

(2017) 03 BOM CK 0236
In the Bombay High Court
Case No : 52 of 2002

Mahalgo Bhuto Gaonkar

APPELLANT

Vs

Gurudas Datta Timblo, Margao, Goa. (expired, represented
through LRs): Smt. Pramila Gurudas Timblo, & Ors.

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Land Acquisition Act, 1894, Section 30 -
Portuguese Civil Code, 1867, — Article 953

Citation : (2017) 03 BOM CK 0236

Hon'ble Judges : Nutan D. Sardessai

Bench : SINGLE BENCH

Advocate : Shivan Desai, D.J. Pangam, L. Fernandes

Final Decision : Dismissed

Judgement

1. This is an appeal at the instance of the original party no.2 assailing the judgment and award dated 5/02/2001 passed by the then learned Reference Court in the Land Acquisition Case No.320/1992 being a reference under Section 30 of the Land Acquisition Act, 1894, Act for short hereinafter.

2. Admittedly an area of 2400 sq. mts. of land from the survey holding no.15/1 of village Verlem of Sanguem Taluka was acquired by the Government for a Sub-health centre. By the Award dated 24/03/1992 the Land Acquisition Officer, LAO for short, had awarded the compensation of Rs.35,763/- but on account of the dispute of ownership between the named parties, he had sent the matter to the District Court alongwith the compensation for its proper determination. The legal heirs of the party no.1 had carved a case that the property of which the acquired land was a part was named "Aforamento Perpetua" situated at Verlem village in Sanguem Taluka described in the Land Registration Office under no.14183 and inscribed in the name of Sociedade Timblo Irmaos Ltd. of which the original party no.1 was a partner. The property was recorded in the name of Sociedade in the Matriz records and which were corresponding to various survey numbers with

distinct boundary, the acquired portion bearing Survey no.15/1 being the land in question which was the subject matter of acquisition. The property belonged to the party no.1 and therefore the entire compensation was to be paid to the party no.1 and later his legal representatives.

3. The party no.2 who is the appellant had taken a plea that the Government had acquired the land admeasuring 2400 sq. mts. from the property situated at Verlem in Sanguem Taluka for the construction of a health centre. He alongwith the other co-owners were having their houses, cowshed, huts and fruit bearing trees which were enjoyed and possessed by him and the other co-owners since the time of their ancestors. The party no.1 had no right, title or interest in the Survey no.15/1 and their names were wrongly entered in the survey records based on the Sale Deed dated 26/12/1952 wherein the party no.1 had purchased 8/9th of the property Aforamento Perpetua bearing the Land Registration no.14183. A wrong entry was made in the survey records and as such he had made an application to delete the name of the party no.1 and to incorporate his name but his objection was dismissed. He had preferred an appeal against the order before the Deputy Collector which was allowed and the case remanded to the Mamlatdar, Records of Rights for a fresh inquiry.

4. He had carved a case further that the area acquired for the health centre was a part and parcel of his property and that of the other co-owners and in their possession from the time of their ancestors while the party no.1 had made a fraudulent entry based on the Sale Deed. It was further his case that by Deed of Mortgage dated 8/11/1920, one Kalu Gaonkar had taken a loan of Rs.15,000/- from one Acasio Rosario Gaspar Paies from Assolda but the properties were not identified in the Deed and based on the Mortgage Deed, the said Acasio had registered 8/9th of the property bearing the Land Registration no.14183 as Aforamento Perpetua referring to the Matriz nos.1 to 264 and without stating the share of Kalu Gaonkar, he had instituted the execution proceedings against the said Kalu Gaonkar and others and purchased half of the 8/9th and one more fraction in the Court auction in 1927. The appellant had thereafter purchased the property by the Sale Deed dated 25/12/1952 from the heirs of Acasio in the share of half of 8/9th and one more fraction purchased in the Court auction in 1927. The entire compensation had therefore to be granted in favour of the party no.2 appellant.

5. Shri Shivan Desai, learned Advocate for the appellant contended that he was in possession of the acquired property with the house therein unlike the respondents who were claiming possession on the basis of the description and the inscription. He adverted to the various documents apart from the impugned judgment and submitted that the learned Reference Court was unduly carried away by the case carved on behalf of the respondents. There was evidence on record to establish the occupation of the appellant and his possession of the acquired land. Even assuming at the highest that there was force in the evidence of the respondents there was no evidence on record that 5/9th of the share

correspond to the Survey no.15/1, and therefore the entire compensation had to be apportioned in his favour by reversing the judgment of the Reference Court.

