

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Appeal Suit No.2350 of 2002

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

This appeal by the unsuccessful first respondent is directed against the order dated 14.08.2002 of the learned Senior Civil Judge, Karimnagar passed in OP.No.62 of 1996.

2. We have heard the submissions of the learned counsel for the appellant and the learned counsel for the 2nd respondent. We have perused the material record. The parties in this appeal shall hereinafter be referred to as the appellant and the 2nd respondent. The 1st respondent herein is the Land Acquisition Officer.

3. The facts necessary for consideration, in brief, are as follows: - 'The Government had acquired a land in an extent of Ac.1.38 Guntas in Sy.No.591 situate at Nustulapur village of Thimmapur Mandal. The Land Acquisition Officer, after due enquiry, had passed an award and had determined the compensation for the acquired land at Rs.17,750/-. Since the appellant and the 2nd respondent herein had made claims for receiving the said amount, a reference was made under Section 30 of the Land Acquisition Act, 1894 to the civil Court and on such a reference the present OP.No.62 of 1996 was taken on file by the learned Senior Civil Judge, Karimnagar. Before the reference Court, the 2nd respondent herein and his supporting witness were examined as PWs1 and 2 and the appellant herein was examined as RW1. Exhibits A1 to A9 and B1 to B3 were marked. On merits, the Court below had held that both the appellant and the 2nd respondent herein are entitled for equal shares in the compensation amount that was awarded for the

acquired land. The aggrieved 1st respondent in the OP i.e., the appellant herein had therefore, filed this appeal before the Court.'

4. The learned counsel for the appellant would contend as follows: - 'The learned Senior Civil Judge had erred in holding that the 2nd respondent is also entitled to receive the compensation for the acquired land in spite of the fact that the sale deed dated 18.09.1984 under exhibit B1, which is a registered sale deed, was executed by the vendors in favour of the appellant, and that the appellant is the exclusive absolute owner having right, title and interest in the acquired land, which is a part of the land purchased by the appellant under exhibit B1. The exhibit A1-agreement relied upon by the 2nd respondent is unregistered and is, therefore, inadmissible in view of the provisions of Section 17(1) (b) of the Registration Act, 1908 and Section 54 of the Transfer of Property Act, 1882 and therefore, reliance placed by the trial court on the said document is legally not correct and the reference Court ought not to have looked into the said exhibit A1-agreement. Any admissions that the 2nd respondent is the owner of the property, which is an immovable property, are of no avail as merely on admissions the title in respect of immovable property does not stand conferred. Further, under Section 4(2) of the Benami Transactions (Prohibition) Act, 1988 ('the Act' for short)the plea of benami cannot be entertained as the land acquisition was subsequent to 19.05.1988, by which date the said Act has come into effective operation and force. For all the reasons, the Court below was in error in holding that the 2nd respondent herein is also entitled to a half share in the compensation amount though he has no valid legal right, title and interest in the property acquired.'

5. On the other hand, the learned counsel for the 2nd respondent would contend that a portion of the land in an extent of Ac.0.08 guntas was earlier acquired and that at that time the

compensation in respect of that portion of the acquired land was shared equally between the appellant and the 2nd respondent and that the appellant had also admitted in his evidence that the compensation earlier awarded for the said earlier acquired land was received by both the appellant and the 2nd respondent and that in view of the said admissions and also the recitals in exhibit A1-agreement, the 2nd respondent herein is also entitled to a share in the compensation that was awarded in respect of the present acquired land and that therefore, the well considered order of the Court below does not call for any interference and that the appeal is devoid of merit and is liable to be dismissed.

6. Now the only point that arises for determination in this appeal is – Whether the 2nd respondent is not entitled to receive compensation for the acquired land along with the appellant? In other words, the question is – ‘Whether the appellant is the exclusive absolute owner having right, title and interest in the acquired land and is therefore, alone entitled to receive the entire compensation for the acquired land, having purchased the acquired land by virtue of exhibit B1-registered sale deed?

