G. Narayanappa and Another

Vs

Government of Andhra Pradesh

Civil Appeal No. 3850 of 1991

(M. H. Kania, N. M. Kasliwal, Smt. M. S. Fathima Beevi JJ)

22.10.1991

JUDGMENT

KANIA, J. –

1. Leave granted. Counsel heard.

2. As we are in agreement with the conclusions arrived at by the High Court of Andhra Pradesh, we propose to set out the few facts necessary for the appreciation of the arguments before us very briefly.

3. The parties belong to the Reddy caste in an area of Andhra Pradesh which originally formed part of the Madras Presidency. Appellant 1 is the illatom son-in-law of appellant 2. The appellants filed their respective declarations under Section 8 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (hereinafter referred to as "the Ceiling Act"). In his declaration, appellant 2 claimed an increase in the ceiling unit permitted to be held by him on the ground that appellant 1 as his illatom son-in-law who had attained the age of majority had a share in the properties of his father-in-law, appellant 2. Appellant 2 deposed in the inquiry held that the appellant 1 was entitled to a half share in his properties as his illatom son-in-law. Both of them claimed that appellant 1 was entitled to a claimed that appellant 1 was entitled to the aforesaid share under an agreement (Ex. A-1). The Land Reforms Tribunal, Anantapur by its judgment dated May 31, 1977, rejected the claim of the appellants and held that the declarant, appellant 2 held surplus holding to an extent of 0.4109 standard acres and directed him to surrender the excess land. Appellant 1 was declared as not holding any land in excess of ceiling limit. The appellants preferred an appeal to the Land Reforms Appellate Tribunal, Anantapur which was dismissed on November 4, 1977. Aggrieved by the order of dismissal made by the said Tribunal, the appellants filed a Civil Revision Petition No. 3974 of 1977 in the High Court of Andhra Pradesh which was dismissed by a learned Single Judge of the High Court by a common judgment along with other connected matters on April 21, 1978. This appeal by special leave is one of the appeals directed against the common judgment of the said High Court.

4. An illatom son-in-law is in a sense, a creature of custom. It is well settled by a series of decisions that a custom of illatom adoption prevails among the Reddy and Kamma castes in territories which earlier formed part of the then Madras Presidency. It is stated in Mayne's Hindu Law and Usages, (13th edn., para 242 in Chapter VII), as follows :

> "A custom known as that of illatom adoption prevails among the Reddi and Kamma castes in the Madras Presidency. It consists in the affiliation of a son-in-law, in

> consideration assistance in the management of the family property. No religious significance appears to attach to the act. Neither the execution of any document nor the performance of any ceremony is necessary. The incidents of an illatom adoption have now become crystallised into fixed rules of law by a long course of decisions. To constitute a person an illatom, a specific agreement is necessary .... After the death of the adopter he is entitled to the full rights of a son even as against natural sons subsequently born or a son subsequently adopted in the usual manner.

5. It has also been stated by Mayne that an illatom son-in-law has no right to claim partition with his father-in-law unless there is an express agreement or custom to that effect. An illatom son-in-law is not an adopted son in any sense. In N. R. Raghavachariar's Hindu Law, (8th edn., paragraph 176), it is stated that an illatom son-in-law loses no rights of inheritance in his natural family and the property he takes in the adoptive family is taken by his own relations to the exclusions of those of his adoptive father. The position, as set out in Mulla's Hindu Law, (16th edn.) is no different. Regarding the position of an illatom son-in-law it has been inter alia observed by Mulla at para 515 (page 534) as follows :

> "He does not lose his right of inheritance in his natural family. Neither he nor his descendants become coparceners in the family of adoption though on the death of the adopter he is entitled to the same rights and the same share as against any subsequently born natural son or a son subsequently adopted in accordance with the ordinary law. He cannot claim a partition with the father-in-law the incidents of a joint family, such for instance as right to take by survivorship, do not apply. In respect of the property or share that he may get he takes it as if it were his separate and self-acquired property"

6. To cite just a few decisions, the custom of having an illatom son-in-law in the Kamma castes and the Reddis in Madras Presidency has been recognised in Nalluri Kristnamma v. Kamepalli Venkatasubbayya (LR (1918-19 46 IA 168 : AIR 1919 PC 162 : 21 Bom LR 906). The same custom has also been recognised by the decision of a Division Bench of the Madras High Court in Hanumantamma v. Rami Reddi (LR (1882) 4 Mad 272). In Narasayya v. Rammachandrayya (AIR 1956 AP 209 : 55 Andh WR 1) it has been held that the institution of illatom adoption, that is, affiliating a son-in-law and giving him a share, is purely a creature of custom and judicial recognition has been given to it.