6. Shri D.J. Pangam, learned Advocate for the respondents submitted by adverting to the pleadings that the case of the appellant was self contradictory and there was otherwise inconsistency in his case. He referred to the evidence of the appellant and submitted that there was no material on record to show that half of the property was sold to the respondents. The property in question was admittedly inscribed in favour of the respondents. He too adverted to the material on record, relied in *Tirumala Tirupati Devasthanams V/s. K.M. Krishnaiah* [1998 (3) SCC 331] and submitted that the appellant had failed to carve a case even on possession. Shri Shivan Desai, learned Advocate for the appellant contended in reply that he had made out a case and that the compensation had to be granted exclusively in his favour.

7. The respondents as the party no.1 had examined their constituted attorney in support of their case who had stated that the acquired land was a part of the Survey no.15/1 being a portion of the property known as Aforamento Perpetua bearing the Land Registration no.14183 and inscribed in the name of Sociedade Timblo Irmaos Ltd. of which late Gurudas Timblo was one of the constituents. This property was bearing Matriz nos.1 to 264 and was enrolled in the name of Sociedade Timblo Irmaos Ltd. bearing the distinct Survey no.15/1 from which an area of 2400 sq. mts. had been acquired for the stated purpose. There were no tenants in this survey holding which was in the possession of the heirs of the party no.1 and in which there were fruit bearing trees. The attorney had relied upon the registration certificate and that of the Description and the Inscription apart from the Form no.III of the Survey nos.1 to 34 with the sub-divisions in support of his case. He admitted that there were houses in the Survey no.15/1 including that of the appellant. However this admission does not in any manner carve out a right of the appellant to the property in question.

8. The constituted attorney had categorically denied the case of the appellant that they were cultivating the paddy field and enjoying the cashew trees and other trees from the Survey no.15/1 and more particularly that the said property belonged to their family from the time of their ancestors. He had for that matter also categorically denied the suggestion that the party no.1 had fraudulently got the Matriz records changed in the name of Sociedade Timblo Irmaos Ltd. The respondents had produced the various Matriz certificates to substantiate their claim to the property bearing Matriz nos. 1 to 264. Besides, they had examined another witness Nadkarni Aw2 who stated that the property Aforamento Perpetua bearing the Land Registration no.14183 and Matriz nos.1 to 264 was inscribed in the name of Sociedade Timblo Irmaos Ltd. with distinct boundaries and the acquired land formed a part of the Survey no.15/1 which was comprised in the said property. The property Aforamento Perpetua was comprised of fruit bearing and non-fruit bearing and forest trees which were enjoyed by the legal heirs of the respondents. He confirmed that he had stated the details of the property on

perusing the documents and that Timblo had purchased the property from one Paes of Assolda though he could not say if Timblo had purchased 8/9th share of the said property from Paes. He too did not rule out the possibility that the appellant had his house in the Survey no.15/1 but which again does not substantiate the case of the appellant that he was in possession and enjoyment of the Survey no.15/1 which is the subject matter of acquisition.

9. The appellant had stated that the acquired land was a part of the Survey no.15/1 and belonged to the persons whose names were recorded as occupants of the house in the said survey records. The occupants of the 25 houses of the said survey number enjoyed the fruits of the trees which were cultivated by their ancestors. Soon thereafter he relented that the houses were situated at a distance of 30 mts. from the acquired land forming a part of the Survey no.15/1. He also admitted that he had moved an application before the Awal Karkoon for addition of their names in the Survey no.15/1 and other survey numbers but who had dismissed the case and they had filed an appeal before the Deputy Collector who had remanded the case before the Mamlatdar, Records of Rights for a fresh inquiry and the same was still pending. He still maintained that the property stood in the name of their ancestors in the Matriz records and produced the certificate Rw1/C to substantiate his case. He admitted in the course of his cross-examination that the name of the original party no.1 was recorded in the occupants column and despite his claim that the property belonged to their ancestors and he had the Aforamento documents, he still did not produce such documents in support of his case. His further admission that he did not know about the land registration document even prior to 1982 and that they had not filed any proceedings against Sociedade Timblo Irmaos Ltd. or Gurudas Timblo for correcting the survey records finally seals his case and his attempt to stake a claim to the acquired land in particular.

