

(2010) 08 DEL CK 0314

Delhi High Court

Case No: Regular Second Appeal No. 69 of 2008 and C.M. No. 4183 of 2008

Vidyawanti (Deceased) through
LRs.

APPELLANT

Vs

Gauri Biswas

RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Evidence Act, 1872 - Section 145, 73, 74, 79
- Land Acquisition Act, 1894 - Section 10, 16, 4, 6, 9
- Transfer of Property Act, 1882 - Section 53A

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: K.R. Chawla, for the Appellant; Ashok Kumar and Raj Rani, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

The plaintiff Vidyawanti had filed a suit for possession, recovery of damages and mandatory injunction. It was alleged that the plot No. A/69 and A/70 measuring 220 sq. yards situated in Dabri, Vashist Park, Delhi of which she was the owner had partly been illegally usurped by the defendants i.e. an area of 133 sq. yards. Decree for possession as also for mandatory injunction seeking a direction that the defendants be directed to demolish the super structure constructed therein be passed in her favour.

2. Amar Nath the husband of the plaintiff was the original owner of this plot. He had purchased this property from Bimal Singh vide sale deed dated 7.2.1967. He died in 1975 leaving behind his widow the plaintiff Vidyawanti and four daughters. The daughters had relinquished their shares vide a relinquishment deed in favour of the plaintiff.

3. Sometime in the last week of February 1984, plaintiff was informed by an unknown person that a dispute relating to her plot was going on at the police station at Delhi Cantt. plaintiff was surprised to know that defendants No. 1 and 2 relied upon a deed of agreement, receipt and will, all dated 22.8.1979 alleged to have been written by the plaintiff in favour of defendant No. 1 wherein the plaintiff had parted with the suit property in favour of defendant No. 1 for a sum of Rs. 3500/- as was evidenced from the said receipt. As per the case of the plaintiff, the said documents were forged. Complaint to the said effect was filed in the police station. On 1.3.1984, plaintiff issued a legal notice to the defendants calling upon them to vacate the aforesaid plot but they failed to do so. The defendants are illegal occupants of the suit property to which the plaintiff is entitled. Accordingly, the suit, aforementioned, was filed.

4. In the written statement, it has been contended that village Dabri had been acquired by an award No. 2114 of Village Dabri dated 27.6.1968; the government had acquired 99 bighas 1 biswa of land which included the land of the plaintiff as such the said land has vested in the government. plaintiff not being the owner has no locus standi to file the present suit. This is fortified by the fact that the husband of the plaintiff namely Amar Nath also filed his claim u/s 9 and 10 of the Land Acquisition Act. The further contention of the defendant was that in spite of the fact that the land had vested in the government but to assuage the plaintiff, the defendants had entered into an agreement for sale dated 22.8.1979 wherein a sum of Rs. 3500/- had been paid by defendant No. 1 to the plaintiff for the purchase of this property. Will and receipt of even date had been executed by the plaintiff. The said documents were witnessed by T.R. Sharma and Suresh Kumar both of whom are sons-in-law of the plaintiff; the plaintiff cannot go back on this version.

5. Trial Court had framed five issues. On behalf of the plaintiff Vidyawanti, the plaintiff herself came into witness box as also PW-2 and PW-3 who were neighbours. On behalf of the defendant two witnesses had been examined i.e. the defendant Gauri Biswas and M.C. Roy who had been examined as DW-2 who was an attesting witness to these documents i.e. agreement to sell, receipt, will all dated 22.8.1979. The said documents had been proved as Ex.DW-1/2 to Ex. DW-1/4. The Trial Judge had decreed the suit of the plaintiff for possession; damages were however not awarded. Finding of the Trial Judge was based on her title to the property. The documents Ex.DW-1/2 to Ex.DW-1/4 upon which the defendants had placed reliance had been discarded as admittedly, no sale deed had been executed by plaintiff in favour of the defendants. The defence of the defendants that the land stood acquired by the government by an award dated 27.6.1968 was also rejected; the onus to discharge this issue was upon the defendants which they had failed to discharge.

