

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 147 OF 2005**

Shri Ram Janu Deikar, r/o Poinguinim

(1) Shri Bhikaro Ram Deikar;

(2) Shri Dileep Ram Deikar;

(3) Smt. Heera Bhikaro Deikar;

(4) Smt. Deepika Dileep Deikar;

All residents of House No. 44, Amonem,

Poinguinim, Canacona-Goa.

.... Appellants

Versus

1. Rukmini Parashuram Acharya, c/o
Prassana P. Acharya, Power of
Attorney Holder, Partagal,
Poinguinim, Canacona, Goa.

2. Laximan Jivu Bhagat, r/o Kumbegal, } *Abated as per Order*
Poinguinim, Canacona. } *dated 26.02.2010*

.... Respondents

Ms. Ankita Kamat, Advocate holding for Shri V.A. Lawande,
Advocate for the Appellants.

Shri R.G. Ramani with Shri Pranav Kakodkar, Advocates for the
Respondent No. 1.

CORAM:- C.V. BHADANG, J.

DATE:- 7th MARCH 2018.

ORAL JUDGMENT:

The challenge in this appeal is to the judgment and award dated 07.01.2005, passed by the Reference Court in Land Acquisition Case No. 61/1996. That was a reference made under Section 30 of the Land Acquisition Act, 1894 (Act, for short), for apportionment of compensation between three

parties. The appellant-Ram Deikar happens to be the party no. 3 before the Reference Court. The respondent no. 1-Rukmini Acharya, was the party no. 1, while respondent no. 2-Laximan Bhagat, who was party no. 2. For the sake of convenience, the parties are referred to in their original capacities.

By the impugned judgment and award, the party no. 1 is held entitled to the entire compensation of Rs.13,856/- along with accrued interest thereon.

2. The brief facts necessary for the disposal of the appeal may be stated thus:

That by notification dated 20.04.1992, lands from village Poinguinim came to be acquired for construction of a road from Hattipaul to Kumbegal. In the said acquisition, an area admeasuring 1,600 square metres, from out of Survey No. 15/1 (part), totally admeasuring to 1,68,510 square metres, came to be acquired. The Land Acquisition Officer by an award dated 12.09.1995, determined the compensation for the said area of 1,600/- square metres at Rs.13,856/-.

As there was dispute between the appellant and the respondents, with respect to the ownership of land Survey No. 15/1 and consequently, as regards apportionment of the compensation, a reference came to be made to the learned

District Judge, under Section 30 of the Act, which was registered as Land Acquisition Case No. 61/1996.

3. The case made out by the appellant (party no. 3 before the Reference Court) was that the subject matter of the property under acquisition is known as 'Cungo' alias 'Gunjimol', which is the property bounded by east by the paddy field of the family of Acharya, on the west by the property of party no. 2- Laximan Bhagat, on the south by the Government property and on the north by a river. It is the material case that the said land was surveyed under different survey numbers, namely, Survey Nos. 13/1, 13/2 and 15/1(part) of Poinguinim village. It was also contended that the said property corresponds to the old matrilineal no. 496. It was thus contended that the property is belonging to the party no.3 and the party no. 1 and party no. 2 has no right to the compensation.

4. The respondent no. 2 (party no. 2 before the Reference Court) did not contest the proceedings.

5. The case made out by the respondent no. 1 (party no. 1 before the Reference Court) was that the land bearing Survey No. 15/1, exclusively belongs to her family by virtue of the title

deed and the land is in possession of the family of the party no.

1. It was contended that the said property bears land registration no. 5334 and matrizes nos. 498, 499, 502, 503, 504 and 505. It was contended that the party nos. 2 and 3 have no documents of title in their favour to establish their title over land Survey No. 15/1 and as such, they are not entitled to any compensation.

6. On the basis of the rival pleadings, the Reference Court framed a solitary issue as to which party is entitled to receive compensation in respect of 1,600 square metres land, acquired from Survey No. 15/1 (part) of Poinguinim village.

7. The party nos. 1 and 3 led oral and documentary evidence. The Reference Court on appreciation of the evidence came to the conclusion that it is the party no. 1, who is exclusively entitled to receive the compensation and proceeded to answer the reference accordingly.