7. **POINT:**

7. (a) The facts are not in dispute. We have given earnest consideration to the facts, which are stated supra, and the submissions as well as the evidence on record. The appellant and the 2nd respondent are brothers. They are also having other brothers who are not parties to this *lis*. The appellant claims that he is the exclusive owner of the acquired land having purchased the same along with some other land under exhibit B1-registered sale deed dated 18.09.1984 and that therefore, he is alone having right, title and interest in the acquired land and that the 2nd respondent has no manner of right in the acquired land

and that therefore, the 2nd respondent is not entitled to any share in the compensation awarded by the LAO in respect of the present acquired land. The 2nd respondent is not disputing the truth and validity of the said exhibit B1-sale deed and also the fact that the appellant had purchased the acquired land also along with other land under exhibit B1-registered sale deed from the vendors therein. However, his only contention is that a portion of the land of the appellant in an extent of 0.08 guntas was earlier acquired and that at that time the compensation that was awarded in respect of that portion of the acquired land was shared equally between the appellant and the 2nd respondent and that the appellant had also admitted in his evidence before the Court below that the said compensation earlier awarded for the said earlier acquired land was received by both the appellant and the 2nd respondent. The 2nd respondent places reliance upon exhibit A1-unregistered agreement and contends that under the said agreement, his(2nd respondent's) right to a share in the present acquired land is admitted by the appellant and that there was an understanding to pay a share in the compensation also to the 2nd respondent. Thus, the claim of the 2nd respondent is not based on his right, title and interest in respect of a half share of the acquired land by virtue of legal and valid title to the acquired land. A perusal of exhibit B1-registered sale deed would show that the appellant had purchased the acquired land in an extent of Ac.1.38 guntas in survey no.591 with other lands under the said sale deed. Therefore, from the recitals in the said document, it is sufficiently established that the appellant is the exclusive and absolute owner having right, title and interest in the acquired land. Thus, the acquired land was purchased by the appellant under exhibit B1 even by the year 1984. It is appropriate to note that the land was acquired in the year 1992. Now coming to the contentions of the 2nd respondent based on exhibit A1, which is an unregistered agreement, it is to be first noted that under the said

agreement, the appellant had agreed to the effect that the appellant-Bhoom Reddy is the pattedar of the land but half share therein belongs to the 2nd respondent and that therefore, in future they both shall divide the loss or profit from the said land equally and that a half share shall be given to the 2nd respondent and that in the remaining land submerged, the appellant shall give half of the compensation to the 2nd respondent.

In view of the said recitals in the said agreement, the 2nd respondent claims that the appellant had recognized the 2nd respondent's right, title and interest in the acquired land and had also conferred title on the 2nd respondent in respect of half of the acquired land under exhibit A1-agreement and that the appellant had further agreed to pay half of the compensation in the submerged land and that therefore, the 2nd respondent is entitled to a half share in the compensation in respect of the acquired land. The sum and substance of the contention of the 2nd respondent is that though the appellant is the absolute owner of the acquired land by virtue of exhibit B1-registered sale deed, the 2nd respondent is entitled to a half share in the compensation awarded for the acquired land in view of the admission under exhibit A1-agreement that the 2nd respondent is entitled to a half share in the land as well as the compensation. Admittedly, exhibit A1 is an unregistered agreement, the genuineness of which is disputed by the appellant. Exhibit A1-agreement was executed in the year 1991 itself i.e., even before the notification was issued for the acquisition of the land by foreseeing that the land would be acquired in the year 1992 is a circumstance to doubt the genuineness of the said agreement under exhibit A1. Be that as it may.

7. (b) Under Section 17(1)(a) & (b) of the Indian Registration Act, instruments of gift of immovable property and other non-testamentary instruments which purport or operate to create,

declare, assign, limit or extinguish whether in present or in future, any right, title or interest vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property are all documents of which registration is compulsory. Under Section 54 of the Transfer of Property Act, a transfer of immovable property can only be made by means of a registered document. Therefore, exhibit A1-agreement which is compulsorily registerable is inadmissible in evidence and cannot be looked into since it is not registered; therefore, the contention of the 2nd respondent based on such a document that he is the owner of half of the acquired land and is, therefore, entitled to a half share in the compensation in respect of the acquired land cannot be countenanced as only a lawful and rightful owner of the property is entitled to receive the compensation. Therefore, we hold that the claim of the 2nd respondent to a half share in the compensation based on exhibit A1-the unregistered agreement is untenable.

