

THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.515 OF 1989

Mahadeo Shripad Deo (Decd)
through LRs Laxmibai Madhav
Deo & Ors.

... Appellants

Vs.

Purushottam Shripad Deo (Decd.)
through LRs Shalini Prabhakar
Vatgikar & Ors.

... Respondents

Mr. S.N. Deshpande, Advocate for the appellants.

Mr. A.A. Garge a/w. Mr. J.H. Oak, Niranjana Kulkarni, Advocate for
respondent nos. 3A to 3G and 5.

Mr. Yogesh Dabke, AGP for respondent no. 8/State.

CORAM : MRS.MRIDULA BHATKAR, J.
RESERVED ON : DECEMBER 5, 2017
PRONOUNCED ON : DECEMBER 22, 2017

JUDGMENT:

1. This First Appeal is directed against the judgment and order dated 21st December, 1988 passed by the learned Joint Civil Judge, Senior Division, Solapur in Land Reference No. 17 of 1980 wherein compensation granted by opponent no. 7/State of Maharashtra is apportioned.

2. The facts of the case, in brief, are as under:

The respondents, i.e, the original petitioners, have filed the reference under section 18 read with section 30 of the Land Acquisition Act. The original petitioners are four brothers and widow and children of deceased brother Shrikant Shripad Deo. The opponents are deceased brother Mahadev Shripad Deo, his legal heirs and sisters of the petitioners and legal heirs of deceased sister of the petitioners. This is a property dispute between the children of original owner Shripad Deo. Some of the children are expired and therefore, their legal representatives have stepped in their shoes. The State of Maharashtra has acquired two lands bearing survey nos. 89A/1F admeasuring 40Ares and survey no. 89A/1F admeasuring 1 H 22 R originally owned by Shripad Deo. The State of Maharashtra by notification dated 31st March, 1980 passed award under section 12(2) of the Land Acquisition Act and granted total compensation of Rs.1,59,252/- for two lands with break up of Rs.41,400/- and Rs.1,17,852/-. The petitioners and respondents neither challenged the amount of compensation nor did they ask for enhancement of the said compensation but a Reference was made before the District Court, Solapur to apportion the amount

of compensation between the children of Shripad Deo. The genealogy of the family of Shripad Deo is as follows:

- | | | |
|--------------------------------------|---|-----------|
| (i) Mahadev Shripad Deo | } | Sons |
| (ii) Purshottam Shripad Deo | | |
| (iii) Shantaram Shripad Deo | | |
| (iv) Ramdas Shripad Deo | | |
| (v) Shrikant Shripad Deo | | |
| (vi) Parwatibai Bhalchandra Kulkarni | } | Daughters |
| (vii) Sunanda Shripad Thite | | |
| (viii) Sudha Nanasaheb Deshpande | | |

3. The petitioners/brothers in their reference contended that they are the sons of deceased Shripad Deo and therefore, they only have the right over the amount of compensation of award by the Government in acquisition proceedings. Opponent no. 5 in Land Reference, i.e., sister Sudha Deshpande was the only contesting opponent and other sisters did not contest the claim of the brothers in the apportionment of compensation. Thus, as per the relief claimed by the petitioners, all brothers only can claim $1/6^{\text{th}}$ share in the amount of compensation.

4. Opponent no. 1 Mahadev Shripad Deo died before his father, i.e., on 15th December, 1978. Shripad Deo died on 17th June, 1979. He has executed his last will on 21st March, 1964, i.e., much prior to his death. Thus, when award dated 31st March, 1980 was passed both Shripad and Mahadev were not alive. Sudha and other opponents contended that their father Shripad Deo during his life time has executed a valid will and as per his last wishes, the compensation of the acquired lands is to be distributed and not as per the demand made by the petitioners. The Government has issued award in respect of land bearing survey no. 89A/1G at Solapur admeasuring 1H 22R in the name of Shripad and the award in respect of land bearing survey no. 89A/1F was in the name of Mahadev. For the land of Shripad, the amount of compensation is Rs.1,17,852/- and for land of Mahadev, the compensation is Rs.41,400/-. The respondents/opponents, i.e., legal representatives of deceased Mahadev 1A to 1H in the reference, they denied the averments of the petitioners that they have right in the compensation of the land bearing S.No. 89A/1F admeasuring 40R, i.e., 1 acre. It was contended by the opponents in their written statement that the