7. Learned counsel for the appellants contends that appellant 1 as an illatom son-in-law of appellant 2, was entitled to a half share in the property of appellant 2. He submitted that an illatom son-in-law who had attained the age of majority was in the same position as a major son and hence, the ceiling area permitted to appellant 2 was liable to be increased by one ceiling unit as appellant 1 did not hold any land independently nor in any manner specified under Section 4-A of the Ceiling Act.

8. Before examining the correctness of these submissions, we may refer to the relevant provisions of the Ceiling Act. The Ceiling Act which provided for a ceiling on agricultural holding in Andhra Pradesh was enacted in 1973 and amended by Act 10 of 1977 which was reserved for the assent of the President and received the same on April 29, 1977. The said amending Act was made effective from January 1, 1975.

9. Section 3 of the said Act is the definition section. Sub-section (c) of Section 3 defines the term 'ceiling area' after the amendment as meaning the extent of land specified in Section 4 or 4-A to be

the ceiling area. Sub-section (5) of Section 3 defines the term "family unit" and clause (i) thereof provides that in case of an individual who has a spouse or spouses such individual, the spouses and their minor sons and their unmarried minor daughters, if any, constitute his family unit. Section 4 provides for the ceiling area. After Section 4 of the said Act, the following Section 4-A was inserted in the Act :

> "4-A. Increase of ceiling area in certain cases. - Notwithstanding anything in Section 4, where an individual or an individual who is a member of a family unit, has one or more major sons and any such major son either by himself or together with other members of the family unit of which he is a member, holds no land or holds an extent of land less than the ceiling area, then, the ceiling area, in the case of said individual or the family unit of which the said individual is a member computed in accordance with Section 4, shall be increased in respect of each such major son by an extent of land equal to the ceiling area applicable to such major son or the family unit of which he is a member, or as the case may be, by the extent of land by which the land held by such major son or the family unit of which he is a member falls short of the ceiling area."

Section 5 prescribes how the standard holding for different categories of land is to be computed. Section 8 provides for declaration of holding by persons whose holding on the notified date together with the other lands mentioned therein exceeds the specified limit. Section 9 provides for the determination of the ceiling area by the Tribunal. Section 10 inter alia provides that 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.

10. The question which arises is whether, for the purposes of Section 4-A of the Ceiling Act, an illatom son-in-law can be regarded as a major son, that is, whether an illatom son-in-law is covered in the definition of the term 'major son' as employed in Section 4-A of the Ceiling Act. It has been observed in the impugned judgment that an illatom son-in-law is a creature of custom and hence, his rights are such as recognised by the custom or under an agreement duly proved.

11. It has been pointed out in the impugned judgment that the Land Reforms Tribunal held, on consideration of the evidence, that half share in property of appellant 2 was bequeathed to him and hence, he would be entitled to half share only after the demise of appellant 2. It was further pointed out that all the lands stood registered in the name of appellant 2 and hence, appellant 1 was not entitled to any share in the properties of appellant 2 during the lifetime of appellant 2. It has been held in the impugned judgment that appellant 1 who is the illatom son-in-law could not be regarded as a son of appellant 2, although he had some rights which were similar to the rights of a natural born son or an adopted son. The agreement (Ex. A) which was set up by the appellants and under which appellant 1 given a share in the land belonging to appellant 2 in praesenti has not been accepted by the courts below on consideration of the evidence. It has been held that the said agreement was a document brought into existence merely with a view to avoid the ceiling law. In this appeal, we are not inclined to interfere with these findings of the appeal. It was also held in the impugned judgment that in the aforesaid circumstances, the ceiling limit of appellant 2 was not liable to be increased on the ground that appellant 1 was his illatom son-in-law who had attained majority on the relevant date.

