

(2012) 11 BOM CK 0121

In the Bombay High Court

Case No : First Appeals No's. 312 of 2002, 41 and 42 of 2003

Harishchandra P. Gaunkar

APPELLANT

Vs

Shri Anant S. Natalkar and Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 30

Citation : (2013) 1 ABR 393 : (2013) 2 ALLMR 359

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : M.B. Da Costa, with Mr. V. Braganza, for the Appellant; S.R. Rivonkar, Advocate for Respondents No. 2 to 5, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri M.B. Da Costa, learned Senior Counsel appearing for the appellant and Shri S.R. Rivonkar, learned Counsel appearing for respondents no. 2 to 5. The above appeals challenge the common judgment passed by the learned Reference Court dated 21/03/2002 passed in Land Acquisition Case Nos. 31/1991, 32/1991 and 33/1991. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

2. Briefly, the facts of the case are that the land was acquired for the purpose of road widening from Bethora to Nirankar in Ponda Taluka, having an area of 875 square metres from the property under survey no. 234 (part), an area of 480 square metres from the property surveyed under no. 235(part) and an area of 235 square metres from the property surveyed under no. 240 (part) of the village of Ponda. In view of the dispute between the parties a reference u/s 30 of the Land Acquisition Act, 1894 (herein after referred to as "the said Act") referred to the learned District Judge, came to be disposed of by the impugned judgment and award dated 21/03/2002. Being aggrieved by the said judgment the appellant has preferred the above appeal.

3. Shri M.B. Da Costa, learned Senior Counsel appearing for the appellant has assailed the impugned judgment essentially on the ground that the property was

originally registered in the Land Registration Office under no. 5667 and enrolled in Taluka Revenue Office under matriz no. 605 and is shown in the old cadastral plan no. 32. It is further his contention that 2/3rd part of the whole property was registered as distinct property in favour of four brothers namely; (1) Lumo Deu Gaonkar, (2) Sonu Deu Gaonkar (3) Siu Deu Gaonkar and (4) Puno Deu Gaonkar. The learned Senior Counsel further pointed out that the appellant is claiming the right from the said Siu Gaonkar. The learned Senior Counsel further pointed out that Lumo and Puno died bachelor and consequently the right of the said deceased devolved upon their brothers who included the said Sonu and Siu Gaonkar. The learned Senior Counsel further pointed out that as far as the party nos. 3 to 6 are concerned they are entitled to distinct 1/3rd part of the property of the said property. The learned Senior Counsel further pointed out that the dispute for apportionment of the compensation is essentially between the party no. 2 and party no. 7. It is further the contention of the learned Senior Counsel that the party no. 7 is claiming a right in the suit property on the basis of the Sale Deed executed on 21/11/1970 by one Mrs. Sita Siu Gaonkar in favour of party no. 7. The learned Senior Counsel further pointed out that the said Sita was not married to said Siu and according to him the question of said party claiming any right to the acquired land would not arise. The learned Senior Counsel further pointed out that in any event considering that the said Siu Gaonkar died without leaving any issues the right of such party at the most would be 1/4th to the property. The learned Senior Counsel has taken me through the impugned judgment and pointed out that the learned Judge has disposed of the reference proceedings and erroneously came to the conclusion that the half share of the compensation is to be paid to party no. 7. The learned Senior Counsel further pointed out that though as far as the acquired portion of the land is concerned the compensation awarded is at the most a sum of Rs. 9000/- nevertheless, considering that any decision in the above reference proceedings would affect the remaining land the rights of the parties are to be determined in accordance with law. The learned Senior Counsel further pointed out that the respondent no. 2/appellant is seriously disputing the authenticity of the said Sale Deed dated 21/11/1970 and as the said sale deed has not been proved the question of relying upon the said Sale Deed for the purpose of awarding any compensation in favour of the party no. 7 would not arise. The learned Senior Counsel, as such, submits that the impugned judgment deserves to be quashed and set aside.