8. I have heard Ms. Kamat, the learned Counsel for the appellants and Shri Ramani, the learned Counsel for the respondent no. 1. With the assistance of the learned Counsel for the parties, I have gone through the evidence and the

impugned judgment.

9. Ms. Kamat, the learned Counsel for the appellants strenuously urged that the matter involves dispute as to the identification of the property and any such dispute, can only be decided on the basis of the expert evidence of a Surveyor. It is submitted that the appellants had examined the Surveyor on their behalf and as such, the evidence led by the appellants carried a great probative value, than the evidence led by the respondent no. 1. It is submitted that the learned District Judge failed to properly appreciate the evidence of the Surveyor and the other documents on record. It is further submitted that the learned District Judge, in its discretion, could have appointed a Surveyor and in the absence of the same, the finding as recorded as to the ownership and title of the respondent no. 1, cannot be sustained. It is submitted that the Reference Court has been swayed away by the presumption available in favour of the occupants in Form No. I & XIV of the land. It is submitted that merely because a person's name is mentioned as occupant, the same would not cast any cloud on the title of the appellants and it is only when a part of the land was acquired, the dispute arose as to the apportionment of the compensation and the appellants justifiably stepped in.

On behalf of the appellants, reliance is placed on the decision of this Court in the case of **Vidhyadhar Atmaram Umarye @ Ventatesh Atmaram Umarye & Others Vs. The Chief Secretary, Government of Goa & Others, 2014 6 Mh.L.J. 250**, in order to submit that merely because the name of a party figures in the survey record, by itself, does not give any cause of action to the party to file a suit for declaration of a title.

10. Ms. Kamat, the learned Counsel for the appellants submitted that the Reference Court could not have placed reliance on the fact that the respondent no. 1, have executed four different sale deeds, with regard to different portions of land in favour of the mundkars. An attempt was made to show that the said portion, which has been sold to the mundkars, is not forming part of Survey No. 15/1. However, the learned Counsel for the appellants, in all fairness, did not dispute that such a case was not set up before the learned Reference Court nor any such ground is made out in this appeal.

Lastly, it is submitted that the Reference Court ought to have restricted the finding of ownership to 1,600 square metres of land, which has been acquired and such a finding

recorded by a Court under Section 30 of the Act, cannot operate in respect of the remaining part of the land Survey No. 15/1. The contention in short is that the dispute is not so much about apportionment of the compensation, but, about the finding which may come in the way of the appellants, while asserting ownership rights over the remaining part of the land Survey No. 15/1. The learned Counsel has submitted that this Court may restrict the finding only to the area of 1,600 square metres of the acquired land.

11. On the contrary, it is submitted by Shri Ramani, the learned Counsel for the respondent no. 1 that the finding cannot be restricted to the part of the land, which is acquired, particularly when the basis of the claim of the title/ownership is same for the entire land Survey No. 15/1. The learned Counsel has extensively taken me through the evidence led and the impugned judgment, in order to submit that the Reference Court after properly appreciating the evidence on record has rightly answered the reference in favour of the respondent no. 1. It is submitted that the appellants have failed to produce any documents worth the name and on the contrary Form No. I & XIV of Survey No. 15/1 shows the name of Prassana P. Acharya and the Government of Goa in the occupants column. It is

submitted that under a deed of mortgage, Prassana Acharya and Rukmini Acharya (i.e. respondent no. 1) had mortgaged the land to Madgaum Urban Co-operative Bank Limited in the year 1988. In the said mortgage deed, there is a reference of four separate sale deeds, executed by Prassana Acharya in favour of the mundkars, by which, a total area of 5,960 square metres, out of Survey No. 15/1, has been sold to the mundkars. It is further pointed out that the Special Civil Suit No. 125/1998 was filed by the appellant, now deceased, Ram Deikar and others against the respondent no. 1 and the members of Acharya family, claiming that they are the lawful owners of the property known as 'Cungo' bearing matríz no. 496 and Survey Nos. 13/1 and 13/2 of Poinguinim village. It is submitted that even in that suit, the appellants had not claimed that a part of the land bearing Survey No. 15/1, is included in the property better known as 'Cungo'. It is submitted that the appellants have not been able to show the outcome of the said suit. It is submitted that there is over-whelming evidence to show that the respondent no. 1 and her family was in possession of the land and were exercising ownership rights over the same and as such, the judgment of the Reference Court, which is otherwise well reasoned, does not call for interference.

12. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

13. On behalf of the party no. 1, two witnesses were examined, namely, (i) Prassana Acharya (P-1/W-1) and (ii) Vithoba Tawadekar (P-1/W-2) and several documents have been produced, including the inventory certificate (AW-1/B), the judgment and order in Regular Civil Suit No. 45/1993 (AW-1/C), the matríz certificate (AW-1/D), the survey plan (AW-1/E), the translation of the inscription and description (AW-1/F), the original mortgage deed (AW-1/G) and Form No. I & XIV of Survey No. 15/1 (AW-1/H).

On behalf of the party no. 3, the appellant-Ram Deikar examined himself (P-3/W-1) along with an Architect, Yogesh Prabhugaonkar (P-3/W-2) and Vassudev Bhat (P-3/W-3). The appellants produced a translation of the certificate of inscription and description no. 1511 (Exhibit-26), a copy of the plan (P-3/W-2A) filed in Special Civil Suit No. 125/1998 by Ram Deikar and others against Rukmini Acharya and others.

14. The appellants (party no. 3) claimed that the land acquired, forms a part of the property 'Cungo' or 'Gungo'

bearing matríz no. 496 and land registration no. 1511, while the respondent no. 1 (party no. 1) claims that the property and the portion acquired, forms part of 'Xinchegally' or 'Chinchegal' or 'Shishegal' corresponding to matríz nos. 498, 499, 502 to 505, bearing land registration no. 5534.

15. Prassana Acharya (P-1/W-1) is the son of the Power of Attorney Holder of the respondent no. 1. He claimed that their title is based on the inventory certificate. It appears that Prassana Acharya had earlier filed Regular Civil Suit No. 45/1993, against Rukminibai Acharya and three others in respect of the property bearing Survey No. 15/1, which was eventually compromised. Admittedly, the appellant-Ram Deikar was not a party to the said suit. However, there are four sale deeds executed by Prassana Acharya on 13.12.1979 in favour of four different persons, who were the mundkars. The learned District Judge has noticed that these sale deeds are presented in the office of the Sub-Registrar of Canacona under nos. 5/1980, 6/1980, 7/1980 and 8/2010. He also claimed that he had applied for conversion of land bearing Survey No. 15/1.

16. This witness was cross examined at length, in relation to the boundaries of the property 'Chichegal' or

'Shishegal'. He claimed that the property 'Gongimol' of Dacor Deicar is to the north of the property 'Chichegal' and he has verified the boundaries of matríz nos. 498, 499, 502 to 505 and they are in respect of property belonging to Acharya family. He claimed that the property bearing land registration no. 5334 corresponds to the aforesaid matríz numbers. In fact, it was suggested to this witness, in cross examination, that the property under No. 5334 is inscribed in favour of Parshuram, Mortu and Mukund and they were having 1/4th share each. Incidentally, Parshuram happens to be the father of Prassana and husband of the party no. 1-Rukmini Acharya. He denied that the name of the respondent no. 1 is wrongly recorded in the occupants column of Survey No. 15/1. He denied that Survey No. 15/1 is part and parcel of 'Gongimol' having land registration No. 15/1.

17. The Form Nos. 1 & XIV of the land Survey No. 15/1 shows the name of the Prassana Acharya and the Government of Goa. It also shows the existence of structures of Vithoba Tavadkar, Thulo Tavadkar, Sonu Tavadkar and Tolu Tavadkar, who are the purchasers from Prassana Acharya. Incidentally, Vithoba Tavadkar, has been examined as P-1/W-2, who claims that property known as 'Chichegal' is part of the Survey No.

15/1, which has been enjoyed by the respondent no. 1 and her family. He also claimed that the respondent no. 1 had planted cashew trees in the property. He claimed that there were about 90 coconut trees enjoyed by the respondent no. 1 and he had plucked coconuts for respondent no. 1, from out of the said property. He further claims that in the year 1979, he purchased a part of the survey no. 15/1, which got separated as Survey No. 15/2 and his three other brothers have purchased the separate parts, over which they have constructed their houses. He in categorical terms denied that the property 'Gungimol' comprises Survey Nos. 12/1, 13/1 and 15/1.

