

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Appeal No.213/2013.
Date of institution 13.08.2013.
Date of decision 13.10.2023.

1. Khurshid Zaman widow;
2. Nadrat Zaman d/o Qamar Zaman r/o Booha Tehsil & District Mirpur.

Appellants

VERSUS

1. Noreen Bibi widow;
2. Saqib Hussain;
3. Muneeb Hussain sons;
4. Saima;
5. Sabeen Bibi;
6. Samreen Bibi daughters of Matloob Hussain r/o Booha Tehsil & District Mirpur;
7. Raj Mohammad r/o Booha Tehsil & District Mirpur;
8. Collector Land Acquisition Mangla Dam Raising Project Mirpur;

Real Respondents

9. Sahdia Zaman;
10. Farakh Zaman daughters;
11. Shafaqat Zaman s/o Qamar Zaman r/o Booha Tehsil & District Mirpur.

Proforma Respondents

CIVIL APPEAL

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Sardar Wajid Pervaiz, Advocate for the Appellants.
Nemo for the Respondents.

JUDGMENT:

The captioned appeal has been directed against the judgment and decree passed by the learned Reference Judge Mangla Dam Raising Project Mirpur dated 17.05.2013, whereby, the reference filed by the predecessor in interest of respondents No.1 to 6 herein, was decided in favour of petitioner and Proforma respondents.

2. FACTS IN BREVITY.

The house bearing code No.C-3169A was constructed by the father of petitioner Matloob Hussain and after his death, petitioner and proforma respondents are the owners of the said house and due to their non-availability in the country, the supra house was registered to the name of respondents No.1 & 2 therein on the report of a woman namely Mst. Fareeda Khanum w/o Mohammad Suleman Qureshi, whereas, the petitioner and proforma respondents are the real owners of the house, hence, a reference application was filed for inserting the names of petitioner and Proforma respondents in the column of ownership of the supra house instead of real respondents and also prayed for that while amending the award and 'Asamiwar', the compensation may be paid to the real owners. Amended reference application was filed by the

petitioner and the other side filed objection upon the said reference application stating therein that the reference is time barred, so, the same is not maintainable, therefore, the reference application may be dismissed and the learned trial Court in light of pleadings of the parties framed four issues and directed the parties to lead their evidence and after necessary proceedings, the learned trial Court accepted the reference application and decreed the suit in favour of petitioner and Proforma respondents through the impugned judgment and decree dated 17.05.2013.

3. The impugned judgment and decree passed by the learned Reference Judge Mangla Dam Raising Project Mirpur has been attacked by the learned counsel for appellant with the version that the same has been passed against the law and facts as the supra house was in the ownership and possession of appellants and proforma respondents No.4 to 6, herein, so, the award was rightly issued in favour of husband of appellant Khurshid Zaman. He further argued that although the house bearing code No. C-3169A was built by the father of petitioner therein but he sold the same in favour of Qamar Zaman, predecessor in interest of appellants herein, in lieu of Rs.3000/- and since

then he was in possession of the house and lastly he prayed for setting aside the impugned judgment and decree.

4. Ex-parte arguments heard, record perused.

Issues No.3 and 4 are very important in the instant lis as the petitioner by filing the reference application claimed that the house bearing code No.C-3169A was built by his father namely Raj Mohammad. They claimed that they were abroad and in their absence, a woman namely Fareeda Khanum who was the close relative of the real respondents, she mala-fidely and maliciously entered their names, so, all the proceedings of survey were illegal and against the spot position. The defendants had failed to record their statement and an agreement to sell on the basis of which the real respondents/appellants, herein, are claiming their ownership is unattested and unregistered document which creates no title at all. Even otherwise, the appellants, in their objections before the trial Court have admitted the claim of petitioner/respondents regarding disputed house in the reference application.

Survey of the Codal Scheme governing the matter in hand.