said land was purchased by Shripad in the name of Mahadev and it remained continuously in the name for more than 50 years till the acquisition and therefore, the legal representatives of Mahadev 1A to 1 H are only entitled to an amount of Rs.41,400/- in respect of land survey no. 89A/1F. After considering the pleadings and the contentions raised by both the sides, the trial Court framed 12 issues and held that the land bearing survey no. 89A/1F admeasuring 40R stood in the name of deceased Mahadev Shripad Deo as benami transaction and the said legacy of Mahadev Shripad Deo has lapsed due to his death prior to the death of Shripad Govind Deo as alleged. In respect of land survey no. 89A/1G it was held that the said plot of land was bequeathed to opponent no. 5 by will dated 23rd June, 1964 by her late father Shripad. However, legacy of Sudha lapsed due to compulsory acquisition of the said land by Government of Maharashtra before the death of father Shripad Deo. It also held that the acquisition of land bearing survey no. 89A/1G by State amended to disposition of the property during the life time of the testator. The trial Court thereafter finally apportioned the amount of compensation of Rs.1,59,252/- as a property of the

deceased Shripad who died intested leaving behind the respective amount of compensation and so distributed the said amount as per the provisions of Section 8 read with Schedule 1 of the Hindu Succession Act.

5. Thus, as per the judgment and order of the Reference Court, all the legal heirs, i.e. 6 sons and three daughters or their respective legal representatives each are entitled to receive $1/9^{\text{th}}$ share of the said compensation.

6. At the outset, the facts admitted by the parties are summarized:

Shripad Deo, father of the original petitioners and the opponents, died on 17th June, 1979 and he was the owner of two lands and he made his first and last will on 21st March, 1964 are admitted facts. The contents in the will are also not disputed. Survey No. 89A/1F admeasuring 40R was purchased by Shripad Deo in the name of Mahadev on 20th May, 1920 when Mahadev was 13 years old. Mahadev died before Shripad, i.e., on 15th December, 1978. The Government acquired the lands and

award was passed on 31st March, 1980 in respect of both the lands. However, land bearing survey No. 89A/1F was in the name of Mahadev and other land bearing survey No. 89A/1G in the name of Shripad.

7. Shripad has executed will in 1964 and he died in the year 1979, i.e., nearly after 15 years. The truthfulness of the said will is not challenged by either of the parties. This is a last will of Shripad Deo. In the will, Shripad has given his various properties and portion of the house to all his children, however, he has not mentioned anything about land bearing Survey No. 89A/1F which he had purchased in the name of Mahadev. In Clause No. 47, he mentioned about the land bearing survey No. 89A/1G admeasuring 2 acres 38R is given to his daughter Sudha alias Leela Deshpande, as she is staying at Pandharpur. In Clause No. 54, he has stated that apart from movable and immovable properties which is not mentioned in the will and not bequeathed, is to be distributed between 6 sons equally and daughters have no right in the said shares.

8. Thus, Shripad disposed of his property by valid will. Therefore, distribution of the property of Shripad should be as per his will only. The learned Reference Court has committed error of law, as on the basis of two wrong propositions the entire reasoning stands. The learned Judge firstly ought not to have held the land given to Mahadev was benami transaction and it remained benami even after Mahadev attained majority. Secondly, the compensation given by the Government in lieu of acquisition of land is a property of late Shripad qua which he died intested.

