

State of Andhra Pradesh

Vs

Mohd. Ashrafuddin

Civil Appeal No. 1346 of 1976

(A. D. Koshal, V. B. Eradi, R. B. Misra JJ)

05.03.1982

JUDGMENT

MISRA, J. -

1. The present appeal by special leave is directed against the judgment and order of the High Court of Andhra Pradesh dated September 17, 1976 allowing a civil revision arising out of proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, hereinafter referred to as 'the Act'.
2. The holding of the respondent consisted of Surveys 36, 37, 41, 42 and 92, all dry, admeasuring 88 acres and 46 cents in village Ghotkuri in District Adilabad. It appears that he had transferred 17 acres from Survey 36 and 11 acres and 48 cents from Survey 41 to another person under unregistered sale deeds pursuant to an agreement for sale and had gifted away Surveys 37, 42 and 92 to his own son Naimuddin by a document written on a plain paper.
3. Pursuant to a notice under Section 8 of the Act the respondent filed a declaration in respect of his holding. In his declaration, however, he did not include in his holding the area transferred by him under two unregistered sale deeds and the aforesaid gift deed.
4. The Land Reforms Tribunal ignoring the aforesaid transfers computed his holding at 1-7692 standard holding. Under the Act he was entitled to possess one standard holding only. He was, therefore, asked to surrender land equivalent to 7692 standard holding.
5. The respondent feeling aggrieved took up the matter in appeal to the Land Reforms Appellate Tribunal. He, however, confined his appeal to the land covered by the two sale deeds in respect of Surveys 36 and 41 and submitted to the finding of the Land Reforms Tribunal regarding the gift of Surveys 37, 42 and 92. The Appellate Tribunal confirmed the order of the Land Reforms Tribunal and ignored the sale deeds executed by the respondent in respect of Surveys 36 and 41. The respondent challenged the order of the Appellate Tribunal by preferring a revision to the High Court. The High Court in its turn allowed the revision holding that the land transferred under the two sale deeds could not be included in the holding of the respondent for ascertaining the ceiling area. The High Court has given the benefit of Section 53-A of the Transfer of Property Act to the person in possession of the plots pursuant to the contract for sale and treated the land as a part of his holding. The State of Andhra Pradesh has come up in appeal to this Court.
6. The Attorney-General appearing for the State has raised only one contention. According to him, on a correct interpretation of the definition of 'holding' as given in clause (i) of Section 3 of the Act,

the land transferred by the respondent will still continue to be a part of his holding. In order to appreciate the contention we have to read the definition of 'holding' along with the explanation attached to it :

3. (i) 'holding' means the entire land held by a person, -

(i) as an owner;

(ii) as a limited owner;

(iii) as an usufructuary mortgagee;

(iv) as a tenant;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of such capacities;

and the expression 'to hold land' shall be construed accordingly;

Explanation. - Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons;

The term 'holding' takes in its fold land held by various persons in various capacities viz., as an owner, as a limited owner, as an usufructuary mortgagee, as a tenant or as a person in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise, or in one or more of such capacities. The Explanation appended to the definition clearly contemplates that if the same land is held by one person in one capacity and by another person in another capacity such land shall be included in the holding of both such persons. Obviously, therefore, the same land can be taken to be a part of the holding of more persons than one provided they hold it in different capacities.

7. Shri P. Govindan Nair appearing for the respondent on the other hand has contended that the expression 'held' in the definition of 'holding' contemplates ownership with possession and that if this be so the transferee who is in possession will be taken to be the holder of the land transferred, and not the respondent who was the transferor and who was not in possession. He has also contended that the interpretation sought to be put by the Attorney-General on the definition would create an anomalous situation.

8. The word 'held' is not defined in the Act. We have, therefore, to go by the dictionary meaning of the term. According to Oxford Dictionary 'held' means : to possess; to be the owner or holder or tenant of; keep possession of; occupy. Thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession. For example, if a land is held by an owner and also by a tenant or by a person in possession pursuant to a contract for sale, the holding will be taken to be the holding of all such persons. It obviously means that an owner who is not in actual possession will also be taken to be a holder of the land. If there was any doubt in this behalf, the same has been dispelled by the explanation attached to the definition of the term 'holding'. The Explanation clearly contemplates

that the same land can be the holding of two different persons holding the land in two different capacities. The respondent in view of the definition certainly is holding as an owner, although he is not in possession.

9. It is by now well settled that a person in possession pursuant to a contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession pursuant to an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession. If per chance he is dispossessed by the transferor, he can recover possession. The transferor cannot file any suit for getting back possession but all the same he will continue to be the owner of the land agreed to be transferred. The respondent, in our considered opinion, satisfies the conditions contemplated by the definition of the term 'holding' and the land transferred by him under a defective title deed will form part of his holding. The High Court, therefore, erred in holding that the land in possession of the transferee cannot be taken to be a part of the holding of the transferor-respondent.

