(2014) 12 GUJ CK 0014

In the Gujarat High Court

Case No : First Appeal No. 3193 of 2012

Shantaben Motiram Nai — APPELLANT

Vs

Govindbhai Mangaldas Valand — RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2014) 12 GUJ CK 0014

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Rituraj M. Meena and Suresh R. Parekh, Advocate for the Appellant; G.M. Amin, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—This appeal is filed by the original plaintiffs challenging the judgment dated 31.03.2011 passed by the Principal Senior Civil Judge, Gandhinagar in Special Civil Suit No. 19 of 2006.

2. Brief facts are as under:

The issue pertains to right to receive compensation for acquisition of land bearing Survey Nos. 167 and 136 of Vavol Village (hereinafter to be referred to as the suit land) acquired by the State Government for the purpose of Gandhinagar Capital Project. Plaintiffs claim 50% share in such lands and therefore, seek apportionment of 50% of the compensation deposited by the acquired body as per the award of the Reference Court. According to the plaintiffs, the land originally belonged to one Lakhabhai, who left behind two sons Nathabhai and Motiram. Motiram died leaving four daughters. Nathabhai had four sons and one daughter. The plaintiffs were the daughters of Motiram and since some of the daughters had already died by the time the suit was presented, their legal heirs were joined as plaintiffs. In the civil suit, the plaintiffs contended inter alia that Land Acquisition Officer had declared his award for acquisition of the said lands. The defendants'' names reflected in the government records as the owners. The plaintiffs, however, had right, title and interest in such lands. They, therefore, objected before the Government authorities the defendants taking away the entire compensation deposited by the acquiring body as per the award of the land acquisition officer. Eventually, an agreement was entered into between the parties on 07.07.1999 on a stamp paper in presence of a notary public. Plaintiffs received 50% of the compensation deposited under such agreement. As per the agreement, any future compensation would similarly be shared in the ratio of 50% each. Land Acquisition Case No. 890 of 1998 was decided by the Reference Court, Gandhinagar pursuant to which, the claimants had to receive a sum of Rs. 1,59,76,989/-. Defendants assured the plaintiffs that such amount of compensation also would be distributed equally. However, by keeping the plaintiffs in dark they withdrew 40% of the compensation amount. The plaintiffs were entitled to receive half of the compensation. It was, therefore, prayed for a declaration that the amount of compensation of Rs. 1,59,76,989/- was to be jointly received by the plaintiffs alongwith the defendants and the plaintiffs had half share of such amount. They accordingly prayed for a decree for payment of Rs. 79,88,489/-.

3. Defendants appeared before the Court and opposed the suit by filing a written statement Exh 14. In such written statement, they denied any right or interest of the plaintiffs in the suit property or any right in receiving the compensation. They contended that Motiram left behind only daughters. He died before the Hindu Succession Act was enacted. During his lifetime, Motiram had got all the daughters married. The expenditure for such marriages was incurred from the family properties. After marriage, daughters had no right or title in the family property. Motiram himself expired in the year 1950. Neither Motiram nor his daughters ever raised any dispute about the properties in question. All the lands are in the name of the defendants since the year 1950. They denied the existence of the so-called agreement.

4. Plaintiffs examined Kantilal Varvabhai Nai, one of the plaintiffs at Exh 34. He was the son of Kashiben, daughter of Motiram. In his examination-in-chief, he stated that there was no partition of the family properties. He referred to the agreement dated 07.07.1999, pursuant to which, his side of the family had received 50% of the compensation awarded by the Land Acquisition Officer. According to him, the plaintiffs had to receive half share of any compensation that may be paid in future also. The defendants, however, refused to share the enhanced compensation awarded by the reference Court.

5. It appears that, after he tendered his evidence through affidavit dated 12.01.2010, the proceedings were adjourned from time to time for his cross examination and eventually, he died before he could be cross examined. The plaintiffs also examined Nai Bhogilal Aatmaram, son of Ishaben at Exh 48. In his examination-in-chief, he made the same assertion as Kantilal. He was cross examined at length by the defendants. In the cross examination, he admitted that his maternal grand father Motiram had two houses in the village besides 10 vigas of land and ornaments. All these properties his grand father had passed on

to his daughters. His grand mother (i.e. Motiram''s wife) died at his house. He admitted that Survey No. 138 was in the name of his mother, which land she had received from Motiram. He also agreed that in the suit lands running in the name of Lakhabai none of the plaintiffs had raised any objections. The suit lands were in the name of the defendants. Before them, they were in the name of the father of the defendants and earlier to that, in the name of the grand father of the defendants. He admitted that his mother had filed RTS proceedings before the Mamlatdar, Gandhingar in the year 1994 which was dismissed on 24.08.1994. Such proceedings were in connection with Survey Nos. 136 and 137 i.e. the suit lands. He further stated that in the year 1999, there was a compromise between the plaintiffs and the defendants for sharing the compensation awarded. The cheque was issued by the Collector in the name of the defendants which was shared by them with the plaintiffs.

