

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30-01-2018
Pronounced on : 28-06-2018

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

A.S.No.538 of 2015
and M.P.No.1 of 2015

1.Meenakshi Ammal
2.Lakshmipathi
3.Pasupathi ..Appellants/Respondents 4 to 6

Vs.

1.Union of India represented by
The Secretary to the Government (Rev.),
Puducherry.
2.Deputy Collector (Rev.),
South cum Land Acquisition Officer,
Puducherry. ..Respondents 1 & 2/Petitioners
3.R.Boopathy
4.Nethaji
5.Gopathi .. Respondents 3 to 5/Respondents 1 to 3

Prayer:- This Appeal Suit is preferred under Section 54 of the Land Acquisition Act against the Award dated 31.7.2015 made in L.A.O.P.No.9 of 2005 on the file of the learned III Additional District Judge, Puducherry.

For Appellants : Ms.Hema Sampath,
Senior Counsel for
Ms.R.Meenal.

For Respondents 1& 2 : Mrs.V.Usha,
AGP (Pondy).

For Respondent-3 : No Appearance

For Respondents-4&5 : No Appearance

J U D G E M E N T

P.VELMURUGAN, J.

The appellants have come forward with this appeal questioning the correctness of the Award dated 31.7.2015 made in LAOP No.9 of 2005 on the file of the learned III Additional District Judge, Puducherry.

2. The respondents 1 and 2 herein have acquired a land measuring 26-48-25 hectares in Sedarapet Village, Villianur Commune, Puducherry for the purpose of setting up of an integrated Infrastructural Development Project. Among those lands, the lands measuring an extent of 1.14-50 hectares comprised in Survey No. 80/7 was also acquired which stands in the name of the third respondent herein namely Boopathy. It is stated that during the award enquiry, the third respondent appeared and submitted his objections for acquiring the lands. During such enquiry, it is stated that the third respondent produced only the xerox copies of the documents in support of his claim and therefore, he was directed to produce the original documents for perusal. It is stated that the third respondent did not produce the original documents to prove his ownership of the lands. Therefore, after passing the award, the matter was referred to the civil Court under section 30 of the Land Acquisition Act for deciding the rightful claimant for the acquired land and the same was taken on file in LAOP No.9 of 2005 on the file of the learned III Additional District Judge, Puducherry.

3. The third respondent, in his claim statement, has stated that the acquired land and some other properties originally belonged to his grandfather Chinnasamy Naidu and Duraisamy Naidu, who was the son-in-law of the said Chinnasamy Naidu. After the death of the said Duraisamy Naidu his daughters, namely, the first appellant and legal heirs of Jayalakshmi took equally the property of their father Duraisamy by way of a preliminary decree in O.S.No.130 of 1980 on the file of the learned Additional Sub Judge at Puducherry. After the death of the said Chinnasamy Naidu, his only son Ramachandira Naidu succeeded to his estate and the third respondent and his five brothers born through the first wife Neelambal, namely, Gopathy (fifth respondent), Ragupathy, Dhanapathy, Gunapathy and Nethaji (fourth respondent) and other three brothers born through the second wife, Meenakshiammal (first appellant) by name Lakshmipathy (second appellant), Pasupathy (third appellant) and Ragupathy were the sons of the said Ramachandira Naidu. During the lifetime of his father, Ramachandira Naidu, partitioned the property by way of a Partition Deed bearing Document No.629/70 dated 20.3.1970 between himself, his two wives and all of his sons. As per the Partition Deed, 'C' Schedule of property was

allotted to the share of the third respondent. The acquired lands comprised in Cadastre Nos.42, 43 and 39 are covered under item Nos.1 to 3 in the said 'C' Schedule of property. Through the Release Deed dated 12.9.1988, his mother Neelambal and Meenakshiammal (first appellant) relinquished their rights over the three items of the property in Cadastre Nos.42, 43/2, 39/1, R.S.80/7 mentioned in the 'B' Schedule of property in favour of the third respondent and the respondents 4 and 5 and appellants 1 to 3 have no right over the acquired property in R.S.No.80/7 and the third respondent is the absolute owner of the acquired property. Hence, the third respondent is entitled to receive the entire compensation for the acquired land. Ex.B-2 Release Deed also shows that the third respondent's mother and the fourth respondent executed the Release Deed in favour of the third respondent and they do not have any objection. Therefore, so far as this acquired land is concerned, it is absolutely in the name of the third respondent and even patta also stands in his name, which clearly shows that the subject land belongs to the third respondent only and he is the absolute owner of the acquired land. The appellants 1 and 2 have not filed any claim application and remained exparte. They have not produced any document to show that they have right in the property.

4. Further, in the claim statement filed by the first appellant viz., Meenakshiammal, she admitted the claim of the third respondent regarding the ancestral property and partition of the property among the family members. It was contended that the acquired property is the subject matter of a suit for partition in O.S.No.395/2003 on the file of the Subordinate Judge, Puducherry and all the claimants are the parties to that suit. Since the first appellant is an illiterate, as directed by her husband Ramachandira Naidu and without knowing the contents of the document, she signed the Release Deed, which is an invalid document, under which property cannot be transferred to anybody and on that score, the first appellant denied that she gave up her interest in the acquired property in favour of the third respondent. Similarly, the Partition Deed referred to is not a valid one and binding on the first appellant and hence the third respondent is not entitled to the compensation for the acquired land.

