
(2005) 10 GUJ CK 0050

In the Gujarat High Court

Case No : Civil Application No. 6801 of 2005 in First Appeal No. 7954 of 1999,
Civil Application No's. 9715 and 9716 of 2005 and Civil Application
No. 9717 of 2005 in First Appeal No. 7954 of 1999

Prabodhchandra Jayantilal Patel and Another

APPELLANT

Vs

Ramesh Bachuji Thakor and Others

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 4, 96
Land Acquisition Act, 1894 — Section 18, 54

Citation : (2005) 10 GUJ CK 0050

Hon'ble Judges : R.S. Garg, J;K.M. Mehta, J

Bench : Division Bench

Advocate : Shital R. Patel, in Civil application No. 6801 of 2005 and A.Y. Kogje, AGP in Civil application Nos. 9715, 9716 and 9717/05, for the Appellant; A.J. Patel, for Respondent 1 and A.Y. Kogje, AGP for Respondent 2 in Civil Application No. 6801 of 2005, for the Respondent

Judgement

R.S. Garg, J.—Civil Application No. 6801 of 2005 is an application by a transferee pendente lite for substitution on record in place of deceased respondent namely, Thakor Bachuji Maganji, Civil Applications No. 9715 of 2005, 9716 of 2005 and 9717 of 2005 are applications seeking condonation of delay, setting aside the abatement and for substitution of the legal representative of deceased respondent Thakor Bachuji Maganji.

2. It is to be seen from the records that after certain land belonging to Thakor Bachuji Maganji were acquired, an award was made somewhere in the year 1991, and Thakor Bachuji Maganji being dissatisfied with the amount awarded by the Land Acquisition Officer asked for a reference u/s 18 of the Land Acquisition Act.

3. During pendency of the land acquisition proceedings, on 1.8.1995 by execution of a sale deed, said Thakor Bachuji Maganji conveyed all his right, title

and interest in favour of Prabhodchandra Jayantilal Patel and Divyesh Prabhodchandra Patel. It is not in dispute before us that in the said sale deed executed on 1.8.1995, the seller/vendor did not reserve any right unto him or did not enter into any covenant with the transferee that the vendor shall continue with the land acquisition proceedings, and whatever amount would be received by the vendor shall be received in the interest of vendees and shall be paid to them.

4. It is also to be mentioned that pendency of the reference proceedings were not reflected in the said sale deed. Mr. Shital R. Patel, learned counsel for the applicants submit that, it was an oral understanding between the parties that vendor Thakor Bachuji Maganji shall continue with the reference proceedings and whatever amount he receives would be paid to the vendees. From this statement, it would at least appear that though the fact of reference proceedings was not mentioned in the sale deed but was brought to the notice of the vendees.

5. Despite execution of the sale deed in favour of Prabhodchandra Jayantilal Patel and Divyesh Prabhodchandra Patel, said Thakor Bachuji Maganji did not bring the fact to the notice of the reference court nor asked the Court that since after execution of the sale deed he is left with no right, title or interest in the property or compensation and as such the vendees may be substituted by the court under Order 22 Rule 10 of CPC.

6. It is also worth noticing that the vendees namely, Prabhodchandra Jayantilal Patel and Divyesh Prabhodchandra Patel did not make any application before the trial court for their substitution in view of the said alienation. The trial court being ignorant of the sale deed allowed said Thakor Bachuji Maganji to conduct the proceedings and ultimately made its award on 11.7.1998. The State Government which also did not know about the transfer and alienation, being aggrieved by the judgment and award made by the trial court filed the appeal u/s 54 of the Land Acquisition Act, 1894, read with Section 96 of the CPC against Thakor Bachuji Maganji.

7. It appears that during pendency of this appeal, the present applicants made an application for their substitution on record but the application was rejected with liberty in favour of the vendees, namely Prabhodchandra Jayantilal Patel and Divyesh Prabhodchandra Patel that they may get their right settled by decree of competent court. Immediately thereafter the vendees filed a civil suit against Thakor Bachuji Maganji and secured a decree in Special Civil Suit No. 213 of 2002 from the Court of learned Civil Judge (S.D.), Gandhinagar, for recovering the amount of Rs. 1,85,224/- from the deceased claimant (since Thakor Bachuji Maganji had expired) and one Amrutbhai Ramtuji Thakor. After obtaining the said decree, the applicants Prabhodchandra Jayantilal Patel and Divyesh Prabhodchandra Patel have again filed application for their substitution.

