THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

A.S.Nos.1517 of 1995 and 2415 of 2001

COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

A.S.No.1517 of 1995 is preferred by the 2nd claimant in O.P.No.57 of 1989 before the I Additional Subordinate Judge, Visakhapatnam. A.S.No.2415 of 2001 is filed by claimants 7 to 9 in O.P.No.4 of 2000 before the Senior Civil Judge, Gajuwaka, Visakhapatnam.

A total extent of Ac.162.46 cents of land in Fakeertakya Village of Visakhapatnam District was acquired by the Land Acquisition Officer under Award No.13/88 dated 22.04.1988, and compensation was awarded to various claimants. An extent of Ac.1.08 cents of land, in Survey No.87/5 of Fakeertkya Village, was part of the land acquired under Award No.13/88. As there was a dispute in respect of title over the said property between claimants 1 and 2 in O.P.No.57 of 1989, the Land Acquisition Officer referred the dispute to the Court of I Additional Subordinate Judge, Visakhapatnam under Sections 30 and 31 of the Land Acquisition Act.

The 1st claimant in O.P.No.57 of 1989 is the wife of late Appanna. Late Sri Appanna and the 2nd claimant Sri E.Pakeeru were brothers and the sons of late Venkanna. The land, of an extent of Ac.1.08 cents in Survey No.87/5, was the ancestral property of late Appanna and the 2nd claimant. The revenue records, throughout, reflected the name of late Venkanna as its owner.

The case of the 2nd claimant before the Court below was that the 1st claimant's husband had executed a sale deed on 19.10.1966 (Ex.B.1) whereby he had sold an extent of Ac.1.08 cents of land in Survey No.87/5, and an extent of Ac.0.54 cents of land in Survey No.81/4 to him. The 1st claimant, however, contended that her husband did not sell the said property; and his signature was obtained by fraud. The Court below noted the contention of the 1st claimant that, after the demise of her husband, she had inherited Ac.0.54 cents of land owned by him in Survey No.87/5, and she continued to be in possession and enjoyment thereof from the date of acquisition. The Court below also noted the contention of the 2nd claimant that the husband of the 1st claimant had sold away his share of the property to the 2nd claimant by sale deed dated 19.10.1966.

The Court below held that, even if no fraud had been played on the 1st claimant and her husband had executed the sale deed in favour of the 2nd claimant, no title had passed on to the 2nd claimant under Ex.B.1 over the land comprised in Survey No.87/5; the lands, sold under Ex.B.1, related only to lands in Survey Nos.81/4 and 81/12, and not in Survey No.87/5; in Ex.B.1, the land sold in Survey No.81/4, was rounded off with pencil as Survey No.87/5; such rounding off could only have been done either by the 2nd claimant or some person on behalf of the 2nd claimant, but not at the instance of the 1st claimant; the claim of the 2nd claimant was that the survey numbers were wrongly mentioned in Ex.B.1; and the land, actually conveyed under Ex.B.1, was the land in Survey No.87/5; no rectification deed was executed subsequent to Ex.B.1, mentioning the particulars of the actual land sold; and it was evident that the 2nd claimant had not purchased the land in Survey No.87/5 from the 1st claimant under Ex.B.1.

After noticing the discrepancy between the pleadings and evidence in respect of the sale transactions, the Court below held that the 2nd claimant had failed to establish that he had purchased Ac.0.54 cents of land in Survey No.87/5 belonging to late Sri Appanna, under the sale deed dated 19.10.1966 as claimed by him in his claim statement, or to establish that he was the owner of the total extent of Ac.1.08 cents of land in Survey No.87/5 of Fakeertakya Village; the 2nd claimant had also failed to establish that he was in possession and enjoyment of the said land since a long time by producing any documentary evidence; on the other hand, as could been seen from Exs. A.1 and A.2, the land comprised in Survey No.87/5 was standing in the name of Sri Venkanna, the father of the 2nd claimant and father-in-law of the 1st claimant as on the date of acquisition of the land; if, actually, the 2nd claimant had purchased the land long back in 1966, he would have mutated his name in the place of his father in the revenue records, more so as his claim was that he had purchased the share of his elder brother in the said property; the 2nd claimant had failed to establish that he had purchased the said property either from the husband of the 1st claimant or from the 1st claimant, as the land was still standing in the name of Sri Venkanna in the revenue records; it was evident that the 1st claimant was in possession and enjoyment of her share of the property after the demise of her husband, and till the date of acquisition by the Land Acquisition officer; no oral evidence was adduced to establish that the 1st claimant was not in peaceful possession and enjoyment of the subject land; the tax receipts, marked by the 2nd claimant, were also of no help as they did not show that the 2nd claimant had paid tax for the total extent of Ac.1.08 cents of land in Survey No.87/5; and it was evident that the 2nd claimant had failed to establish that he was the owner of the total extent of Ac.1.08 cents of land in Survey No.87/5 of Fakeertakya Village. The Court below held that claimants 1 and 2 were entitled to equal shares in the compensation amount of Rs.78,768.98 ps. deposited by the Land Acquisition Officer to the credit of the said O.P. under Award No.13/88.