6. The first Appellate Court allowed the appeal; judgment and decree of the Trial Court was set aside. The Court took into consideration the fact that the award No.

2114 dated 27.6.1968 was a public document u/s 74 of the Indian Evidence Act. The presumption of the proof of the document had been established. The Court below had erred in not considering this document which clearly evidenced that the disputed land had stood acquired by the government divesting the plaintiff's title in the suit property. The documents Ex.DW-1/2 to Ex.DW-1/4 had given adequate protection to the defendants under the provisions of Section 53A of Transfer of Property Act and as such even in the absence of a sale deed having been executed in their favour the defendants were entitled to the protective umbrella under the aforesaid provision. The Court had further held that Ex. DW-1/6 i.e. the sale deed dated 7.2.1967 executed in favour of the husband of the plaintiff in respect of the suit property had in fact been proved through the testimony of a defence witness which had also substantiated the defence of the defendants that this document had come into their hands only after the plaintiff had agreed to transfer the title of the suit property in favour of the defendants. Suit of the plaintiff had accordingly been dismissed.

7. This is a second appeal. On 12.8.2008 the following substantial questions of law had been formulated:

1. Whether the land shall be deemed to have been acquired when neither the possession taken over by the Government for the last about 39 years nor proved that any compensation was paid or received?

2. Whether the agreement to sell (which is not admitted by the appellant) nor the possession given or taken in pursuance to the alleged aforesaid agreement to sell confer title upon the respondent or not or is the respondent entitled to protection u/s 53A of the Transfer of Property Act?

3. Whether without exhibiting the alleged award nor producing a formal proof and without confronting the appellant u/s 145 of India Evidence Act, can be relied upon. Had the alleged certified copy of the award been exhibited?

8. The first argument urged before this Court is that the reliance by the first Appellate Court on award No. 2114 dated 27.6.1968 was an illegality. This document had not been proved on record. Section 74 of the Evidence Act only describes public documents; even presuming that it was a public document only a certified copy of the same could be tendered to prove this document. The document on record was not even a certified copy. There was no proof before the Court that the plaintiff or her predecessor-in-interest had received any compensation in lieu of the land acquisition; the absence of the possession of the said land having been taken over by the government u/s 16 of the Land Acquisition Act, the proceedings even otherwise did not stand culminated and as such, such a finding of the Trial Court is an incorrect proposition of law. Learned Counsel for the appellant has placed reliance upon [Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce](#), The Special Land Acquisition Officer, Bombay and Ors. v. Godrej and Boyce to

support his submission that in the absence of any proceedings u/s 16 of the Land Acquisition Act, the possession not having been taken over, the Award by itself is not sufficient to pass title to the government.

The next submission of the learned Counsel for the appellant is that the plaintiff was admittedly the owner of the suit property and once it is established that the title has not passed with the government, the plaintiff continues to the owner. The documents Ex.DW-1/2 to Ex.DW-1/4 do not pass any title to the defendants; the said documents are forged and fabricated and a police complaint to the said effect had also been filed. The first Appellate Court had fallen in grave error by herself examining the handwriting and making a comparison of the said documents and for this proposition reliance has been placed in the judgment reported in [The State \(Delhi Administration\) Vs. Pali Ram](#), it is submitted that it is not advisable that the judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; the prudent course is to obtain the opinion and assistance of an expert. Reliance has also been placed upon AIR 1995 Ori 131 Laxmi Bai v. A. Chandravati, [Smt. Hamida Vs. Smt. Humer and others](#), , [O. Bharatan Vs. K. Sudhakaran and another](#), to substantiate the same submission. Ex.DW-1/5, the house tax receipt of which reliance has been placed upon by the first Appellate Court also related to a separate property which has a distinct property number and this is evident from the document itself. The first Appellate Court had fallen in grave error in holding that Ex.DW-1/6, the sale deed had been proved through a defence witness. Attention has been drawn to the said document. It is pointed out that Ex.DW-1/6 does not bear the signature of the presiding officer; moreover in the entire version of DW-1, she has nowhere proved this document.