12. Coming to the position in law, the discussion in the text books, which we have referred to in some detail earlier, makes it clear that although an illatom son-in-law has some rights similar to

those of a natural son born after the adoption of the illatom son-in-law, his rights are not identical to those conferred by law on a son or an adopted son. To cite two main differences, he does not succeed to the properties of his father-in-law by survivorship, but only on account of custom or an agreement giving him a share in the property of his father-in-law. His position is not identical to that of an adopted son because he does not lose his rights in his natural family on being taken as an illatom son-in-law and continues to be entitled to a share in the property of his natural father. It is, therefore, difficult to regard an illatom son-in-law who has attained majority as a major son for the purposes of Section 4-A of the Ceiling Act.

13. Learned counsel for the appellants placed reliance on the decision of a learned Single Judge of the Andhra Pradesh High Court in Peechu Ramaiah v. Government of A. P. [(1976) 2 APLJ 278 (HC)] where it has been held that after the death of the father-in-law an illatom son-in-law is entitled to the rights of his son. If there is an agreement to that effect, the illatom son-in-law is also entitled to half share in the property of the adoptive father-in-law even during his lifetime. The Division Bench in the impugned judgment has not accepted the correctness of the aforesaid judgment. In our opinion, the view taken by the Division Bench in the impugned judgment appears to be correct. From the texts which we have cited earlier it is clear that the general recognised position is that an illatom son-in-law becomes entitled to a share in the property of his father-in-law as his heir, that is, on his death, it being well settled in law that there can be no heir to a living person. Moreover, in Peechu Ramaiah v. Government of Andhra Pradesh ((1976) 2 APLJ 278 (HC)) the conclusion arrived at by the learned Single Judge that the illatom son-in-law was entitled to a half share in praesenti, that is, even during the lifetime of his father-in-law, was based on an agreement to that effect which was duly proved. In the present case, the agreement (Ex. A) has been disbelieved by the authorities below as well as the High Court. It has been pointed out by the Land Reforms Tribunal that the half share to which appellant 1 would be entitled was bequeathed to him in the will of appellant 2 and he would be entitled to that share only on the death of appellant 2. In fact, it was fairly conceded by learned counsel for the appellants that he was not in a position to show any evidence on the basis of which it could be said that there was a custom applicable to the parties by which appellant 1 as an illatom son-in-law of appellant 2 was entitled to a share in the property of appellant 2 during the latter's lifetime.

14. In our opinion, it is not possible to equate an illatom son-in-law who has attained majority with a major son for the purposes of Section 4-A of the Ceiling Act. As pointed out in Penumatsa Koti Ramachandra Raju v. State of A. P. ((1980) 1 APLJ 307 (HC)), it is quite apparent from the language of the Statement of Objects and Reasons of the Act 10 of 1977, whereby Section 4-A was inserted in the Ceiling Act, that Section 4-A was inserted in order to obviate the hardship caused to the Muslims and Christians among whom the concept of a joint family did not obtain and even major sons did not have any share in the ancestral property during the lifetime of the father unlike in the case of joint Hindu families. It appears that the intention which lay behind the amendment was to put Muslims and Christians at par with Hindus in respect of the ceiling law. It was with this point of view that it was provided in Section 4-A of the Ceiling Act that, although the limit of the father's holding would be increased on the ground of his having a major son that increase would be limited to the extent by which the land holding of the major son and his family unit fell short of the ceiling unit. In our opinion, the Statement of Objects and Reasons of the said amending Act whereby Section 4-A was inserted into the said Act lends support to the view that we are taking, that an illatom son-in-law, who does not lose his rights in his own family, cannot be regarded as a major son of his father-in-law for the purposes of the Ceiling Act. If he was so regarded, there would be a double benefit, in the sense that because of his presence the ceiling area of his father-in-law would be increased as well as the ceiling area of his natural father and that certainly could not have been

the intention behind the amendment inserting Section 4-A. Since there is no custom of having an illatom among Muslims and Christians such a construction would lead to disparity between the position of Muslims and Christians on the one hand and Hindus on the other. That would be contrary to the very purpose for which the amendment was made.

15. In the result, we are of the view that there is no merit in the appeal and it must fail. Appeal dismissed.

16. However, looking to the facts and circumstances of the case there will be no order as to costs.

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