6. The defendants did not examine any witnesses but relied on certain documentary evidence in the nature of revenue records in Form No. 7/12 and 8A pertaining to the suit lands. They also produced the orders passed by the revenue authorities in RTS proceedings instituted by one of the plaintiffs.

7. The Trial Court raised following issues:

(i) Whether the plaintiffs proved that suit property was ancestral property and they had half share as per the price entered into between them?

(ii) Whether the plaintiff proved that the suit property was undivided property and that they had equal right in such property?

(iii) Whether the defendants proved that the property was partitioned between the parties and therefore the plaintiffs have no right?

(iv) Whether the plaintiffs were entitled to suit claimed?

And;

(v) What order?

8. The Trial Court decided Issues No. 1 to 4 in the negative and consequently, dismissed the suit and answered Issue No. 5 accordingly.

9. The learned Judge dismissed the suit on three grounds. Firstly, that the same was barred by limitation. According to the learned Judge, the agreement for sharing the compensation equally was entered into on 07.07.1999. The suit for enforcement of such agreement was filed on 15.02.2006. Law of limitation prescribed period of three years for filing the suit. The suit was barred by limitation.

10. The second ground was that, in the revenue records, the names of the plaintiffs did not appear. They filed RTS proceedings. Mamalatdar dismissed the application. Against such order, appeal was filed. Proceedings were remanded and Mamalatdar once again dismissed the application against which, no further

proceedings were carried.

11. Third ground was that, as per the agreement dated 07.07.1999 Exh 60, the plaintiffs were not entitled to receive any enhanced compensation. They had limited their rights to receive compensation awarded by the Land Acquisition Officer alone.

12. Learned counsel Mr. Ruturaj Meena contested the findings of the Trial Court on following grounds:

(i) That the civil suit was filed for receiving part of the compensation awarded by the Reference Court. The judgment was rendered in December 2003. Civil suit which was filed on 15.02.2006 is, thus, within the period of limitation.

(ii) Mere entry proceedings would not decide the right, title and interest of the parties in the immovable property. Merely because the names of the plaintiffs were not entered in the revenue records did not extinguish their right. The Mamlatdar, in fact, dismissed the application upon remand on the ground that the land was already acquired.

13. The agreement dated 07.07.1999 was corrected and the clause for not permitting any share of the plaintiffs in enhanced compensation was later on added. The daughters of Motiram were all illiterate. They did not realize such changes made in the agreement.

14. We may deal with the issues seriatim. Insofar as the question of limitation is concerned, the learned Trial Judge has committed serious error. The civil suit was filed for receiving 50% of the compensation awarded by the Reference Court. The Reference Court rendered its decision on 18.12.2003. Right to receive part of this compensation arose from the date of the award. The civil suit filed by the plaintiffs on 15.02.2006 was, thus, within the period of three years prescribed in the Limitation Act. Equally importantly, the Trial Court decided this issue without framing any issue on the question of limitation. In the written statement, the defendants did not raise any such dispute. The Trial Court, without putting the parties to notice, proceeded to declare the suit as time barred. It is true that as per law, even if the defendants do not raise a defense of limitation, the Trial Court can still hold that the suit was barred by limitation, however, not without framing the issue in this respect.

15. With respect to the second aspect, we may go alongwith the counsel for the plaintiffs. Mere entry proceedings would not decide right, title or interest in any immovable properties. If the plaintiffs therefore had any evidence to establish their right over the property, merely because they failed in the entry proceedings, would not be fatal to their interest. Even otherwise, the Mamlatdar did not decide the issue on merits but terminated the proceedings on the ground that the lands were already acquired. However, these observations must be seen in light of the evidence on record. Admittedly, the revenue record of the suit lands contained the names of the defendants, before them their fathers and prior

to that their grant father Lakhabhai. Right from the year 1950, names of any of the plaintiffs did not appear in the revenue records. It has also come on record that Motiram, the predecessor in title of the plaintiffs, died sometime in the year 1950. He had got his daughters married during his life time. A serious question therefore would arise about the continued right of married Hindu woman whose predecessor in title expired before the introduction of Hindu Succession Act. It has also come on record that Motiram held certain exclusive landed properties and houses in the village which he passed on to his daughters after his death. That is how witness Nai Bhogilal stated that his mother received Survey No. 138 of Vavol village from her father which in turn was received by his heirs. The defendants '' suggestion of division of family properties during the life time of the two brothers Lakhabhai and Motiram therefore cannot be discarded out of hand.

