(2013) 07 BOM CK 0264

In the Bombay High Court

Case No : First Appeal No''s. 67 and 68 of 2007

Sitaram Damodar Sinai Desai and Another	APPELLANT
Vs	
Rajendra Vassudev Deshprabhu and Others	RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2014) 2 ALLMR 379 : (2013) 5 BomCR 494 : (2014) 3 MhLj 65

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : H.D. Naik in F.A. Nos. 67 and 68/2007, for the Appellant; Shivan Dessai in F.A. Nos. 67 and 68/2007 for Respondents No. 1(a) to 1(d) and J.P. Mulgaonkar in F.A. Nos. 67 and 68/2007 for Respondents No. 4(a) to 4(c), for the Respondent

Judgement

U.V. Bakre, J.—Heard learned Counsel for the parties. This Common judgment shall dispose of both the above appeals since they pertain to the acquisition of the portions of the same property, vide the same notification.

2. The land was acquired for construction of bus stand at Pernem. This acquisition included an area of 3200 square metres of land from survey No. 3/2 of village Pernem and an area of 4570 square metres of land from survey No. 2/1 of the same village. By award dated 30/12/1992 passed u/s 11 of the Land Acquisition Act, 1894 (L.A. Act, for short) compensation of Rs. 45,295/-was awarded for the acquired land from survey No. 3/2 whereas compensation of Rs. 1,44,059/- was awarded for acquired land from survey No. 2/1. Since there was dispute regarding apportionment of the compensation, separate references u/s 30 of the L.A. Act, for survey Nos. 3/2 and 2/1 were made by the Land Acquisition Officer. The Land Acquisition Case No. 160 of 1996 pertained to the acquired land from survey No. 3/2 whereas the Land Acquisition Case No. 161 of 1991 pertained to the acquired land from survey No. 2/1.

3. Dr. Vasudeo Deshprabhu, one of the legal representatives of Rajendra Vassudev Deshprabhu, in his written statement, filed in both the cases, alleged

that the acquired land from survey Nos. 3/2 and 2/1 is out of the property "Xeri Narayan", half of which originally belonged to late Rajendra Vassudev Deshprabhu and after his death the same belongs to his legal heirs and that the remaining half share originally belonged to Sitaram Ghanashyam Sinai Desai and after his death to his legal representatives. Dr. Vasudeo Deshprabhu further claimed that the said property is described in the Land Registration Office under No. 5237 and enrolled in the Taluka Revenue Office under Matriz Nos. 2054-2058. It was therefore prayed that half share of compensation be paid to the legal heirs of Rajendra Deshprabhu and balance half share to the legal heirs of Sitaram Ghanashyam Sinai Desai.

4. Sitaram Damodar Sinai Dessai, the appellant in both the appeals, filed his written statement, in both the Land Acquisition cases, wherein he alleged as follows:

He is the legal heir of late Sitaram Ghanashyam Sinai Dessai and that said Sitaram G.S. Dessai was the owner of the property acquired, by virtue of inheritance through Inventory Proceedings. Said Sitaram G.S. Dessai gifted the property along with other properties by Gift Deed dated 17/4/1957, to his two sons namely Purshottam Sinai Dessai and Damodar Sinai Dessai. He is the son of said Damodar Sinai Dessai. The said Gift Deed was subsequently rectified by deed of rectification dated 8/5/1969. There was one condition that the assets constituting the gift deed share shall be transmitted by donees on their death, to the male issues of each of them and in case any one of them has no male child the said assets shall be transmitted to the son or sons of one of the donees. It was further mentioned in the Rectification Deed that in the last case, the widow and children of the donee who did not leave behind male issues shall have usufruct of the assets gifted to the husband and father, as long as the widow survives and the daughters remain spinster whereas the donee who has male issues or his heirs should give each of the daughters of the other donee an amount of Rs. 4,000/- towards dowry. The said clause was to cease in case both donees did not have male issues and the adoptive son of any of the donees will not avail benefit of this condition.

5. The legal heirs of Saularam Salgaonkar, in L.A.C. No. 160/1996 and the legal heirs of Purushottam Harijan, in L.A.C. No. 161/1996 filed written statement claiming entire compensation on the ground that they were agricultural tenants of the acquired land.

6. Mr. B.S. Dessai did not raise any claim in both the cases.

7. Accordingly, issues were framed in both the cases. The issue of tenancy raised by the legal representatives of Purshottam Harijan and of Saularam Salgaonkar, in both the cases, was referred to the Mamlatdar of Pernem. Report dated 29/4/2004 was received in both the case from the Joint Mamlatdar, Pernem stating that the matter was dismissed. The said alleged tenants did not pursue the matter any further.