Under Section 12 (2) of Land Acquisition Act, immediate notice of award is mandatory requirement to the interested persons who are not present or represented before the

Collector, 12 (2) of the aforesaid Act speaks volumes in this regard although in short and smart parlance:-

12 (1). _____

(2). The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made".

5. It is trite that issuance of notice to the interested person at the eve of finalizing and concluding the proceedings is *sine qua non* which cannot be overlooked or brush aside as such proceedings without intimating the concerned Quarters (who figures in apportionment matters) is violation of universally recognized golden principle of ***Audi Alteram Partem***, besides militates against the constitutionally fundamental guaranteed right i.e. right to fair trial having close nexus with right No.1 i.e. security of person which is mother of all fundamental rights.

6. Seeming the requirement of Section 12 (2) of the Land Acquisition Act has not been adhered to which is a major dent in the proceedings qua concluding under Section 12 (2) supra mentioned. Section 11 of the supra Act postulates mode of inquiry and award by the Collector in pursuance of notice given under Section 9 of the said Act. Relevant para is reproduced as under:-

11. Inquiry and award by Collector;

(i). _____

(ii). _____

(iii). The apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information whether or not they have respectively appeared before the Collector or not, of the true area and value of the land and the apportionment of the compensation among the persons interested."

7. The agreement to sell is an unregistered document which cannot be relied upon, furthermore, appellants have failed to produce the marginal witnesses of the said instrument before the Court nor the attorney of appellants had supported the contents of agreement to sell in his statement, so, the mere production of an unregistered document does not create any title or right, therefore, the said instrument cannot be taken into consideration which was rightly discarded by the trial Court. The appellants, herein, totally made rebuttal of the reference application before the Court below verbally and no documentary evidence in this regard has been brought on record which may show that they were the real and actual owners of the house in dispute, so, law is well-settled that documentary evidence is always given preference over the oral stance, as in the oral account of witnesses, the statements of witnesses in general are usually overstated

and exaggerated. Moreover, both the parties in the trial Court were agreed that the petitioner and proforma respondents therein were abroad at the time of survey and the survey was made by a lady Farida Khanum.

Threshold of Facts/Squeezed Analysis.

Case portrayed by the petitioners in the instant appeal and reference is that as the House in question in the reference was already sold by the late Raj Mohammad (husband of the appellant) to one Qammar Zaman in 1970-71 in light of facsimile of agreement to sell but the same was not brought on record in accordance with law, neither exhibited nor scribe or marginal witnesses have been produced in order to put reliance upon the same, that too the aforesaid agreement to sell even otherwise is not a registered document as per requirement of Section 17 (e) of the Registration Act 1908, mere agreement to sell creates no right in favour of a party relying and referring the same. Main thrust of the ex-parte arguments is upon limitation with reference to belated filing of objection petition before the Collector under Section 30, while prescribed period of limitation is provided in the Codal scheme of AJ&K Land Acquisition Act, referred agreement to sell which was neither tendered in evidence as required by law of evidence

nor anyone of the characters of said document was produced as witnesses, thus, in this sense, the said document is seemingly shady as it lost its credence in view of the Article 17 and 79 of the Quanoone Shahdat.

8. In the BRCV, the house had been declared as a residential unit consisting of nine rooms, however, there is no mentioning of any kitchen in the document which showed that the house had been surveyed hurriedly and in hasty manner in absence of the parties by the survey team on the pointation of an irrelevant woman, which does not fulfill the legal requirements. The learned Court below in my opinion, has passed the impugned judgment and decree purely in accordance with law after deep scrutiny of the record, which needs no interference by this Court.

On the basis of conclusion that we have reached above, the appeal in hand fails and is accordingly dismissed. The parties are left to bear their own costs. File shall be kept in archive.

Muzaffarabad.

13.10.2023 (Saleem)

JUDGE

Note:- Judgment is written and duly signed. The office is directed to transmit the instant file in a sealed envelope to circuit bench Mirpur and the Deputy Registrar of circuit bench Mirpur is further directed to intimate the parties or their counsel accordingly.

JUDGE