10. Furthermore, the appellant also admitted that he did not have any document showing the title in his name or in the name of his late father in respect of the suit property nor his name or that of his father figured in the Matriz documents. Besides, he admitted that he had not filed any suit against Sociedade Timblo or against Gurudas Timblo for setting right the error in the land registration document while conceding that Gurudas Timblo had filed a suit against them. He was equally unaware if Sociedade Timblo had filed another suit against Rohidas Gaonkar and 15 others on the ground that they had cut trees for making ground for cultivation and/or whether any order had been passed in the suit after hearing both the parties restraining Rohidas Gaonkar from cutting any trees from the said property. For that matter and assuming at the highest that he had a right and interest in the property, he was surprisingly not aware what was the foro paid towards the Aforamento by Sukto Gaonkar or if anybody paid the foro. Therefore his statement that his ancestors were paying the foro and that after Sukto Gaonkar, Kalu Gaonkar was paying the foro does not advance his case any which way considering also his statement that he did not have any receipt towards the payment of the foro paid by anyone.

11. The appellant no.1 also admitted that he did not have any document showing a title in his name or in the name of his father in respect of the suit property nor their names figured in the Matriz documents. They had also not filed any suit or proceedings for deletion of the name of Sociedade Timblo from the Matriz records which once again militates against their case that they had a right to the suit property. A cursory perusal of the tenor of his crossexamination which is more in the nature of denials does not in any manner buttress his case nor carve out any right in the suit property in respect of which a claim was raised qua the compensation awarded by the Land Acquisition Officer. The attempt also to deny the claim of the respondents/party no.1 therefore falls flat and fails to inspire confidence in the evidence led by the appellants/party no.2.

12. Chandru Rw2 examined by the appellant in support of his case claimed that the acquired land bearing Survey no.15/1 in which the Government had constructed a hospital belonged to the appellant in which there were jackfruit trees, mango trees, cashew trees and other trees. There were about 50 houses in the said survey holding which were enjoyed by the appellant alongwith his brothers and others whose names were figuring in the survey records. The trees were planted by the persons whose names appeared in the survey records. At the outset he admitted during his cross-examination that he did not know what was the area of the Survey no.15/1 or the area of the acquired land and/or the properties falling on all the four sides of the Survey no.15/1. For all his claim about the existence of the house and the right of the appellant to the suit property, he did not even know the house number of the appellant nor could he state the names of the persons having their houses in the Survey no.15/1 or their house numbers. He was unaware of the names appearing in the survey records both in the Index of Lands or in the Form no.I and XIV.

13. Chandru Rw2 at one time stated that the appellant had documents in respect of that property but in the other breath claimed want of knowledge on the type of documents held by them to support their case. He was also not aware of the land registration number of this property nor the person in whose name it stood registered in the Land Registration Office. He also did not rule out the possibility of the name of Gurudas Timblo being recorded in the Survey no.15/1 and equally claimed want of knowledge about the Matriz records being claimed in the name of Sociedade Timblo Ltd. His testimony too does not support the case of the appellant for his claim or right to the Survey no.15/1 and the acquired area in particular.

14. Putu Rw3, the third witness of the appellant had broadly stated about the existence of various trees in the Survey no.15, the existence of the health centre in the acquired land but admitted in his cross-examination that he did not know the area of the acquired land. His cross-examination by and large was in negation of his earlier statement-in-chief on the existence of a number of trees including cashew trees and the collection of cashew juice. Chandru Rw4 the fourth witness claimed that the acquired land was enjoyed by the appellant no.1

and the other villagers but could not name the villagers who were enjoying the acquired land alongwith him prior to the acquisition. He also admitted that he did not know how the appellant or his ancestors acquired right to the land in question nor was he aware of the Matríz number of the acquired land. Equally he did not know whether the property was recorded in the name of Gurudas Timblo in the survey records and what was the land registration number in respect of the said land. His testimony too therefore fails to inspire confidence in the case of the appellant.

