

V.S.Govindasamy

Vs

Dir.of Land Reforms Madras

(CJI M. M. Punchhi, K. T. Thomas, M. Srinivasan JJ)

12.02.1998

JUDGMENT

SRINIVASAN J

1. Leave granted.

2. The only question before us is whether the lands gifted to Sumathi the unmarried daughter of deceased Govindasamy by his father Swami goundar could be included in the holding of Govindasamy's family for the purpose of calculating the ceiling area.

3. The relevant facts which are not in dispute are as follows:

4. The Tamil Nadu Land Reforms (Fixation of ceiling on land) Act, 1961 (hereinafter referred to as the "Act") received the assent of the President on 13th April 1962. It was amended by the Tamil Nadu Land Reforms (Reduction of ceiling of land) Act 17 of 1970. According to Section 3(11), the date of commencement of the Act means the 15th day of February 1970. Section 3(31) defines the 'notified date' as the date specified by the Government in a Notification which shall be a date after the publication of the Act. The relevant notified date in this case is 2.10.1970. Between 15.2.1970 and 2.10.1970 Swami goundar had executed deeds of settlement gifting an extent of 17.615 standard acres of his grand daughter Sumathi through his son Govindasami under three documents. When the Authorities under the Act initiated proceedings to calculate the ceiling area of Govindaswami's family, they included the land gifted to Sumathi by her grand father. An order was passed by the Assistant Commissioner (Land Reforms) holding that the family of Govindaswami consisting of himself, his wife and unmarried daughter had a surplus of 18.178 standard acres and directed Govindaswami to declare the same. On an appeal to the Land Tribunal, the order was confirmed in so far as it related to Sumathi's property. A revision petition was filed in the High Court of Madras which was later transferred to the Land Reforms Special Appellate Tribunal, Madras on the constitution thereof. The Tribunal dismissed the revision by order dated 14.8.95 holding that the question is concluded by a judgment of this Court in Civil Appeal No.4419 of 1989 dated 27.10.1993. It is that order which is challenged in this petition.

5. Section 5(1) of the Act provides that the ceiling in the case of every person and the ceiling area in the case of every family consisting of not more than five members shall be 15 standard acres. The word 'person' has been defined in Section 3(34) as to include any family among others. 'Family' is defined in Section 3(14). The relevant part of the Section is in the following terms:

(14) "family" in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her:-

(i) minor sons and unmarried daughters, and

(ii) minor grandsons and unmarried grand daughters in the male line, whose father and mother are dead. Explanation II:- for the purpose of this clause:

(a) in the case of person governed by Hindu law, "unmarried daughters", and "unmarried grand daughters" shall not include "unmarried daughters" or "unmarried grand daughters"-(i) in whose favour any land has been voluntarily transferred by either of whose parents or grand parents on account of natural love and affection; or

(ii) in whose favour a preliminary decree for partition has been passed before the notified date."

6. Section 22 of the Act empowers the Authorised Officer to declare a transfer or a partition effected on or after the date of the commencement of the Act but before the notified date to be void if he finds that the transfer or the partition as the case may be defeats any of the provisions of the Act. An exception to the Section is carved out in Section 21A which was inserted by the Amending Act 17 of 1970. Under Clause (b) of that Section where any parent or grand parent has voluntarily transferred any land on account of natural love and affection to any minor son, unmarried daughter, minor grandson or unmarried grand daughter in the male line after the 15th day of February 1970 but before the 2nd day of October 1970, such transfer shall be valid. Thus there can be no doubt that the transfer by Swami goundar in favour of his unmarried grand daughter in the male line namely Sumathi is valid.

7. On that premise, if we consider the provisions of Section 3(14) she shall not be included in the family of Govindaswami because of Clause a (i) of Explanation II. Learned counsel for the respondents contends that clause a (i) will apply only if there is a transfer by Govindasami in favour of his unmarried daughter when the ceiling area of Govindasami is being determined. According to him the transfer by Swami goundar in favour of his unmarried grand daughter Sumathi could exclude her from the family of Swamigonda if and when a question arises with regard to the ceiling area of Swami goundar. In other words, learned counsel wants us to read explanation II by adding the word 'respectively' after the word 'grand parents' in clause a(i). There is no merit whatever in this contention. Clause (a) of explanation II refer to unmarried daughters and unmarried grand daughters. They shall not be included in the family if in their favour any land has been voluntarily transferred by either their parents or grand parents on account of natural love and affection. The language of the clause is very plain and the purpose of such exclusion is also very clear. Obviously, the Legislature does not want to club the properties of a daughter which she has obtained absolutely by way of gift from her parents or grand parents with the other properties of the person whose ceiling area is determined. If such clubbing is permitted, the father of the unmarried daughter would conveniently declare the land exclusively gifted to her by her grand father as surplus area and thus deprive her of the property give to her by her grand father.

8. On a plain reading of Sections referred to above, we have no hesitation to reject the contention urged on behalf of the respondents.

9. Reliance is placed by the respondents on the judgment of this Court in Civil Appeal No.4419 of

1989-S.C.Sampath & Ors.Vs.The Authorised Officer, Land Reforms, Kaacheepuram dated October 27, 1993.We have read the judgment. It does not contain any discussion on the question. It has merely affirmed the view expressed by the High Court.

10.Our attention is drawn to a para in the judgment of the High Court in that case which has been extracted in the order of the Special Appellate Tribunal in the present case. A perusal of the same shows that ex facie it is inconsistent and the reasoning is in violation of the language of Explanation II to Section 3(14) of the Act.

11.Out attention has been drawn to a judgment of this Court in Susila Devi Ammal and others Vs.State of Madras 1993 Supp.1 S.C.C.462.That was a case of partition during the relevant period and the High Court had overlooked the provisions of Section 21A of the Act. This Court set aside the judgment of the High Court and remanded the matter to the Land Tribunal. That ruling has no relevance in the present case.

12.In the view we have expressed earlier on the clear language of Section 3(14), we have no difficulty in concluding that the lands gifted to Sumathi by her grand father Swami goundar cannot be included in the holding of Govindaswami's family. With respect to those lands she has to be treated as a 'person' separately holding the lands as full owner thereof. The judgment of the Special Tribunal and the orders of the Authorities below are unsustainable. They are hereby upset. The Assistant Commissioner (Land Reforms) is directed to re-determine the holdings of the family of Govindasami (deceased) after excluding the land gifted to his daughter Sumathi by her grand father Swami goundar. The appeal is accordingly allowed. There will be no order as to costs.