8. Both the land acquisition cases then proceeded for trial, Dr. Vasudeo Deshprabhu, examined himself as AW1. Mr. Uday Pandurang Prabhu Moye, the son-in-law of Purshottam Sinai Desai examined himself as AW 2. Mr. Sitaram Damodar Sinai Dessai, the appellant, then examined himself as AW3. He produced the Gift Deed; Deed of Rectification; Judgment and Decree in Special Civil Suit No. 94/90/A/IISR; Oral order of this Court in First Appeal No. 12/2001; and order dated 3/5/2001 of this Court in Letters Patent Appeal No. 5/2001.

9. Upon consideration of the entire evidence on record, the learned Reference Court held that there is absolutely no dispute with regard to the party namely Rajendra Vassudev Deshprabhu as far as his right to receive half of the compensation, is concerned and that the dispute was only regarding the remaining half share. He held that since the issue regarding tenancy raised by the legal heirs of Purshottam Harijan and Saularam Salgaonkar was referred to the Mamlatdar and the same was dismissed and since no further claim was raised, the said parties were not entitled to receive any compensation. Mr. B.S. Dessai had not raised any claim.

10. The learned Reference Court held that the Gift Deed or Deed of Rectification does not disclose specific properties of the donor but it only states about free and disposable quota and therefore it was not known whether the acquired land fell within the said property included in the Gift Deed. He further held that admittedly the land was acquired during the life time of Purshottam as well as his brother Damodar and therefore they had lost right to bold the property due to the acquisition and hence there is no question of transferring further right out of such property to Sitaram Damodar Sinai Dessai (appellant). The reference Court held that at the most the said two persons namely Purshottam Sinai Dessai and Damodar Sinai Dessai were entitled to receive compensation in equal share according to the Deed of Gift. He therefore held that the remaining half share has to be apportioned amongst the legal heirs of said Purshottam Sinai Dessai and Damodar Sinai Dessai in equal shares.

11. Consequently, the reference was partly allowed. The legal representatives of Rajendra Vassudev Deshprabhu have been held to be entitled to receive half share of the compensation together with the interest accrued thereon and the remaining half share has been directed to be apportioned equally amongst the legal representatives of late Purshottam Sitaram Sinai Dessai and late Damodar Sitaram Sinai Dessai together with interest accrued thereon.

12. Only the appellant, Sitaram Damodar Sinai Dessai is aggrieved by the impugned judgment and Award in both the cases whereas no other party has challenged the said Judgment and Award.

13. At the out set, Mr. Shivan Dessai, learned Counsel appearing on behalf of the legal heirs of Rajendra Vassudev Deshprabhu submitted that as far as his parties are concerned there is absolutely no dispute that they are entitled to receive half of the compensation. He submitted that there is no challenge to the impugned

judgment and order insofar as the claim of legal heirs of Rajendra Deshprabhu is concerned. Mr. H.D. Naik and Mr. J. Mulgaonkar, learned Counsel, have not disputed this position.

14. Mr. Naik, learned Counsel appearing on behalf of the appellant, submitted that the Gift Deed dated 17/4/1957 and the Deed of Rectification dated 8/5/1969 are valid as held by the Courts and as per the said documents, it is the appellant who is the sole heir of late Sitaram Ghanashyam Sinai Dessai and therefore, he is entitled to receive the entire remaining 50% share in the compensation. He read out the written statement of the appellant, the oral evidence led by him and the conditions of the Gift Deed as well as the Deed of Rectification. According to him, the said conditions in unambiguous terms mention that the subject of the Gift Deed will be in favour of the male issues of the donees and in the event there are no male issues of any of the donees to the male issue of the other donee. He submitted the donees namely Purshottam Sitaram Sinai Dessai and Damodar Sitaram Sinai Dessai were trustees and were entrusted with the gifted properties with a condition that they shall transmit the same to the male issues upon their death. He pointed out from the evidence on record that Purshottam Sitaram Sinai Dessai had no male issues and has two daughters only whereas the appellant is the son of Damodar Sitaram Sinai Dessai. He submitted that the said two daughters of Purshottam Dessai and husband of one of them, who are parties to both the cases, had not filed any written statement before the Reference Court. Therefore, according to learned Counsel, the evidence of Mr. Uday Pandurang Prabhu Moye cannot be looked into. He therefore, submitted that it is the appellant who is entitled to receive the entire remaining half of compensation.

15. Mr. Mulgaonkar, learned Counsel appearing on behalf of the two daughters and one son-in-law of Purshottam Sitaram Sinai Dessai [respondents No. 2(a) to 2(c) in First Appeal No. 67/2007 who are respondents No. 4(a) to 4(c) in the First Appeal No. 68/2007] submitted that it is an admitted fact that half of the property from which land has been acquired belonged to Rajendra Vassudev Deshprabhu and remaining half belonged to Sitaram Ghanashyam Sinai Dessai. He submitted that the Gift Deed and the Deed of Rectification relied upon by the appellant speaks about free and disposable quota without specifying any specific portions of the properties. He submitted that there were no inventory proceedings for determining the shares. Therefore, he submitted that the said Gift Deed and Deed of Rectification cannot prove anything. He further pointed out that as per the said Gift Deed and the Deed of Rectification and the judgment of the Civil Court, the said Gift Deed was to take effect on the death of the donor. Therefore, upon the death of Sitaram Ghanashyam Sinai Dessai, his two sons Purshottam Sinai Dessai and Damodar Sinai Dessai became equally entitled to the said property. Learned Counsel submitted that further transfer was again to take effect after the death of the said donees, as per the condition mentioned in the deed. He submitted that the, acquired land was acquired during the life time of said Purshottam Sinai Dessai and Damodar Sinai Dessai and therefore, the

question of the appellant acquiring any right to the said land did not arise. He therefore, urged that the judgment and award in both the cases is in accordance with the settled principles of law based on proper appreciation of evidence on record and hence, no interference is called for.