5. In the claim statement filed by appellants 2 and 3 viz., Lakshmipathi and Pasupathi, it is contended that the acquired property is the subject matter of O.S.No.1365/2005 on the file of the III Additional District Munsif, Puducherry which was filed against respondents 3 to 5, namely, Boopathy, Nethaji and Gopathi for the relief of mandatory injunction to compensate them for the loss and in pursuance of the decree in the suit for partition, legal heirs of one Jayalakshmi Ammal were allotted the properties including the acquired properties which were

partitioned by Partition Deed dated 20.3.1970 and hence till the dispute is decided in O.S.No.1365/2005, the third respondent is not entitled to claim the compensation.

6. Before the Reference Court, the first respondent Boopathy, who is the third respondent herein, was examined as RW-1 and through him, Exs.B-1 to B-4 were marked. The 4th and 5th respondents, who are the appellants 1 & 2 herein, were examined as RWs.2 and 3 and Thiru S.S.Dhanasekaran, Advocate was examined as RW-4 and Exs.B-5 to B-16 were marked. The third respondent Boopathy while examining before the Reference Court as RW-1 marked the Partition Deed as Ex.B-1, the Release Deed executed by the mother and the fourth respondent as Ex.B2 and patta in his name as Ex.B-3. Therefore, the third respondent has clearly established his title and possession. The appellants have not denied Ex.B-1. They are only challenging the Release Deed in Ex.B-2. However, they have not proved that the release deed was executed under threat or coercion. The person who pleads coercion, has to prove the same as to the circumstances under which the document was executed. Though it was mentioned that two suits, namely, O.S.No.395 of 2003 and O.S.No.1365 of 2005 are pending, they have not produced any document to show that subsequent to the award passed by the Reference Court in LAOP No.9 of 2005, there was a decree in favour of the appellants, evidencing their title. So in the absence of the same, the award passed by the reference Court namely III Additional District Judge, Puducherry cannot be interfered with.

7. The Reference Court has every jurisdiction to decide the title when the matter is referred under Section 30 of the Act. Therefore, the contentions raised by the appellants that the Reference Court has no power or jurisdiction to decide the title is not acceptable. Further, in O.S.No.1365 of 2005, the said Meenakshiammal, the first appellant herein, has never denied her signature or execution.

8. The appellants themselves have admitted and accepted the existence of the Partition Deed of the year 1970 and as a token of admission they have also sold the property which they got by means of partition. Therefore, the appellants cannot approbate and re-approbrate and are estopped from denying the existence of the Partition Deed. They have to establish their title to the acquired property in the suit. For that reason, even as on date, there is no suit pending and as such, the decree need not be postponed.

9. Even during the life time of the father of the third respondent, the Partition Deed was effected. The acquired property shown in the Schedule was allotted to the third respondent. Even the suit in O.S.No.130 of 1980 was decreed

during the lifetime of the third respondent's father and during his lifetime, they have not challenged the decree. Therefore, they cannot now say in these proceedings that the third respondent is not entitled to the subject property as per Ex.B-1.

10. According to the third respondent, the claim on the part of the appellants is hit by acquiescence, because they have not claimed for themselves any share owing to the unexpected litigation and consequent division of 1/4th share during the lifetime of the father of the third respondent or during the pendency of the suit in O.S.No.130 of 1980. If it is true, then the second appellant should have taken steps in I.A.No.6 of 1997 in O.S.No.130 of 1980, but it was not done. Hence, without any records, the appellants were claiming title over the acquired lands in order to prevent the third respondent from receiving the compensation amount. Further, the decree holders, namely the legal heirs of Jayalakshmi had filed E.P.No.20 of 2002 in O.S.No.130 of 1980 for executing the decree, where a compromise memo was filed and the dispute as such was settled. Further, the appellants 2 and 3 admitted that they have not raised any objection, when their share was allocated to the plaintiffs in O.S.No.130 of 1980.

11. The appellants have not come up with clean hands as they have sold away four items of the properties in favour of third parties and it was not whispered in their claim statement. But the third respondent had marked the certified copy of those sale deeds. When the appellants 2 and 3 were cross-examined, they have admitted the sale of four items of the properties.

12. Insofar as the land acquisition proceedings is concerned, the appellants have not objected to the award being passed in favour of the third respondent nor did they claim any share in the compensation amount, which was admitted by the second appellant. Therefore, the trial court was correct in its finding that the third respondent is the absolute owner in possession of item Nos.1 to 3 mentioned in 'C' Schedule attached to the Partition Deed dated 20.03.1970, which was marked as Ex.B-12, in which the appellants were the parties and they have subscribed their signatures. The first appellant has categorically stated that she could identify her 29 signatures, which was marked as Ex.B-12 series. The first appellant admitted the execution of Release Deed dated 12.09.1988, and her signatures, were marked as Ex.B-11 series.

13. The execution and other aspects of Ex.B-11 and Ex.B-12 were proved by the third respondent by examining Thiru S.S.Dhanasekaran, Advocate, as RW-4. The appellants have sold away the lands in favour of third parties on the strength of the Partition Deed, which came to be acted upon and therefore the

first appellant is not entitled for 1/4th share. The appellants have not made any concrete claim either before the Land Acquisition Officer or before the Reference Court.

14. The appellants themselves have admitted and accepted the existence of the Partition Deed of the year 1970 and even as a token of admission, they have also sold the property which they got by means of partition as per Ex.B-1 Partition Deed. Therefore, it would not be possible for the appellants to deny the existence of Partition Deed. Hence, the contention that the appellants have interest over the award amount, cannot be accepted.

15. Therefore, we find no merits in the appeal and it is dismissed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

Svn/tsh/tar

To

1.The District Judge,
Pondicherry.

2.The Deputy Collector (Land Acquisition)
Pondicherry.

+2cc to Ms.R.Meenal, Advocate SR.No.41638

सत्यमेव जयते

A.S.No.538 of 2015

GN(23/07/2018)

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