9. The learned counsel for both the sides have read the evidence, documents and relevant portions of the judgment. Considered their submissions. First let me advert to the issue of compensation awarded in respect of survey No. 89A/1F. This land was purchased by Shripad in the name of his eldest son Mahadev in the year 1920 when he was 13 years old. This land was purchased by father out of love and affection for his eldest son. Undoubtedly, at the relevant time, considering the age of Mahadev, he was not earning member of the family and hence,

at the most, at that time can be said it was a benami purchase. Mahadev attained majority 5 to 6 years thereafter, i.e. in the year 1927 and died before his father. Shripad did not transfer the said property either in his name or in the name of his other children either during the life time of Mahadev or after his death. This act of Shripad reveals that Shripad intended to give that property to Mahadev only and did not want to transfer it to his any children or wanted to take it back as his property. The intention of the party is always gathered on the basis of his or her overtact. In the year 1964 when Shripad executed the will, he could have mentioned about such benami purchase of the land and could have disposed of the said property the way he wanted. However, he did not do so only because till then Mahadev had become the full owner of the suit property. Thus, when the property was acquired by the Government, the award was passed rightly in the name of Mahadev in the year 1980. The reasoning given by the Reference Court that Mahadev died before Shripad and the land was acquired in the life time of Shripad is a material fact and so the inference of lapse of legacy is totally incorrect. There was no question of lapsing of legacy in

any manner because Mahadev became the absolute owner of the land when the land was acquired. The learned Judge ought to have taken into account the close relationship between Shripad and Mahadev as father and son and, therefore, the said purchase was a gift by the father to his son. Mahadev retained the land with him so also his name remained entered throughout in the revenue record in respect of suit property, it shows the gift was accepted, never returned and hence complete. Hence, after death of Mahadev, his widow or his children are the legal representatives entitled to receive the amount of compensation and said amount of compensation is to be apportioned equal shares between them only. Thus, the finding on this point of the Reference Court is hereby set aside.

10. Shripad bequeathed land survey No. 89A/1G to Sudha Deshpande. He did not give her the entire land but he bequeathed 2 acres from the entire land in favour of Sudha. It is erroneous to hold that in the life time of Shripad, the State Government acquired the said land as it stood in the name of Shripad and, therefore, the legacy of Sudha lapsed and the

compensation received in lieu of the said land is to be distributed under section 8 read with Schedule 1 of the Hindu Succession Act of 1956. Once Shripad has bequeathed the land in favour of Sudha and did not challenge the said will till his death, the bequeath continued and it effected after his death and legacy continued. It is to be noted that in the case of testamentary disposition, Hindu Succession Act does not apply and the interest of the deceased is governed by the Indian Succession Act of 1925. All the testamentary arrangement of the properties and the proceedings under the will are covered under the Indian Succession Act. The acquisition of the land by the State Government during the life time of Shripad cannot affect the contents of the will. The bequest remained unaffected by virtue of Section 163 of Indian Succession Act.

11. The learned counsel Mr. Deshpande has ably assisted this Court by drawing my attention to Section 163 of the Act. It is useful to reproduce the said Section as follows:

Section 163 in The Indian Succession Act, 1925

“163. Change by operation of law of subject of specific

bequest between date of will and testator's death.— Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change."

12. Section 163 restores the effect of change taken place in respect of bequeath between the date of the will and the death of testator. The transformation of bequest in any other manner is possible during that period and the will comes into operation only after the death of the testator. The object of the will is that a person has a right to dispose of his self acquired property as per his wish and desire. The said desire and wish is to be honoured even if there is a change in the property/bequest. In Section 163 such circumstances causing change are specifically mentioned – (a) by operation of law; (b) in the course of execution of the provisions of any legal instrument under which

things bequeathed was held. In the present case, the bequest of land due to acquisition that took place under the Land Acquisition Act was transformed into compensation, i.e., Liquid cash and therefore, the said cash, i.e., changing the form of immovable property into movable property remained as bequest as per the last will of Shripad made in favour of Sudha.

13. Thus, the will cannot be read in parts. As per the will, Sudha was beneficiary of two acres of land and during life time of Shripad though the land was acquired, which obviously stood in his name, whatever compensation is received after his death, Sudha alone is entitled to the same. During the life time of Shripad, if he would have actually received the amount of compensation in his name and if he would have disposed of the said amount by distributing it amongst his children, then Sudha's legacy would have been lapsed. The distribution of the property can be implemented only after the death of the settler testator of the will. In the present case, Shripad died after the acquisition but before the award and, therefore, the claim of Sudha alone is to be acknowledged.