10. This takes us to the other contention raised by Shri P. Govindan Nair that the interpretation sought to be put by the Attorney-General on the definition would create an anomalous position inasmuch as the same land according to the definition may form part of the holding of the transferor as well as of the transferee or of the owner as well as of the tenant.

11. At the first flush it may appear to be paradoxical to say that the same land could form part of the holding of various persons enumerated in the definition of 'holding' but on a closer scrutiny of the relevant provisions of the Act the proposition presents no difficulty.

12. A reference may be made to Sections 10 and 12 of the Act. Insofar as they are material for the purpose of this case they read :

10. (1) If the extent of the holding of a person is in excess of the ceiling area, the person shall be liable to surrender the land held in excess.

(2) The Tribunal shall serve on every person, who is liable to surrender the land held in excess of the ceiling area under sub-section (1), a notice specifying therein the extent of land which such person has to surrender and requiring him to file a statement within such period not being less than fifteen days, as it may fix, indicating therein, full particulars of the lands which such person proposes to surrender.

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(5)(a) Notwithstanding anything in this section. it shall be open to the Tribunal to refuse to accept the surrender of any land -

(i) Which has been converted into non-agricultural land and has been rendered incapable of being used for purposes of agriculture;

(ii) the surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or on account of the land being in the possession of any person mentioned in item (ii) or item (v) of clause (i) of Section 3

or on account of the land proposed to be surrendered becoming inaccessible by reason of its severance from the remaining part of the holding; and

the Tribunal shall, in every such case, serve a notice on the person concerned requiring him to surrender any other land in lieu thereof; and thereupon the provisions of sub-sections (3) and (4) shall, mutatis mutandis apply to such surrender :

Provided that where land proposed to be surrendered under this section is burdened with a mortgage, the Tribunal may, on an application made by the mortgagor with the consent of the mortgagee, by order, transfer such mortgage from the land so proposed to be surrendered to the residuary holding of the mortgagor or to any part thereof.

(b) Where the land so surrendered under clause (a) is also not acceptable to the Tribunal, the Tribunal shall, after giving an opportunity to the person concerned of being heard, select any other land in lieu thereof, and thereupon, the said land shall be deemed to have been surrendered by such person.

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12. (1) Where any land is surrendered or is deemed to have been surrendered under this Act by any usufructuary mortgagee or tenant, the possession of such land shall subject to such rules as may be prescribed revert to the owner.

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(4) Where any land is surrendered or is deemed to have been surrendered under this Act by any limited owner or by any person in possession by virtue of a mortgage by conditional sale or through a part performance of contract for sale or otherwise, the possession of such land shall, subject to such rules as may be prescribed, revert to the owner.

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It may be argued on the strength of Section 10 that if the same land is included in the holding of two persons in different capacities both of them may be asked to surrender the excess area and in that case serious prejudice might be caused to one or to both of them. For example, A is the owner of certain plots and he delivers possession of a part of his land to B pursuant to an agreement for sale. According to the definition of 'holding' the land in possession of B will be taken to be a part of the holding of A and B both. If the land forming part of the holding of A and B is in excess of the ceiling area, both may be obliged to surrender the excess area. The legislature, however, has made a provision to safeguard the interest of the owner in such a case. Section 12(4) provides : "Where any land is surrendered or is deemed to have been surrendered under this Act by any limited owner or by any person in possession by virtue of a mortgage by conditional sale or through a part performance of contract for sale or otherwise, the possession of such land shall, subject to such rules as may be prescribed, revert to the owner." Sub-section (5) also safeguards the interest of the mortgagee in possession or a person in possession in pursuance of a contract for sale

and provides : "The owner to whom the possession of the land reverts under sub-section (4) shall be liable to discharge the claim enforceable against the land by the limited owner or person in possession; and the land surrendered shall, if held as a security, continue to be the security."

13. Even so, there may be cases in which some prejudice might be caused to some tenure-holders but that cannot be helped. If the definition of the term 'holding' is couched in clear and unambiguous language the court has to accept it as it stands, and if it is so construed, there is not the slightest doubt that the same land can be a part of the holding of various persons holding it in different capacities. When the terms of the definition are clear and unambiguous there is no question of taking extraneous aid for construing it.

14. Lastly, Shri P. Govindan Nair referred to Form I in the Rules framed under the Act. He relies on Item 8 of that Form in support of his contention. It reads :

8. Have all details of all lands owned by others but held by the declarant and where the declaration is by a family unit, by all members of the family unit as limited owner, usufructuary mortgagee, tenant, or in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise on the specified date, been furnished in Enclosure II ?

We are afraid, Item 8 of Form I of the Rules does not help the respondent at all. Rather it goes counter to his contention. It envisages that the same land can be part of the holding of various persons in different capacities.

15. For the foregoing discussion the appeal must succeed. We, accordingly, allow the same and set aside the order of the High Court and restore that of the Land Reforms Tribunal. In the circumstances of the case, there will be no order as to costs.

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