4. On the other hand, Shri S.R. Rivonkar, learned Counsel appearing for the respondents no. 2 to 5/party nos. 3 to 6 has supported the impugned judgment. The learned Counsel however, pointed out that the party nos. 3 to 6 are entitled to 1/3rd distinct share in the whole property. The learned Counsel further pointed out that as far as the dispute between the party nos. 2 to 7 is concerned the respondents no. 2 to 5 are in no manner involved.

5. The party no. 7 though served failed to remain present.

6. On the basis of the submissions of the learned Counsel and on going through the records, the following point for determination arises in the present appeal:

POINT FOR DETERMINATION:

Whether the Reference Court was justified to direct half of the compensation in favour of party no. 7

7. On perusal of the impugned judgment as well as the material on record, I find that the learned Judge on the basis of appreciation of evidence on record has come to the conclusion that the said Siu Gaonkar was married to Sita Gaonkar. Though it was the contention of party no. 2 that there was no marriage between the said Sita and Siu nevertheless, there was no evidence adduced by the party no. 2 on that count. Apart from that, the learned Judge has relied upon the death certificate and other evidence on record to come to the conclusion that said Sita was the widow of the said Siu Gaonkar while determining the apportionment of compensation in favour of party no. 7. The learned Judge at para 13 has observed that Siu Gaonkar and Sita Gaonkar died without leaving issues but before her death, Sita, widow of said Siu sold her undivided rights in the ancestral property including the acquired land to the party no. 7. The learned Judge, as such found that party no. 7 is entitled to receive one half of the compensation in respect of the land acquired.

8. Considering that the said Siu did not leave any issues the right of Siu Gaonkar would devolve upon his brothers and/or their descendants. Hence, the finding of the learned Judge to the effect that Sita Gaonkar would be entitled to one half the compensation cannot be sustained. At the most the share of said Sita Gaonkar being the widow of Siu would be restricted to 1/4th share in the acquired land. Considering the said aspect, I find that the finding of the learned Judge to that extent cannot be sustained and the party no. 7 would be entitled to 1/4th share in the compensation.

9. Taking note of the submissions of Shri M.B. Da Costa, learned Senior Counsel appearing for the appellant/party no. 2 to the effect that the shares which have been determined by the learned Judge whilst passing the impugned judgment would affect the rights of the parties as far as the remaining larger property is concerned, I find that it is well settled that the judgment in Reference Proceedings do not by itself create a declaration of title in respect of party in whose favour the compensation is apportioned. Considering the said aspect and taking note of the fact that there were no partition proceedings or any other proceedings determining the share of the parties on the death of Siu Gaonkar and other brothers, I find it appropriate that the finding arrived at by the learned Reference Court are restricted only to the land acquired which was subject matter of the present appeal. It is made clear that the shares determined herein would not influence the Court in any other proceedings initiated by the parties in respect of the remaining portion of the property is concerned. The law is clear that shares of the parties in an inheritance have to be determined in inventory

proceedings or any other like proceedings.

10. Considering the shares whilst passing the impugned judgment, I find that 1/4th share has been erroneously allotted would have to be apportioned between party no. 2 to the extent of 2/3rd and the remaining 1/3rd in favour of party nos. 3, 4, 5 & 6. In view of the above, I pass the following order:

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and award is modified as under:

One fourth of the compensation in all the three references shall be paid to party no. 7 namely Ladu P. Gaonkar;

Two third of the remaining three fourth of the compensation in all the references shall be paid to party no. 2 Harishchandra Gaonkar and the remaining 1/3rd share be paid equally to party nos. 3, 4, 5 & 6.

(iii) It is made clear that the finding rendered herein are only with regard to the apportionment of compensation of the acquired land and shall not influence the Court whilst deciding any dispute with regard to the remaining portion of the property.

(iv) All the appeals stand disposed of accordingly with no order as to costs.