14. On the point that it is only when the possession of the land has been taken by the Government under section 16 of the Act, right of the owner of the land is extinguished, the learned counsel relied on following judgments:

- (i) Judgment of Hon'ble Supreme Court in the case of Sharda Devi vs. State of Bihar & Anr., reported in (2003) 3 SCC 128.
- (ii) Judgment of Hon'ble Supreme Court in the case of Satendra Prasad Jain & Ors. vs. State of U.P., reported in 1993 SC 2517.

15. The learned counsel Mr. Garge has submitted that Sudha cannot claim property in Appeal, as Sudha chose not to file Reference or counter claim on the basis of will before the Reference Court. She did not claim inheritance, so she is estopped from her claim of sole claimant. The learned counsel for the respondent has submitted that the claim of Sudha or any other person cannot be better or higher once the property vest with the Government after notification under section 4 and thus, Sudha has no locus to challenge the acquisition proceedings.

The learned counsel relied on the judgment of Division Bench of the Bombay High Court in the case of **Damodar Laxmanrao Kumbodh by LRs. Pramod Damodarrao Kumbodh vs. State of Maharashtra**, reported in 2008(3) Mh. L.J. 123.

16. While meeting this point, the learned counsel Mr. Deshpande pointed out the contentions raised in the written statement of Sudha where she has categorically stated that she claims the entire compensation of land, i.e., 891F under the will.

17. Under Section 115 of the Indian Evidence Act, principle of estoppel is laid down. Section 115 in The Indian Evidence Act, 1872 is reproduced thus:

“115 Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.”

18. While applying the principle of estoppel, the Court has to verify whether the person has intentionally given up his claim or not. If he or she unintentionally disclaims, then the principle of estoppel cannot be pressed into service. Moreover, the suit is filed not only under section 18 of the Act, i.e., in respect of amount of compensation but it is a reference under section 18 and under section 30 of the Land Acquisition Act. Section 30 in The Land Acquisition Act, 1894 is thus:

“30. **Dispute as to apportionment:** When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. State amendment.”

19. In the case of **Damodar Laxmanroa Kumbodh** (*supra*), while dealing with the issue of acquisition and notification under section 4 of the Land Acquisition Act, it was held that once the notification under section 4 has been issued in subsequent encumbrance on that is not binding on Court. Claim of persons who acquire interest later would be irrelevant as they have no

locus to challenge acquisition proceedings.

20. The ratio laid down in the case of **Damodar Laxmanrao Kumbodh** is not helpful and useful to the respondent, as the acquisition proceeding is not challenged but a fact of transfer and bequest is disputed. The right of Sudha is created much earlier by Shripad, i.e., the owner of the land himself by bequest. So, it cannot be considered as a regular transfer before the acquisition.

21. In the case of **Union of India & Anr. vs. Raghubir Singh (Dead) by LRs. in Civil Appeal Nos. 2839-40 of 1989 & Ors.**, reported in (1989) 2 SCC 754, Bhag Singh and Mohinder Singh cases overruled and it is not applicable to enhancement under section 30(2) of the Amendment Act, as the present award is prior to 1982 and therefore no enhanced solatium.

22. Thus, the judgment and order dated 21st December, 1988 passed by the trial Court needs to be set aside in view of the above discussion in respect of apportionment of the property.

Hence, I pass following order:

- (i) First Appeal is allowed;
- (ii) The judgment and order dated 21st December, 1988 passed by the learned Joint Civil Judge, Senior Division, Solapur in Land Reference No. 17 of 1980 is hereby set aside;
- (iii) The legal heirs of Mahadeo are entitled to get compensation in equal shares in respect of land bearing survey no. 89A/1F along with interest accrued thereon;
- (iv) Sudha or her legal heirs are entitled to get compensation in respect of two acres of land bearing survey no.89A/1G in equal shares;
- (v) For the compensation of remaining land, if any, from land bearing survey no. 89A/1G, all the children of Shripad Deo are entitled to get 1/9th share each and if the children are no more, then their legal heirs are entitled to get their respective shares equally.

23. Before parting with the judgment, I would like to mention that this Appeal is pending since 1989, however, with the assistance of learned counsel Mr. Deshpande and Mr. Garge, it was possible to dispose of this Appeal.

(MRIDULA BHATKAR, J.)