

THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

LAAS.No.1496 of 2005

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JUDGMENT:(per Hon'ble Sri Justice M. Seetharama Murti)

This is an appeal by the claimants 5 and 6 assailing the orders dated 05.08.2005 of the learned Principal Senior Civil Judge, Ongole passed in LAOP.No.82 of 1988.

2. We have heard the submissions of the learned counsel for the appellants, the learned Government Pleader for Appeals appearing for the 1st respondent/LAO and the learned counsel appearing for the 3rd claimant. We have perused the material record.

3. The facts, in brief, are as follows:

The land in an extent of Ac.1.05 cents in Survey No.139/1B of Ongole was acquired by the Government. After due award enquiry, an award dated 05.12.1985 was passed by the LAO/1st respondent herein ('the LAO' for brevity) awarding a compensation of Rs.1,64,280.55 paise. The possession of the acquired land was taken on 18.01.1983. Since the land owners have failed to establish their right and title in respect of the subject land, a reference under Section 31(2) of the Land Acquisition Act, 1894 was made for determination of the true owner who is entitled to receive the compensation and making the payment of the awarded compensation to such owner. The reference was taken on file as LAOP.No.82 of 1988 on the file by the learned Principal Senior Civil Judge, Ongole. The claimants 1, 2 and 4 had died during the pendency of the proceedings of the Original Petition. The claimants 5 and 6 were brought on record being the legal representatives of the deceased 1st claimant. Claimants 7 and 8 were impleaded as per orders in an interlocutory application filed under Order I Rule 10 of the Code of Civil Procedure, 1908. The claim of the 4th

claimant was dismissed as per the orders dated 20.12.1995 of the Court below. The claimants 1 and 2 filed a counter. Claimants 5 to 8 did not file a separate counter on their impleadment as parties. The 3rd claimant filed a counter. The 3rd claimant claimed a 1/6th share in the amount awarded and deposited to the credit of the above Original Petition. The claimants 1 and 2 resisted the claim of the 3rd claimant stating that the 3rd claimant is not a party to the Award and that the 3rd claimant has to work out the rights, if any, by a separate proceeding being a stranger. During the course of the trial, no witness was examined on the side of the reference officer. On behalf of the claimants 5 and 6, who are the legal representatives of the deceased 1st claimant, the 5th claimant was examined as RW1. Exhibits B1 to B3 and B7 were marked on their side. The husband of the 3rd claimant was examined as RW2. Exhibits B4 to B6 and B8 were marked on her side. The claimants 7 and 8 had not adduced any evidence. On merits, the learned Principal Senior Civil Judge held that the 3rd claimant is entitled to a 1/6th share of the compensation amount which is lying in the Court deposit and had rejected the claim of the other claimants that they alone have got equal shares in the said amount. Aggrieved of the said orders, the claimants 5 and 6 had preferred this appeal.

4. The learned counsel for the appellants/claimants 5 and 6 had mainly contended that the preliminary decree in OS.No.50 of 1973 on the file of the Senior Civil Judge, Ongole declared the 1/6th share of the plaintiff therein i.e., Pasupuleti Subbarajamma and that the preliminary decree had not specifically declared the share of the 3rd claimant viz., Gorrepati Audilakshamma who is the 4th defendant therein and that therefore, in the Land Acquisition proceedings, the Court below, to which a reference was made, has no jurisdiction or authority to declare the right or share of the 3rd claimant and order that the 3rd claimant is entitled to a 1/6th share of the compensation.

5. Per contra, the learned counsel for the 3rd claimant had submitted that the present appellants and the other sharers have already received their shares of compensation in respect of the acquired land from out of the amount which was deposited before the civil Court, and that the Court below had only declared that the 3rd claimant is entitled to only a 1/6th share out of the total

compensation awarded and that the amount representing 1/6th share of the 3rd claimant is alone lying in the civil Court deposit and that there are no rival claimants since all the other sharers have received their shares of compensation and that though the preliminary decree has not specifically declared the share of the 3rd claimant, it was specifically held in preliminary decree that the plaint items 1 to 3 and 5 to 16 shall be divided into 7 equal shares and the plaintiff therein be allotted one such share and that the plaintiff therein is no other than the sister of this 3rd claimant and that therefore, on an analogy and on the basis of undisputed facts, it can safely be held that the 3rd claimant, who is also admittedly a party entitled to a share in the property, is also entitled to a 1/6th share in the compensation awarded as rightly held by the learned Principal Senior Civil Judge.

6. Now the only point for consideration is - 'Whether the impugned order declaring that the 3rd claimant is entitled to a 1/6th share of the compensation amount, which is lying in the civil Court deposit, is sustainable under facts and in law?

7. POINT:

7. (a) There is no dispute with the facts, which are narrated supra. The contention of the claimants 5 and 6/appellants herein is that since the preliminary decree did not specifically declare the right of the 3rd claimant, the 3rd claimant is not entitled to a share much less 1/6th share in the compensation awarded. Thus, the main contention of the learned counsel for the claimants 5 and 6 is that the 3rd claimant cannot claim 1/6th share in the compensation in respect of the acquired land as her share is not determined in the suit for partition and her share was not specifically mentioned in the preliminary decree though she was a party (4th defendant) in that suit for partition. The contentions of the 3rd claimant are already stated supra, in detail.

7. (b) We have carefully gone through the copy of the preliminary decree, which is placed on record. In the preliminary decree passed in the aforementioned suit for partition, it is clearly mentioned in the operative portion that the plaint schedule items 1 to 3 and 5 to 16 be divided into 7 equal shares

and the plaintiff be allotted one such share. Therefore, a reading of the preliminary decree would show that the shares of the sharers and the sharers entitled to shares are ascertained and then the share of the plaintiff therein was determined. The plaintiff in the suit for partition is no other than the sister of this 3rd claimant i.e., the 4th defendant therein. Therefore, on an analogy and on the basis of undisputed facts, it can safely be held that the 3rd claimant, who is also admittedly a party entitled to a share in the property, is also entitled to a 1/6th share in the compensation awarded. Further, she being the sister of the plaintiff, her claim is in parity with the claim of the plaintiff therein and as such, her case/claim stands on the same footing as the plaintiff in the said suit. On application of the analogy applicable to the case of the plaintiff in the suit for partition to the 3rd claimant as well, who is no other than the sister of the said plaintiff and whose claim is on the same footing as that of the plaintiff therein, it can safely be held that the 3rd claimant is also entitled to a 1/6th share in the compensation amount. Admittedly, the claimants 5 and 6/appellants herein have received their shares of compensation. It is to be noted that even their shares were not specifically determined in the preliminary decree for partition. And, yet they have received their shares of compensation. It is admitted and undisputed that they cannot lay any claims to the compensation amounts, which are beyond and in excess of their shares of compensations, which they have already received. Therefore, they being not entitled to any more compensation amounts, they cannot either make a rival claim or raise a valid objection to the claim now being made by the 3rd claimant. Therefore, we do not find any merit in the appeal filed by the claimants 5 and 6 opposing the right of the 3rd claimant to receive her share of compensation awarded in respect of the acquired land.

8. Viewed thus, we find that there is no illegality or impropriety in the order of the Court below and that therefore, the order of the Court below does not brook any interference. Accordingly, we hold that the appeal is liable to be dismissed being devoid of merit. The point is accordingly answered.

9. In the result, the appeal is dismissed. There shall be no order as costs. Miscellaneous petitions, pending if any, in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

10.03.2015

Vjl