9. These arguments have been countered by the learned Counsel for the respondent. It is submitted that there is no fault in the findings in the impugned judgment. The plaintiff was not the owner; the title had vested with the government after the award had been passed. The documents Ex.DW-1/2 to Ex.DW-1/4 had been attested by the sons-in-law of the plaintiff and even in the replication filed by the plaintiff this has not been denied; it is not the case of the plaintiff that the said attesting witnesses were not her sons-in-law. The first Appellate Court had correctly protected the possession of the defendants u/s 53A of the Transfer of Property. The judgment called for no interference.

10. Perusal of the record shows that the Award No. 2114 dated 27.6.1968 is on record. This is a duly attested document having been attested on 10.9.1987 bearing the stamp of the office of the Deputy Commissioner, Delhi. This Award shows that the property in dispute has since been acquired by the government. The name of the claimants who had demanded compensation in lieu of this acquisition has also been detailed therein. The name of Amar Nath, the husband of the plaintiff finds mention at serial No. 56. Being an attested copy/certified copy of the original

bearing the stamp of the Deputy Commissioner this document falls in the category of a public document u/s 74 of the Indian Evidence Act and u/s 79 of the said Act a presumption arises about the genuineness of such a certified copy of the said document. The application fee to obtain this certified copy from the office of the Deputy Commissioner was paid by Sudershan Biswas i.e. defendant No. 2, the husband of defendant No. 1. He had paid a fee of Rs. 10/- to obtain 14 pages of this document. This has been certified on the last page of the document. This document has to be read in evidence.

11. By virtue of this document, the disputed land stood acquired on 27.6.1968 and the husband of the plaintiff Amar Nath who was the original owner stood divested of his title. Record also shows that Amar Nath had also applied for compensation at Rs. 10/- per sq. yards for the land and Rs. 1500/- for the leveling meaning thereby that at that point of time there was no super structure. Compensation was allowed with the interest @ Rs. 6% per annum. This is evident from the recitals in the Award. As such once the predecessor of the plaintiff had lost his title to the suit property, in the year 1968 when the award was passed, the question of the plaintiff claiming ownership of the suit property thereafter did not arise. The judgment of M/s Godrej and Boyce (supra) does not help the appellant. In the said case, it was held that a mere notification u/s 4 or 9 or a declaration u/s 6 of the Land Acquisition Act would not pass title from the erstwhile owner to the government. In the instant case the Award had admittedly been passed; name of Amar Nath, husband of the plaintiff found mention therein as an awardee of the compensation.

12. Defendants have pleaded that the plaintiff was fully aware that the land in dispute had been acquired by the aforementioned Award yet in spite of her no title to the suit property she had illegally and unauthorisedly taken a consideration of Rs. 3500/- from defendant No. 1 and executed an agreement to sell, power of attorney, will and receipt for a sum of Rs. 3500/- wherein the plaintiff had represented herself to be the absolute owner of the suit property; she had cheated defendant No. 1 upon which the defendant No. 1 had reserved her right to take appropriate action. This was the defence of the defendants. Further defence of the defendants was that they were in possession of the suit property since the year 1975; thereafter on 22.8.1979 the aforementioned documents of title i.e. Ex.DW-1/2 to Ex.DW-1/4 had been executed by the plaintiff in favour of the defendants. Before the Trial Judge, to prove Ex.DW-1/2 to Ex.DW-1/4, DW-1, the defendant herself and DW-2, an attesting witness to these documents namely M.C.Roy had come into witness box. He had testified that the defendants Guari Biswas and her husband Sudershan Biswas were living in the suit property since the last about 30 years. The land had been acquired by an Award No. 2114 in the year 1968 and compensation had been paid to the landlord; further that a sum of Rs. 3500/- had been paid by defendants to the plaintiff and in lieu of which an agreement to sell, money receipt and a will had been executed by the plaintiff in favour of defendant No. 1. The aforementioned documents were signed by the plaintiff in his presence as also in the presence of Suresh Kumar

and T.R. Sharma, both sons-in-law of the plaintiff. In the replication filed by the plaintiff there has been no denial that Suresh Kumar and T.R. Sharma whose signatures appeared on Ex.DW-1/2 to Ex.DW-1/4 had not signed these documents or the said persons are not her sons-in-law. Execution of these documents had stood proved. These were clear findings of fact by first Appellate Court who had placed reliance upon these documents holding the same to be duly executed. The Trial Court had also, in fact, not discarded these documents; finding being that since no sale deed had been executed in favour of the defendant, the defendant did not have a title on the basis of these documents alone.