16. I have carefully gone through the record and proceedings of both the cases. I have considered the arguments advanced by learned Counsel for the parties.

17. The only question for determination in the present appeal is whether the appellant is entitled to receive the entire remaining half share in the compensation.

18. The appellant is claiming the said entire 50% of compensation, only on the basis of Deed of Gift dated 7/4/1957 with conditions, which was subsequently rectified by Deed of Rectification dated 8/5/1969. The relevant portion of the Deed of Rectification reads as follows:

That the assets constituting the Gift Deed share shall be transmitted by Donees on their death to the male issues of each of them and in case any one of them has no male issues, the same assets shall be transmitted to the son or sons of one of the Donees; in this last case, the widow and the children of the Donee who does not leave male issues shall have usufruct of the assets gifted to their husband and father so long as the widows survive and those daughters till they continue as spinsters and the Donee who has male issues or his heirs shall give each of the daughters of the other Donee dowry of Rs. 4,000/-. This clause ceases in case both the Donees do not have male issues, and the adopted son of any of the Donees shall not avail of the condition so imposed.

19. Late Shri Sitaram Ghanashyam Sinai Dessai, who made the said Gift Deed/ Deed of Rectification is the grand-father of the appellant. He expired on 29/7/1995. Thus, upon his death, the gift in favour of his two sons namely Purshottam Sinai Dessai and Damodar Sinai Dessai (father of the appellant) had come into force and both had become entitled to half share each in the said properties which were gifted. The appellant was born on 5/9/1977. Purshottam Sinai Dessai has two daughters namely Smt. Shashikala@ Shobha Shrikant Malkarneker and Mrs. Nita@ Neema Uday Moye. The said Purshottam Sinai Dessai did not have son.

20. Late Purshottam Sinai Dessai and his wife Smt. Ramabai had filed Special Civil Suit No. 4/90/A/II/SR against Damodar Sinai Dessai and his wife Smt. Jayantibai and son Master Sitaram (appellant) for declaration that the condition in the said Deed of Gift and the Deed of Rectification is ineffective and inoperative and that Master Sitaram Damodar Sinai Dessai is not entitled to any right on account of the said instruments. By judgment and decree dated 31/7/2000, the said suit was dismissed. First Appeal No. 12 of 2001 filed against the said judgment and decree was also dismissed by this Court by oral order dated 9/2/2001. Letters Patent Appeal No. 5/2001 filed against the said oral order was also dismissed by order dated 3/5/2001. Thus, there is no doubt that

the said Gift Deed and the Deed of Rectification are valid documents. However, it is pertinent to note that the said Gift Deed is in the nature of last Will which was to produce effect only upon the death of the donor and subsequently upon the death of the donees. Though the property stood transferred to the donees, upon the death of the donor, Shri Sitaram Ghanashyam Sinai Dessai, however, only after the death of Purshottam Sinai Dessai and Damodar Sinai Dessai, the property was to get transmitted in favour of Sitaram Damodar Sinai Dessai, the appellant. It can be understood that Purshottam Sinai Dessai and Damodar Sinai Dessai and their spouses were alive at least till 2001. The acquired land had vested in Government in or about 1994 and in any case during the life time of Purshottam Sinai Dessai and Damodar Sinai Dessai. In the circumstances above, as has been held by the learned Reference Court, the question of appellant becoming the sole heir of the donees with respect to the acquired land, does not arise.

21. It is also pertinent to note that the said Gift Deed speaks about the free and disposable quota of Sitaram Ghanashyam Sinai Dessai and not about any specific portion of the properties. Obviously, the said document does not disclose about the acquired land or any other property or portion thereof to be the disposable quota of Sitaram Ghanashyam Dessai. There is also no evidence on record to prove that any inventory proceeding had taken place, upon the death of Sitaram Ghanashyam Sinai Dessai. There is nothing to hold that the acquired land forms the part of the gifted disposal quota. In such circumstances, I fully agree with the learned Reference Court who has held that in the circumstances above the claim of the appellant regarding the entire compensation only on the basis of Gift Deed cannot be accepted.

22. The impugned judgment and award in both the cases is therefore in accordance with the settled principles of law based on correct appreciation of the evidence on record. No interference is called for. In the result, both the appeals are dismissed, with no order as to costs. Appeals stand disposed of.