15. The then learned Reference Court had examined the evidence led by the respondents as the party no.1 and that of the appellant as the party no.2 and on an assessment thereof alongwith the documents, had come to a clear finding that the party no.1 i.e. the respondents had amply established their case vis-a-vis their right to the acquired land being a part and parcel of their property entitling them to the compensation in toto. He had also come to a finding that the party no.2 i.e. the appellant had failed to prove that the acquired land formed a part and parcel of their property and in the face of this clear findings had held the party no.1/respondents entitled to the entire compensation awarded towards the acquired land admeasuring 2400 sq.mts. from the Survey no.15/1. This finding of the learned Reference Court does not call for any interference considering the conspectus of facts and the evidence discussed threadbare.

16. Shri D.J. Pangam, learned Advocate for the legal heirs of the respondents no.1 had sought to rely on the judgments in Shri Narcinva Shivram Sinai Nadkarni & Ors. V/s Government of Goa [First Appeal no.177/2005 dated 18/12/2011], Silvestre Mascarenhas & Ors. V/s. Smt. Shantu Locma Fotto & Ors. [Second Appeal No.11/1994 dated 9/02/1998], Coiro Malgo Velipo (dec. through LR"s) & Ors. V/s. M/s. Sociedade Timblo Irmaos [Second Appeal No.61/2003] and Tirumala Tirupati Devasthanams (supra) in support of his case. Shri Shivan Desai, learned Advocate for the appellants opposed the reliance in Coiro Malgo Velipo (dec. through LR"s) (supra) on the premise that he was not a party thereto and therefore the findings in the said judgment could not bind him.

17. In Narcinva Shivram Sinai Nadkarni (supra) a learned Judge of this Court (F.m. Reis, J.) held at para 10 as below:

"10. Article 953 of the Portuguese Civil Code provides as under:

"The inscription in the registration of a title of conveyance without condition precedent, involves, irrespective of any other formality, the transfer of possession in favour of a person in whose favour such inscription has been done."

Therefore the fact that the property of the Appellants has been shown in the Land Registration document not only confers on them due title in respect of the property but also it shows that they are in possession of the property."

There was no particular rebuttal of the fact that the property was inscribed in favour of the predecessor of the respondent and hence the judgment in Narcinva

Shivram Sinai Nadkarni (supra), would squarely apply.

18. In *Silvestre Mascarenhas* (supra), a learned Single Judge of this Court (R.M.S. Khandeparkar, J.) had observed at para 5 as below:

"5. As regards the point concerning the adverse possession, it is well established that the possession follows the title. That apart, in this State, the law which is in force till today in the form of Article 953 clearly provides, and as has been understood by the learned District Judge, that the inscription in the registration of a title conveying ownership, irrespective of other formalities, operates transfer of possession of such property in favour of the person in whose name the inscription stands."

Coiro Malgo Velipo (dec. through LR's) (supra), challenged in the Second Appeal the judgment of the first appellate Court in favour of the original plaintiffs decreeing the suit for injunction which was dismissed by the Trial Court. Shri D. Pangam, learned advocate for the respondents referred to the table set out in paragraph 16 of the said judgment to buttress his case that the respondents therein being the predecessor of the respondents had established their right to the same property and that this Court had confirmed the decree in the suit for injunction in their favour. However the appellant herein was not a party to the said proceedings nor was there any clarity vis-a-vis the property in question with that in the Second Appeal and therefore as rightly submitted by Shri Shivan Desai, this judgment cannot be applied to the facts of the present case.

19. In *Tirumala Tirupati Devasthanams* (supra), the two Judge Bench of the Hon'ble Apex Court formulated points for consideration at paragraph 7 and held in their view that a judgment not inter parties is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. This judgment is clearly distinguishable inasmuch as the judgment in *Coiro Malgo Velipo* (dec. through LR's) (supra), unlike the contention of Shri Pangam, learned Advocate for the respondents did not spell out in detail the right of the respondents to the property in question, hence the respectful departure.

20. Having earlier come to a finding that there was no infirmity with the findings rendered by the learned Reference Court and that the appellants had failed to carve out any right to the acquired land, no fault can be found with the judgment under challenge awarding the entire compensation in favour of the legal heirs of the respondent no.1. In view thereof, I pass the following order:

ORDER

(i) The appeal is dismissed with no order as to costs confirming the judgment and award of the Reference Court in favour of the respondents no.1.