13. These documents Ex.DW-1/2 to Ex. DW-1/4 have given adequate protection to the defendant u/s 53A of the Transfer of Property Act. This provision is available to such a defendant as a defense to protect his possession. It imposes a statutory bar on the transferor/plaintiff who seeks to enforce any right in lieu of the suit property. Apart from Ex. DW-1/2 to Ex.DW-1/4 the Court had also relied upon the house tax receipt Ex.DW-1/5 evidencing payment of house tax by the defendant of the suit property in the year 1977. The contention of the counsel for the appellant that this document does not depict the correct number of the property is a misplaced argument. Perusal of Ex.DW-1/5 shows that Guari Biswas had paid house tax to the MCD on 21.12.1977 of Rs. 75.60 for property RZ-61A/18, Vashist Park which is the house number. Ex.DW-1/2 the agreement to sell between the plaintiff and Guari Biswas clearly states that Gauri Biswas is a resident of RZ-61/A/18, Vashist Park and she has paid a consideration of Rs. 3500/- for 133 sq. yards of land located in plot No. A-69,70. There is no discrepancy; plots were numbered A-69/70; house number for which defendant had tendered the house tax is RZ-61/A/18.

Submission of the learned Counsel for the appellant that the finding of the first Appellate Court that Ex.DW-1/6 had been proved by the defendants is a misreading is borne out from the Record. This document has not in fact been proved in the version of any witness. It has however been filed by the defendant as is evident from his list of documents filed before the Trial Court on 10.9.1987. Be that as it may, even if this document had not been proved nevertheless this document is an undisputed document; it is the sale deed of the aforementioned suit property whereby the vendor Rishal Singh had sold this property to Amar Nath, the husband of the plaintiff on 07.2.1967. The claim of the plaintiff is in fact based on this document itself. As such even if this submission has been wrongly noted it does not affect the otherwise well reasoned order.

14. The judgments relied upon by the learned Counsel for the appellant reported in the case of Pali Ram, Laxmi Bai, Smt. Hamida and O Bharathan (supra) are inapplicable to the facts of the instant case. The judgment in Pali Ram, in fact, clearly states that u/s 73 of the Evidence Act there is no legal bar on a Judge examining the questioned document himself. It is also not the case of the appellant that the scrutiny of the documents by the presiding officer was the only evidence before the

Court to draw a conclusion that the said documents were genuine; Ex.DW-1/2 to Ex.DW-1/4 had been proved by cogent oral evidence. The attesting witness of the said document M.C. Roy had come into the witness box to testify that it was in his presence that the said documents had been executed.

15. In view of the aforementioned discussion, the substantial questions of law are answered as follows:

(i) The disputed land had been acquired by the government vide Award No. 2114 dated 27.6.1968. The acquisition proceedings stood complete by the passing of the Award. Certified copy of the said document has been placed on record and the same has to be read in evidence. The husband of the plaintiff had been awarded compensation; he stood divested of his title; plaintiff claiming through her husband also has no legal title.

(ii) plaintiff mis-represented that she is the owner of the suit property. She had vide valid documents of transfer Ex.DW-1/2 to Ex.DW-1/4 dated 22.8.1979 taken a consideration of Rs. 3500/- and transferred the suit property in favour of the defendants who were in continuous physical possession even prior thereto i.e. since the year 1975. They were adequately protected under the doctrine of part performance as contained in Section 53A of the Transfer of Property Act.

16. Appeal has no merit. The appeal as also the pending application is dismissed.