18. It can thus be seen that there is clear evidence that Prassana Acharya, who is the son of the party no. 1 is shown as the occupant in Form No. I & XIV and the family of the respondent no. 1 have been ascertaining and exercising ownership right over the land Survey No. 15/1. Not only that, the said property was mortgaged by the Acharya family to the Madgaum Urban Co-operative Bank Limited and had executed four sale deeds in favour of Vithoba Tavadkar and three others and the purchasers have constructed their houses on the portion so purchased.

19. The evidence led on behalf of the appellants, on the contrary, is insufficient to come to the conclusion that land Survey No. 15/1 is part of the property called 'Gungimol', bearing land registration no. 1511 or matriz no. 496. It would be significant to note that the appellant-Ram Deikar and others had filed Special Civil Suit No. 125/1998 against Rukmini Acharya and others for declaration, injunction and some consequential reliefs in respect of the land known as 'Gungo' or 'Gungimolla'. A copy of the plaint is produced at Exhibit-28. In para 2 of the plaint, it is averred that the property known as 'Gungo' or 'Gungimolla' is situated at Poinguinim village and is enrolled in the Taluka Revenue office bearing matriz no. 496, Survey Nos. 13/1 and 13/2. It can thus be clearly seen that when the said suit was filed in the year 1998, there was no claim made on behalf of the appellants that the property known as 'Gungo' or 'Gungimolla' corresponds to the matriz no. 496, which is surveyed under part of Survey No. 15/1. The evidence of P-3/W-1 cannot take the case of the appellants any further.

20. It is the evidence of Yogesh Prabhugaonkar, Architect (P-3/W-2) and Vassudev Bhat (P-3/W-3) that they conducted the survey of the land known as 'Gungimolla' or 'Gungimol' in January, 2003, which is surveyed under Survey

Nos. 13/1, 13/2, 15/1 and 12/1 (part) of Poinguinim village and found that the said land, is described under registration no. 1511 and inscribed under no. 260. It appears that the Surveyor conducted his exercise on the basis of the documents of description and inscription and without reference to Form No. I & XIV.

Yogesh Prabhugaonkar, Architect (P-3/W-2), in the cross examination has stated that the area of the rest of the property 'Gungimol' was given to him by Vassudev Bhat (P-3/W-3), however, he does not know as to how Vassudev Bhat had determined the area of the property 'Gungimol'. He however admitted that in order to make up the total area of the land, he included certain part of the area of Survey No. 12/1. The evidence of this witness does not at all inspire confidence.

The plan prepared by Vassudev Bhat (P-3/W-3) does not bear his signature. He tried to explain it by stating that he has no authority to sign the plan. He states that under the document of description and inscription, the rest of the property was not mentioned. He stated that the boundaries of the property were indicated by the appellants (party no. 3) at the location and accordingly, he prepared the plan as the boundaries were tallying with those mentioned in the documents. He stated that the neighbouring owners were not

called, when they had gone at the location and conducted the exercise. It can thus be seen that the evidence led on behalf of the appellants is not sufficient to establish that the land Survey No. 15/1 is part of land known as 'Gungimol' bearing land registration no. 1511 corresponding to matriz no. 496. The learned Reference Court, after carefully considering the evidence led, has rightly found that the respondent no. 1 alone, is entitled to the compensation of the acquired land.

21. Reliance placed on the decision in the case of **Vidhyadhar Atmaram Umarye** (supra) to my mind is misplaced. The issue before this Court in that case was about the limitation for a suit for declaration of title. It is true that unless and until there is a cloud on the title, a party is not required to file a suit. However, in the present case, the question is about the entitlement of the compensation on the basis of the title to the land Survey No. 15/1. It is also not possible to accept the contention that the Reference Court ought to have restricted the finding to the area acquired, in as much as, the entitlement to the compensation proceeds on the basis of the title to the entire land Survey No. 15/1. It is thus not possible to segregate the finding between the land acquired and the remaining land out of land Survey No. 15/1.

The appeal is without any merit and is accordingly dismissed, with no order as to costs.

Decree be drawn accordingly.

C. V. BHADANG, J.

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