (f) of Section 8 is attracted. In any event, it was open for the plaintiffs appellants to approach the arbitrator as to what should be the compensation amount they should receive. The fact that the agreement is incorporated in the partition deed makes no difference at all. In my view therefore, the appellate Court was justified in finding that the Civil Court had no jurisdiction to decide what should be the compensation that the appellants should receive. It was the exclusive function of the arbitrator as the Civil Court's jurisdiction is barred. Therefore, point No. 1 is answered accordingly and the Civil Court has no jurisdiction to decide the suit. That being so, I find it unnecessary to decide the second point which perhaps could only be academical in nature as even if the decision goes in favour of the appellants that would serve no purpose. There is no merit in this appeal. The same is dismissed. Parties to bear their respective costs.

6. Appeal dismissed.