7. (c) Coming now to the further contentions of the 2nd respondent that he and the appellant had shared compensation awarded in respect of the land acquired earlier and that the appellant had made admissions in regard to the 2nd respondent's right and ownership to the property and right to receive the compensation in respect of the present acquired land, it is to be noted that transfer of immovable property cannot be affected by oral admissions and any transfer of immovable property can only be by means of an instrument which is registered. Admittedly, no transfer *inter vivos* has been affected under a valid instrument in favour of the 2nd respondent so as to confer legal title upon him in respect of a half share of the acquired land. Any document specifying relinquishment of a right in immovable property and creating a corresponding right in another under it requires registration and a person claiming title to the property and a consequential right to claim compensation by virtue of such document can rely upon such document

if only it is registered. Title to immovable property of the value of more than one hundred rupees passes only through a valid registered conveyance and title to such property does not pass by admission when the statute requires a registered deed of transfer. Therefore, any admissions that compensation was shared in respect of earlier acquired land or any further admissions in that regard during the course of trial before the reference Court in this case, do not take away the right of the appellant over his landed property and such admissions do not also confer any right on the 2nd respondent. In the decision in **Ch.S.Hanumantha Rao and others v. R.Sainath and others**^[1] this Court held that the transfer of immovable property cannot be affected by oral admissions and it can only be by means of an instrument which requires to be registered and that unless a transfer *inter vivos* has been affected under a valid instrument no legal title will be conferred upon the transferee.

7. (d) Coming lastly to the alternate contention of the 2nd respondent that the acquired land is the property of both the appellant **and** the 2nd respondent and that the appellant is holding the property benami under exhibit B1 for the benefit of both the parties also cannot be countenanced in view of Section 4(2) of Act which clearly lays down that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

In the decision in **Akinipalli Shankaraiah v. Akinipalli Lingaiah**^[2] this Court having followed the authoritative pronouncement of the Supreme Court in *Rajagopal Reddy v. P.Chandrasekharan* [AIR 1996 SC 238] held as follows in paragraph 13 of the judgment: -

‘It can be seen clearly from the judgment of the Supreme

Court that it is not sufficient that the transaction must have been anterior to the date of the commencement of Section 4(2) of the Act, but the defence of benami must also have been taken prior to 19.05.1988.”

The Supreme Court in the above mentioned judgment held as follows:

‘Section 4(1) of the Act has no application to the suit which was filed prior to coming into force of Section 4 of the Act i.e., 19.05.1988. Insofar as Section 4(2) of the Act is concerned, a defence of benami, which was otherwise available to a defendant in a suit, till coming into the force of Section 4 of the Act, is no more available to the defendant, if such a defence is taken by the above mentioned cut-off date i.e., 19.5.1988, in other words, the written statement is not filed by that date.’

Since the land acquisition in the present case is subsequent to 19.05.1988 the defence of benami which was otherwise available in a suit or a claim is not available from 19.05.1988 i.e., from the date of coming into force of Section 4 of the Act. Therefore, in that view of the matter, the 2nd respondent is precluded from making a claim that he has a right in the property and that the property is held benami under exhibit B1 by the appellant. Viewed thus, the legal position supports the case of the appellant. Hence, the plea of the 2nd respondent that he is entitled to a share in the compensation for the acquired land, which is contrary to law, cannot be countenanced by this Court. It is not the case of the 2nd respondent who is the brother of the appellant that the property is a coparcenary property and is held by a Hindu undivided family for the benefit of coparceners in the family. In the absence of any such foundation in the pleadings, the 2nd respondent cannot make a claim to the property. The learned Senior Civil Judge without properly appreciating the legal position obtaining and only based on the admissions which are not legally binding and merely on the ground that earlier compensation for some other acquired land in an extent of Ac.0.08 guntas was shared between the appellant and the 2nd

respondent had erroneously held that the 2nd respondent is also entitled to a share in the compensation. Such findings, which are contrary to law and which are unsustainable, brook interference.

8. Viewed thus, we find that there is merit in the appeal and that the order impugned is liable to be set aside. Therefore, we hold that the 2nd respondent is not entitled to receive compensation for the acquired land along with the appellant and that the appellant alone is entitled to receive the entire compensation for the acquired land, having acquired the absolute right, title and interest to the said land by virtue of exhibit B1-registered sale deed. The point is accordingly answered in favour of the appellant.

9. Accordingly, the appeal is allowed and the order impugned is set aside holding that the appellant is exclusively entitled to the compensation amount and that the 2nd respondent is not entitled to any share in the compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

26.02.2015

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[\[1\]](#) 1999(6) ALD 308

[\[2\]](#) 200(3) ALD 94