

K. C. Sundaram, Cinema Proprietor

Vs

Uma Devi (Smt) and Others

Civil Appeal No. 107(N) of 1978

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

08.10.1991

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. This appeal by certificate has been preferred against the Full Bench decision of the Kerala High Court dated August 18, 1977 rendered in C.R.P. No. 1472 of 1976. The question raised in the appeal relates to the construction of Section 2(52) of the Kerala Land Reforms Act, 1963 ('Act'). Before we set out the section, we may refer to the fact in brief. The land in dispute once belonged to the Paliam family - next in affluence only to the Cochin Royal family in the Cochin State (now part of the State). In a partition of the Paliam, the Janm right in the property was allotted to Madusoodanan Kuttan Achan (DW2). He had about 200 acres of land in his possession. On March 25, 1959, DW 2 transferred one acre of land out of his holding to the appellant. That land was in the possession of a tenant Rama Shetty, the predecessor of the present respondent - Uma Devi. The appellant approached the Land Tribunal seeking resumption of the land from the tenant on the ground that he was a small holder. The relief was sought under Section 16-A. The Tribunal dismissed the application, but the appellate authority accepted the appeal and granted the relief sought. Thereupon, the tenant approached the High Court under Section 103 of the Land Reforms Act by way of revision. In view of the conflicting views expressed in some of the cases, the matter eventually came before the Full Bench. The Full Bench has set aside the order of the appellate authority. It has stated that the appellant could not be considered as a small holder in view of the Explanation to Section 2(52) of the Act.

2. The small holder enjoys certain special privileges and concessions under the Act. One of the concessions is that he is entitled under certain circumstances and conditions to resume possession of the whole land in occupation of the tenant (Section 16-A). The plea of the tenant was that DW 2 was in possession of and had interest in, land exceeding the limits specified in Section 2(52). He had transferred after December 18, 1957 one acre of land to the transferee and transferee consequently would not be entitled to exercise the right of a small holder under the Explanation to Section 2(52). For the transferee, the argument was that the Explanation would not be applicable to him. It was contended that in order to attract the Explanation, two conditions must be satisfied viz; (i) that the transfer should have been after December 18, 1957; and (ii) that it should have the result of reducing the extent of the holding of the limit required to entitle a person to the status of a small holder.

3. The High Court has held that a transfer or a partition effected after December 18, 1957 will have the disqualifying effect provided by the Explanation to Section 2(52), irrespective of whether it does or does not reduce the extent of the holding to the limits indicated in the said provision. In other

words, the High Court has stated that both the aforesaid conditions need not be satisfied, it would only (sic) the first of the conditions to be satisfied to disqualify the transferee.

4. In our opinion, the construction indicated by the High Court has merit. The Explanation has two limbs. The first deals with the right of the transferor. It provides that if a person is holding land in excess of the ceiling limits prior to December 18, 1957, he cannot become a small holder by way of partition or transfer. He could make transfer and effect partition but he could not get the benefit of a small holder. The second limb of the Explanation seems to be independent of the first. It deals with a case of a person in respect of the land allotted or transferred to him. It provides that if by reason of such partition or transfer effected by the person referred to in the first part of the Explanation, he cannot exercise the right of a small holder in respect of the land allotted or transferred to him. The appellant is a transferee by reason of the alienation made in his favour on March 25, 1959. That was after the specified date i.e. December 18, 1957, the date on which the Kerala Land Reforms Bill, namely, the Agrarian Relations Bill of 1957 was published in the Kerala Gazette. The transferee by reason of the alienation effected after the said date gets no benefit of a small holder. The underlying purpose of Section 2(52) was really intended not to recognise the transfers effected after December 18, 1957 for claiming the privileges of a small holder. The view expressed by the High Court seems to be justified and does not call for interference.

5. In the result, we dismiss the appeal but in the circumstances of the case, we make no order as to costs.

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