

(2010) 02 DEL CK 0163
In the Delhi High Court
Case No : C.M. (M) No. 1113 of 2008

Savitri Devi and Another

APPELLANT

Vs

Bharpai and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0163

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Deepak Khosla, for the Appellant; Sube Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this petition under Article 227 of the Constitution of India, the petitioners have assailed order dated 5th July, 2008 whereby an application under Order 1 Rule 10 CPC made by the petitioners to be impleaded as a party in a reference forwarded by Land Acquisition Collector to the ADJ u/s 30 of Land Acquisition Act was dismissed. The petitioners are daughters of Smt. Bharpai and made application under Order 1 Rule 10 CPC claiming that at the time of filing objections and claims, the applications being semi-literate women did not know anything about their right and the Counsel filed objections on behalf of their mother but objections were not filed on their behalf. It was submitted that applicants' mother claimant IP No. 1 had transferred land in question to them and thereafter mutation of the land was also done in revenue record and the applicants were recorded as owners/bhumidars and they were also in cultivator possession of the land. The applicants came to know that IP No. 1 had filed claim in respect of the land on the basis of a sale deed, in her favour. It is alleged to be a fabricated and false sale deed. The sale deed was allegedly executed by applicant No. 1 and was witnessed by applicant No. 2. It is stated that this sale deed was got registered by IP No. 1 in connivance with Smt. Kalawati and they conspired and her thumb impression was taken on the sale deed and the same was got registered. She stated that she had never executed

the sale deed nor got it registered. The applicant No. 2 who is shown as witness did not witness the same. It is stated that as per the sale deed executed in their favour by IP No. 1, the applicants were entitled to receive compensation and they made application that their presence was necessary.

2. The application was dismissed by the trial Court observing that the applicants were daughters of IP No. 1 viz. Bharpai. Initially the land was sold by Bharpai to the applicants and later on applicant No. 1 sold the land back to her i.e. to IP No. 1. The trial Court observed that the sale deed was acted upon and the mutation was also effected in favour of IP No. 1. Considering these facts and in view of judgment of Supreme Court in Smt. Ambey Devi Vs. State of Bihar and another, , the application was dismissed.

3. It is submitted by the Counsel for the petitioners that in Repaka Bhyravamurthy and another Vs. Muppidi Venkataraju and others, , Full Bench of Andhra Pradesh High Court had considered the implications of Smt. Ambey Devi case (supra) and observed as under:

The power of reference u/s 30 is wider than the power of reference u/s 18. Can it in this situation be said that a person who did not appear before the Land Acquisition Officer has no locus standi to get himself impleaded as a party? The answer to the same must be rendered having regard to the facts and circumstances of each case. A person may not appear either having not been issued any notice or otherwise before the Collector and still his interest may be protected by the Collector and an award can be passed in his favour. However, an enquiry made by the Collector u/s 11 of the Act cannot be held to have such a repercussion with those who had not been found to be interest in the claims as they would not have say at all. However, a subsequent discovery or question of interest as regard the entitlement to receive the compensation or a part of it by reason of a subsequent event, may give rise to a situation where an application under Order 1 Rule 10 CPC may be maintainable. The devolution of such interest may not be confined to the situation contained in Section 146 of the Code of Civil Procedure, more so, when a question of title is involved. In a reference u/s 30 not only the question of title, but also the status of the parties may be involved. Order 1 Rule 10 confers a wide power upon the court. A party may be added by the Court if he satisfies the provisions specified therein or the Court may, at age of the proceedings, suo motu add a party in the interest of justice. Although normally a plaintiff has more say in the matter of impleadment of parties, an order of impleadment by a Court of law, in relation to a question where the status of the persons is involved, a person may have a right to be impleaded.

Moreover, in a given case, a person may not even know that the lands are going to be acquired and thus, he will not be in a position to appear before the Land Acquisition Collector. Even a notice might not have been served upon him. It would be harsh if a person who had been kept in dark or who has been a victim of some fraudulent act, is not impleaded as a party. In such a situation, interest of justice demands that he should be impleaded as a party.

4. It is apparent from the decision cited by the petitioner that the Court has to consider the facts of each case and an application under Order 1 Rule 10 CPC in a reference u/s 30 has to be considered on the basis of facts of each case and it is to be allowed only in those cases where the applicant had been in dark or who had been a victim of some fraudulent act and was not impleaded as a party. It is not the case here. The applicants' mother transferred the land in the name of the applicants thereafter applicants again transferred the land in the name of their mother and the mutation was done in the name of their mother. Their mother is a party to the reference. The applicants were very well aware of the acquisition proceedings and their mother had filed objections. The plea taken by the applicants that their mother forged the sale deed with connivance of someone and the sale deed in favour of the mother was a forged document is not believable since execution of it is not denied. If they had such a plea, they had full opportunity to represent to the Land Acquisition Collector. It is not their case that they had not come to know about the acquisition proceedings or they were in dark about the acquisition proceedings. It is also not their case that they were inimical to their mother or they were not on talking terms with their mother.

5. I consider that the application made by them was rightly dismissed by the trial Court. The application was a misuse of the judicial process. I find no merits in this petition. The petition is hereby dismissed.