16. But, apart from these factors, the plaintiffs'' real problems arise out of the agreement dated 07.07.1999 Exh. 62. In the plaint, the plaintiffs had referred to such agreement dated 07.07.1999 for basing the claim for receiving 50% of the enhanced compensation. According to them, such agreement was signed on a stamp paper and was notarized. It was under such agreement that the initial compensation awarded by the Land Acquisition Officer was shared equally, according to the plaintiffs at the relevant time. It was also according to the plaintiffs that under this agreement, the plaintiffs'' right to claim 50% of the enhanced compensation was recorded.

17. As noticed, even in the deposition, witness Bhogilal Nai Exh 48 had also referred to the said agreement dated 07.07.1999 under which, the parties had agreed to share the compensation equally. Pursuant to such agreement, the compensation awarded by the Land Acquisition Officer was divided in equal measure. The parties had also agreed under such writing to share equally the enhanced compensation.

18. We may, therefore, peruse the contents of such agreement in light of the averments and pleadings of the plaintiffs. Such agreement was entered into between the heirs of Motiram as parties of the first part and descendants of Nathabhai as the parties of the second part. It was recorded in the agreement that the lands bearing Survey Nos. 167, 152 and 136 of Village Vavol were the ancestral properties of both sides. Land Acquisition Officer had passed an award of compensation. However, due to disputes between the two sides, such compensation was not being disbursed. Long time had passed and therefore, with the intervention of the elders of the community, both sides have agreed to share equally the compensation awarded by the Special Land Acquisition Officer for acquisition of Survey Nos. 167, 152 and 136 of Vavol village. Both sides will co-operate in enabling the other side to receive such compensation by giving necessary declarations before the authorities. Proceedings instituted by both sides would be withdrawn. Initially, the parties of second part would receive full cheque amount for the compensation. The net thereof would be divided equally and 50% would be paid over to the parties of the first part. It was further

recorded that "whatever further compensation which may become payable in respect of the said survey numbers, only parties of the second part would be entitled to receive the same. Both sides agreed to this and parties of the first part shall not raise any such claim in future."

19. It can thus be seen that under such agreement, which, according to the plaintiffs, enabled them to receive 50% of the compensation awarded by the Land Acquisition Officer, parties decided to close all their disputes. They agreed to share the compensation at that stage. Significantly, as noted earlier, the agreement records that the right to receive further compensation in future was retained by the parties of the second part and the parties of the first part had agreed to forgo any such rights. The plain effect of this agreement would be that the plaintiffs received 50% of the compensation awarded by the Land Acquisition Officer without having to resort to court proceedings and establishing their right, title, interest in the properties. Whatever disputes were pending, both sides agreed to withdraw the same. This was on additional condition that any future compensation would be received only by the parties of the second part and the first part would have no further right left. Under the circumstances, the plaintiffs had forgone their right if there was any in the suit properties relatable to the enhanced compensation that may become payable in future. On such condition, the defendants agreed to part with 50% of the compensation awarded by the Land Acquisition Officer without any legal battle. The plaintiffs who so heavily rely on such documents cannot resile from an important condition of this agreement. It was open to them to assert their full right over 50% share of the property by resorting to legal proceedings. It was also open to them to waive part of the right for immediate solution. They chose the later. Now they cannot go back to legal remedies to assert their right or title through court proceedings.

20. Learned counsel for the plaintiffs, however, suggested that such clause envisaging no compensation payable to the plaintiffs in future was overwritten and the earlier clause of sharing such compensation equally in future also was scored out. According to the counsel, this was by misleading the plaintiffs who were illiterate ladies. This amounted to unilaterally changing the important condition of the agreement. We notice that the original document at Exh. 62 does contain corrections and overwriting in this important clause of the agreement. It is possible to canvass that the earlier typed clause envisaged sharing of the compensation equally even in future. However, authorized corrections in any document before the same is executed as an agreement is not impermissible in law. The corrections carry initials purported to be of the notary public. The document was presented by the plaintiff from their custody. The corrections, if any, therefore, were in a document which was presented by them. Their theory that such corrections were made later on after the agreement was executed, therefore, cannot be accepted. Even otherwise, the contention raised before us by the counsel for the plaintiffs is not founded on any pleadings or any evidence on record. Nowhere in the plaint or in the evidence of the plaintiffs there is even a suggestion that an important clause of the agreement was

changed without their knowledge. In fact, the plaintiffs relied heavily on this agreement to base their claim for half share of the compensation. When there is no foundation, no proof and no evidence that the material clause in the agreement was altered without the knowledge of the plaintiffs or their predecessor executing the agreement, a mere oral contention that such changes were unauthorized, were made after the agreement was executed or were surreptitiously made keeping the illiterate ladies in dark, simply cannot be accepted. Significantly, the agreement in question was signed also by the said witness Bhogilal Nai alongwith Bachubhai Nai. They were neither illiterate nor ignorant.

21. For the reasons recorded, appeal is dismissed. R & P to be transmitted to the Trial Court.