As the entire dispute whether the 1st claimant's husband had sold his share of the land of Ac.1.08 cents in Survey No.87/5 to the 2nd claimant revolves around Ex.B.1, we perused Ex.B.1 ourselves. The land referred to therein is the land in Survey No.81/4 of an extent of Ac.0.84 cents, and land in Survey No.81/2 of an extent of Ac.0.44 cents. The lands under acquisition, and the subject matter of O.P.No.57 of 1989, were only the lands in Survey No.87/5 of an extent of Ac.1.08 cents. As the land in Survey No.87/5 was not the subject matter of sale under Ex.B.1 sale deed dated 19.10.1966, the Court below rightly held that both claimants had an equal share of the property, which the 1st claimant's husband and the 2nd claimant had inherited from late Sri Venkanna; and they should be paid half share each of the amount of compensation deposited by the Land Acquisition Officer. The order of the Court below does not suffer from any illegality or infirmity necessitating interference by us in this appeal. A.S.No.1517 of 1995 fails and is, accordingly, dismissed.

In O.P.No.4 of 2000 (against which A.S.No.2415 of 2001 is preferred by the respondents in A.S.No.1517 of 1995) an extent of Ac.0.81 cents of land in Survey No.81/4 was acquired. In the order under appeal, the Court below held that the dispute was between claimants 2 to 4 who were brothers; as the 2nd claimant died, his legal representatives were brought on record as claimants 7 to 9; an extent of Ac.0.81 cents of land in Survey No.81/4 was acquired under the award; from the order of the I Additional Subordinate Judge in O.P.No.57 of 1989 it was evident that, on the basis of the property purchased under sale deed dated 19.10.1966, the 2nd claimant was entitled only to Ac.0.20 cents out of Ac.0.81 cents in Survey No.81/4 and not to the entire extent of Ac.0.81 cents; claimants 7 to 9 had claimed the entire extent in Survey No.81/4; as per Exs.A.1 and A.2, the land stood in the name of the 2nd claimant and another; and, as Ex.B.2 was staring against claimants 7 to 9, it was evident that the 4th claimant (appellant in A.S.No.1517 of 1995) was the owner of the entire extent of Ac.0.40 cents of land in Survey No.81/4 having purchased it under the sale deed dated 19.10.1966.

It does appear from the order of the Court below that, from out of Ac.0.84 cents of land in Survey No.81/4, an extent of Ac.0.40 cents had been purchased by others. It is only the remaining extent of Ac.0.40 cents, which belonged to late Sri Venkanna, which devolved on claimants 2 and 4 before the Court below i.e., for 20 cents each, and as the 2nd claimant had sold Ac.0.20 cents by sale deed dated 19.10.1966 to the 4th claimant, the entire extent of Ac.0.40 cents belonged to him, and neither claimant No.2 nor claimants 7 to 9 had any claim thereafter over the lands acquired in Survey No.81/4. While a feeble attempt was made by Sri K.Purushotham to contend otherwise, we perused the sale deed dated 19.10.1966, which clearly shows that the land in Survey No.81/4 was sold by the 2nd claimant to the 4th claimant and, consequently, neither claimant No.2 nor claimants 7 to 9 (appellants herein) were entitled for any share in the land acquired in Survey No.81/4. Consequently, A.S.No.2415 of 2001 also fails and is, accordingly, dismissed.

The Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

14th July 2015
JSU