

(2001) 01 DEL CK 0132

Delhi High Court

Case No: C.M. 1338 of 2000 and C.R. 493 of 2000

Sudershan bids was and Another

APPELLANT

Vs

Vidyawanti and Others

RESPONDENT

Date of Decision: Jan. 31, 2001

Citation: (2002) 1 RCR(Civil) 197

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: Sumeet Verma, for the Appellant; K.R. Chawla, for the Respondent

Judgement

S.K. Mahajan, J.

plaintiff had filed a suit for possession and recovery of damages for use and occupation of the premises against the defendants. In the written statement the defendants took the plea that since land had already been acquired under the provisions of the Land Acquisition Act, plaintiff did not have locus standi to file the suit. It was also alleged that the plaintiff had agreed to sell the land to the defendants and had executed certain documents like Agreement to Sell, Receipts and Bills etc. in favor of the defendants. After the statement of the plaintiff Smt. Vidya Wanti was recorded as PW-1, an application was made by the defendants for recalling her to further cross-examination so as to confront her with the objections filed by the husband of the plaintiff under the Land Acquisition Act and with the documents, namely, the Agreement to Sell, Receipts and Bills. By order dated 20.11.99, the Court allowed this application and recalled Smt. Vidya Wanti was bed ridden and was unable to walk and her general condition was also very poor. Medical Certificate was also furnished. On this representation being made the Court recalled the order dated 20.11.99 and closed the evidence of the plaintiff. Being aggrieved by this order the petitioner has filed the present revision petition.

2. it is contended by the petitioner that there was no reason to recall the order dated 20.11.99 since it was not the fault of the petitioner that the witness was not able to attend the Court. It is further contended that since the Court has by order

dated 20.11.99 permitted the witness to be recalled for further cross-examination great injustice and prejudice would be caused to the petitioner in case her cross-examination was not conducted. It is not submitted by him that the defendant/petitioner had already moved an application for recording the statement of the witness on Commission and in case the witness was not able to attend the Court because of her ill health, the Court should have allowed the application and appoint a Local Commissioner to record the further cross-examination of the witness on Commission. Learned Counsel for the respondent is agreeable that since the witness is more than 90 years old and is bed ridden it will be appropriate that a Local Commissioner is appointed to record her statement.

3. In view of the submissions made by the parties and keeping in view the fact that the witness is more than 90 years old and is also bed ridden, I deem it appropriate to appoint a Local Commissioner to record the statement of Smt. Vidya Wanti in terms of the order dated 20.11.99. The cross-examination shall, however, be confined only to the documents, namely, the objections filed by the husband of the respondent before the Land Acquisition Authorities and the Agreement to Sell, Receipt and the Will alleged to have been executed by the respondent. I, accordingly, appoint Ms. Beenashaw N. Soni, Advocate as the Local Commissioner to record further cross-examination of Smt. Vidya Wanti PW-1. The Local Commissioner shall be paid a fee of Rs. 5,000/- by the petitioner for executing the Commission. The Local Commissioner shall record the statement of Smt. Vidya Wanti PW-1, on 24.2.2001 at 11.00 a.m. The Trial Court is directed to send one of the officers/employees of the Court to visit the residence of the witness on the appointed date and time along with the file of the case. The officer/employee who will visit the residence of the witness along with the file shall be paid a fee of Rs. 1,000/- by the petitioner. With these observations the petition stands disposed of.

4. After the statement of Smt Vidya Wanti PW-1 is recorded the learned Trial Court will ensure the expeditious disposal of the suit.

5. Petition disposed of.