

State of Gujarat

Vs

Narges K. Panthaky

Civil Appeal No. 10181 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

02.11.1995

ORDER

1. Leave granted.

2. The proceedings were initiated under the Gujarat Agricultural Lands Ceiling Act, 1960 (for short "the Act") to determine the ceiling area and the surplus area. The respondent claimed that under an agreement dated 14-10-1969, thirty acres of land had been transferred in favour of the respondent's mother which was duly recognised by mutation proceedings dated 15-9-1971. The question is whether it is to defeat the provisions of the Act. Sub-section (1) of Section 8 of the Act reads thus :

"8. Transfer or partitions made after 15th day of January, 1959 but before commencement of this Act. - (1) Where after 15th day of January, 1959 but before the commencement of this Act or after 24th day of January, 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Where such transfer or partition was made after 15th day of January, 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day January, 1971 but before the specified date."

3. A reading thereof would clearly indicate that notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of the Act. The question is whether this agreement is a transfer. Shri R. R. Bhatt, learned Senior Counsel appearing for the respondent, has taken us through the agreement which had specifically stated that right, title and interest of the land was conferred for the first time in favour of the respondent under that document. Thereby, the right, title and interest held by the owner of the land is sought to be extinguished. In turn it is sought to be conferred in favour of the respondent for the first time under the document. By operation of Section 17 of the Registration Act, it is a compulsorily registerable document. Since it has not been registered, the owner has not been divested of the right, title and interest in the land and thus continued to be the owner of the under the Act.

4. The authorities and the High Court have not appropriately considered this question. The appeal is allowed accordingly and the matter is remitted to the ceiling authority to compute the ceiling area

keeping in view what has been held in this order. The authorities would take further action according to law. No costs.