
(1999) 12 DEL CK 0083
In the Delhi High Court
Case No : F.A.O. No. 30 of 1999

Rampat and Others

APPELLANT

Vs

Khazani and Others

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (1999) 12 DEL CK 0083

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. B.P. Gupta Adv, for the Appellant; Mr. Ravi Gupta, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This appeal is directed against the order passed by the Additional District Judge, Delhi in Land Acquisition Case No. 209/1982 dismissing the application filed by the judgment debtor/appellants under Order 9, Rule 13 CPC for setting aside the judgment/order dated 18.7.1985 passed by the Additional District Judge, Delhi in the same Land Acquisition Case.

2. A reference petition u/s 18 of the Land Acquisition Act was filed by the respondents wherein the petitioners herein were also impleaded as parties. The notices were ordered to be issued to all the three petitioners for 2.11.1982. As the notices were to be served on the petitioners and as none appeared on their behalf, they were proceeded ex parte by order dated 2.1.1982 and the said reference petition was finally decided on 18.7.1985 in favor of the respondents. The respondents as the decree holder also received the enhanced compensation in terms of the award passed by the Reference Court. On 28.8.1986 the petitioners herein for the first time came up with the aforesaid application under Order 9 Rule 13 of the CPC for setting aside the ex parte decree dated 18.7.1985. In the said application seeking for setting aside ex parte decree it was the case of the petitioners that they were never served with the notice of the reference proceedings in which the judgment dated 18.7.1985 was passed and

Therefore, they had no knowledge either about the proceedings of the case or of the award passed by the reference court.

3. The aforesaid application was contested by the respondents herein contending inter alias that the petitioners were duly served with the notices of the reference proceedings being Land Acquisition Case No. 209/1982 and that they were all aware about the pendency of the said case in the said court and they did not deliberately appear in the proceedings despite service and knowledge of the proceedings.

4. On the aforesaid pleadings of the parties the Additional District Judge framed two issues and also recorded the evidence adduced by the petitioners herein. The Additional District Judge thereafter by his judgment and order dismissed the application holding that the petitioners were duly served with the notice of the reference case and that they deliberately- ly did not appear in the said case and that the application is also barred by time as per provisions contained in Article 123 of the Limitation Act and that they had also failed to show any cause much less sufficient cause for setting aside the ex parte judgment dated 18.7.1985.

5. Counsel appearing for the appellants submitted that the Additional District Judge erred in law in not setting aside the decree although there was no documentary evidence on record to indicate that the petitioners were served in the aforesaid proceedings. He also submitted that a similar petition filed by the petitioners u/s 18 of the Land Acquisition Act and an application filed under Sections 30 and 31 of the Land Acquisi- corporation Act were stayed by the High Court in a connected Probate proceedings and accordingly the aforesaid judgment/decreed could not have been passed by the Additional District Judge and the same was required to be set aside.

6. The learned counsel appearing for the respondents however, submitted that none of the aforesaid grounds as submitted by the counsel appearing for the appellants has any merit.

7. In the light of the aforesaid submissions of the counsel appearing for the parties I have also perused the records including the impugned judgment/order. The case of the appellants in the application under Order 9 Rule 13 of the CPC was that they were not served with the notices of the reference proceedings. It is pleaded by them that they come to know about the aforesaid ex parte judgment for the first time on 20.8.1986. The aforesaid plea was considered by the Additional District Judge and by a reasoned order he negated the aforesaid pleas holding that the appellants were served with the notices. He has also referred to the orders passed by his predecessor in office, particularly to the order dated 30.9.1982 which indicates that the summons were issued to the petitioners.

8. The Additional District Judge also passed an order on 2.11.1982 where- in he has categorically recorded that the petitioners were duly served for the next date and that they were ordered to be proceeded ex parte since none appeared on

their behalf despite service on that date. It further appears that the summons showing service of the notices of the reference proceedings are missing from the case file and appear to be lost. The aforesaid conclusion was arrived at by the Additional District Judge after consulting the records and on appreciation thereof.

9. In the connection reference may also be made to the cross-examination of AW-1 who is one of the petitioners. In his cross-examination recorded on 23.11.1993 he had admitted that he was aware about the progress of the case pending in the court of Additional District Judge, which is Land Acquisition Case No. 209/1982. The D.W. - 1 namely - the respondent No. 1 herein also examined herself and she had stated in her examination-in-chief that the petitioners were residing in the same village in her neighborhood and that they were aware about the proceedings in her reference petition. There is no cross-examination at all from the side of the petitioners on the aforesaid statement of the decree holder. The Additional District Judge also found that the petitioners did not state even a word in their application as to how and through whom they came to know about the reference case of the respondents, particularly passing of the ex-parte decree in the said proceedings. The Additional District Judge also found that the respondent was the successor-in-interest of Smt. Munni who was the original owner in respect of the aforesaid land for which she had received the compensation pursuant to award dated 18.7.1985. It was also found that the petitioners illegally occupied the said land in question and the respondents filed a petition u/s 84 of the Delhi Land Reforms Act for their ejection which was decreed in her favor by the Court of the Revenue Assistant by his judgment dated 18.11.1969. The appeal against the aforesaid order filed before the District Judge was dismissed by order dated 19.5.1970 and the revision filed there from was also dismissed vide judgment/order dated 17.1.1972. It is disclosed from the records that thereafter the petitioners pleaded a document purporting it to be the WILL of late Smt. Munni and filed Probate proceedings before the court of District Judge, Delhi and the said Probate proceedings were also dismissed on merits by judgment dated 30.9.1976 by then District Judge, Delhi as against which an appeal was filed in this court. In the said appeal an order was passed staying the proceedings of the appeal since die without any rhyme or reason. It is also disclosed from records that the reference application filed by the petitioners herein and the application filed by them under Sections 30 & 31 of the Land Acquisition Act were also stayed pursuant to the order passed in the said appeal pending before this Court. The records relied upon and conclusions arrived at by the Additional District Judge thus make it crystal clear that the petitioners were served with the summons for the orders passed by the Additional District Judge on appreciation of the records shall have to be regarded as true and correct so long no rebutting evidence is placed on record. The petitioners also got all proceedings initiated by him stayed which lead to irresistible conclusions that the intention was only to delay the proceedings.

10. I find no reason to interfere with the order passed by the Additional District

Judge, Delhi, who has given cogent reasons for dismissing the application filed by the petitioners. This appeal no merit and is dismissed accordingly.