

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1156/1992

Sushilabai Trimbak Shinde

... Appellant

V/s.

Trimbak pandurang Mate

... Respondent

Mr. P. N. Joshi a/w. N. M. Pujari for the Appellant

CORAM: K.K. TATED, J.
DATED : FEBRUARY 2, 2016

PC. :

1. Heard the learned counsel for the Appellant. None for the respondent though duly served.

2. This appeal is preferred by the original claimant challenging the judgment and award dated 15/10/1992 passed by the learned Jt. District Judge, Nasik in LAR No.198/1988 holding, if the Appellant succeeds in a partition suit being RCS No.65/1988 pending in the court of Civil Judge, Senior Division, Igatpuri, she will be entitled to her share accordingly.

3. Few facts of the matter are, as under:

In the present proceedings the State of Maharashtra acquired land gut No.701 and 832 situated at village Murabai for Nandur Madhameshwar Project. After following due process of law, the SLO, National High Way Project, Nasik passed an award and decided

compensation payable to the owners of the gut No.701 to the extent of Rs.1,06,091.90 ps and for land being Gut NO.832 Rs.1,24,001.25 ps. The Appellant claimant filed Reference u/s. 30 of the Land Acquisition Act, 1894 claiming her share. During pendency of the said LAR, the Appellant claimant also filed a suit for partition in the court of Civil Judge, Junior Division, Igatpuri being Regular Civil Suit No. 65/1988. The Reference Court considering the facts and circumstances of the case held that in case the Appellant claimant succeeds in Regular Civil Suit No. 65/1988, she will be entitled to her share in compensation awarded By the SLO.

4. Being aggrieved by the said judgment and award, the Appellant original claimant preferred the present appeal. The learned counsel for the Appellant submits that the Reference Court erred in coming to the conclusion that the Appellant is entitled to her share in case she succeeds in partition suit being Regular Civil Suit No. 65/1988. He further submits that the Reference Court failed to consider the fact that the deceased Pandurang has relinquished his rights in favour of minor sons Trimbak and Shivaji in respect of the suit property. He further submits that the relinquishment of rights can be done only by way of a registered document and not orally. On the basis of these facts, the learned counsel for the Appellant submits that the judgment and award passed by the Reference Court is liable to be set aside.

5. After considering the submissions made by the learned counsel for the Appellant and perusing the impugned judgment and award and other documents, following issue is involved in the appeal :

“Whether the Appellant claimant made out a case u/s. 30 of the Land Acquisition Act, 1894?”

6. It is to be noted that, in the present proceedings the SLO, after following due process of law held that the owner of the gut No.701 is entitled to Rs.1,06,099.90 ps and gut No.832 Rs. 1,24,001.24 ps by way of compensation. The Appellant original claimant claimed her share on the basis that the property acquired by the Government was belonging to her grand father i.e. Kondaji who died on 29/03/1936. It is to be noted that, bare reading of the impugned award passed by the Reference Court shows that the Reference Court has not denied the claim of the Appellant. The Reference Court has held in the Regular Civil Suit No. 65/1988 which was for partition in respect of the suit property, if the plaintiff succeeds in the said suit, she will be entitled to claim compensation awarded by the SLO. Apart from that, the Reference Court directed the respondent Trimbak Pandurang Mate to provide security for Rs.20,000/- before withdrawing the entire amount. This itself shows that if the Appellant claimant succeeds in Regular Civil Suit No. 76/1988, she is entitled to her share.

7. Considering these facts, I do not find any error in judgment and award passed by the Reference Court dated 15/10/1992. Hence, I answer the aforementioned issue in the negative.

8. In view of the above, first appeal stands dismissed. Considering the facts and circumstances of the case, no order as to costs.

(K.K. TATED, J.)