8. After gaining knowledge of the death of Thakor Bachuji Maganji, the State Government has also filed the above-referred three applications for substitution

of the legal representative, setting aside the abatement, extension of time and condonation of delay in making the application.

9. Mr. Kogje, learned Counsel for the State submits that, as the sale deed was executed on 1.8.1995 when the proceedings were pending before the trial court, the limitation applicable to an application under Order 22 Rule 4 of CPC would not apply because there is no death of such party or person but because of the conferral of rights in favour of the third party it is entitled to be brought on record in place of original party. He submitted that the application under Order 22 Rule 10 of CPC can be filed at any time. His further submission is that the judgment and decree delivered by the court below are nullity because the person who continued with the lis before the trial court had no right, title or interest since after 1.8.1995 any evidence brought by the third party on record could not be looked into by the trial court nor the judgment could be delivered in favour of the party who had no existing right in the property in dispute.

10. Learned counsel for the intervener submits that in view of the oral understanding between the parties it was not necessary for the original claimant Thakor Bachuji Maganji or the present applicants to make application under Order 22 Rule 10 of CPC, because it would always be deemed that the vendor would be taking care of the litigation for and on behalf and in the interest of the vendees/transferees.

11. Arguments of learned counsel for the intervener could be well appreciated and accepted if the vendor had reserved any right in his favour. We could also appreciate the arguments if in the sale deed itself there was a covenant that despite the sale of the property, for the purposes of enhancement of the compensation, the vendor shall continue on the record. If no rights were reserved in favour of the vendor and he had conveyed absolute title and all rights in favour of the vendees, then he could not continue on record. He was also duty bound to inform the Court that, since after alienation of the property, he has no right to continue on record and alienee/vendee may be brought on record. The vendees/transferees could certainly rely upon the representation made by the vendor in the Court provided certain rights were left in favour of the vendor. In a case where no rights were reserved in favour of the vendor to represent the vendees in some legal proceedings, then on execution of the document the vendor will be left with no right.

12. In the present matter, the vendor after losing all his right could not continue on record. So far as the oral understanding between the vendor and the vendees are concerned, it is trite law that no party would be allowed to plead or to prove anything contrary to the writing specially any covenant in the sale deed. In a case where a fraud is alleged or it is said that the document in dispute is sham or bogus or is contrary to public policy or was executed for some other consideration then only the party challenging the document would be allowed to lead further evidence to challenge or explain the contents of the documents. Present is not a case where a fraud is alleged or the document is being

challenged on any other ground. The vendees are claiming right on basis of the document and under such circumstances they cannot be allowed to say that there was some oral understanding between the parties.

13. As the trial court was kept in dark and the correct facts were not brought to the notice of the trial court, the transferor unauthorisedly proceeded with the trial, and therefore, it can be said that the transferor mislead the trial court and the trial court delivered the judgment in favour of a person who had no right on the date of the judgment by the trial court.

14. In view of the aforesaid, we do not find any difficulty in holding that the judgment and the award made by the court below are nullity. Once we hold that the judgment and award are nullity then the question of abatement specially in a case like present would loose of its importance. The judgment and award made by the trial court for the reasons aforesaid are set aside. The matter is remitted to the trial court. The trial court is hereby directed to restore the matter to its original number and give proper opportunity to the parties to take further steps in the matter.

15. The parties shall appear before the trial court on 15th November, 2005. If the present vendees make an application under Order 22 Rule 10 of CPC then the trial court shall take up the application in its true perspective and shall pass appropriate order on it in accordance with law.

16. It is also made clear that any evidence led by said Thakor Bachuji Maganji or by the State since after 1.8.1995 shall not be read as evidence because said Thakor Bachuji Maganji had no right to lead any evidence and he continued with the proceedings unauthorisedly.

17. If the application of the vendees is allowed then they shall be substituted in place of the original claimants. After their substitution they would be given proper opportunity to lead evidence. The State Government shall also be given proper opportunity to lead evidence. The trial court shall dispose of the matter thereafter in accordance with law.

18. All these civil applications are accordingly disposed of. No order as to costs.