A. G. Varadarajulu

Vs

State of Tamil Nadu

(K. Venkataswami, M. Jagannadha Rao JJ)

23.03.1998

JUDGEMNT

M. JAGANNADHA RAO J

1. Leave granted.

2. This appeal is preferred by the two appellants namely A.G. Vardarajulu and Srimati V. Jayalakshmi who are respectively, husband and wife, against the order passed by the Tamilnadu Land Reforms Special Appellate Tribunal, Madras in TRP No. 82 of 1994 dated 25th April, 1995. The case arises under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 161 (hereinafter called the Act).

3. The 1st appellant is the declarant. The 1st appellant's plea is that land of an extent of acres 36.74 allotted in favour of his wife, the second appellant Smt. V. Jayalakshmi in a partition Deed dated 25.9.1970 executed between the Appellant's son. Balaguruswamy and his wife should be excluded from his (the 1st appellant) holding as being "Stridhana land" of his wife. Within the meaning of the said expression in Section 3(42) of the Act, to the extent permissible under section 5(4) of the Act.

4. The following are the facts:

> There was a partition deed between the first appellant and his son Balaguruswamy in the year 1959. Under the said document, each of them was allotted certain extent of the joint family property. On the basis that the wife of the first appellant was not allotted any property towards her right to maintenance against the joint family property, another partition deed dated 24.9.1970 was executed between the minor son, the said Balaguruswamy and his mother, i.e. wife of first appellant. Under this document towards the right to maintenance, the said Balaguruswamy allotted acres 36.74 in favour of his mother. At the time of execution of said partition deed dated 24.9.1970, the son Balaguruswamy, being a minor, was represented by his father, the first appellant, as guardian.

5. The land ceiling authorities started proceedings under the Act for computing the admissible ceiling area which could be allocated to the first appellant under the Act. While doing so, the Authorised Officer by his order dated 18.9.1985 held that even though the partition deed dated 24.9.1970 was a 'valid' document having been executed between 15.2.1970 and 2.10.1970 as permitted by Section 21A, still much as the second appellant was not in possession of this allotted the time of commencement of this Act on 15.2.1970 as required by section 3(42). The same could

not be treated as her 'stridhana'. It was consequently held that no part of it could be excluded from the 'holding' of the first appellant even to the extent permitted by section 5(4) of the Act. This was the decision of the Authorised Office made on 18.9.1985.

6. A preliminary statement to that effect was published in the Gazette in Form 7 on 18.9.1985. No objections were received from the appellants. A final statement was published in the gazette on 22.1.1986 under section 12 of the Act and thereafter a final notification was published in the Gazette on 12.2.1986 under section 18(1) of the Act.

7. Against the said final notification, a revision was preferred by both the appellants before the Land Commissioner at Madras. The revision was rejected on 25.9.1986 holding again that the above-said extent allotted to the second appellant in the partition Deed dated 24.9.1970 could not be treated as 'stridhana' in as much as it was not in her possession at the time of commencement of the Act i.e. 15.2.1970 as required by section 3(42) and that it was not sufficient that she had a pre-existing right of maintenance as on 15.2.1970. It was held that it was rightly included in the holding of the first appellant by the Authorised Officer.

8. Against the said order of the Land Commissioner dated 25.9.86, W.P. No. 11055/86 was filled in the Madras High Court which was transferred to the Tamil Nadu Land Reforms Special Appellate Tribunal, after its Constitution and numbered as TRP No.82/94. After the TRP was dismissed by the Special Tribunal by its judgment dated 25.4.95, the appellants have preferred this appeal against the said judgment.

9. We have heard learned Senior counsel for the appellants Sri S.Sivasubramaniam and the learned counsel for the respondents Sri M.A. Krishna Moorthy.

10. Learned senior counsel for the appellants submitted that the Tribunals had accepted that the Partition Deed dated 24.9.1970 executed between the second appellant and her son Balaguruswamy was a valid document, - as it was executed between 25.2.1970 and 2.10.1970 during which period such partitions were permitted by section 21A. It was argued that if the said partition deed was to be deemed to be valid under section 21A, then it must be held that because of the non-obstante clause in section 21A, the conditions laid down in section 3(42) for treating the land as stridhana land could not apply and therefore it was not, necessary that the land covered by the partition deed should be 'held' by the female as on 15.2.1970, the date of commencement of the Act.

11. Alternatively, it was argued for the appellants that the facts of the case fit into the definition of 'stridhana land' in section 3(42) inasmuch as the allotment of land to the second appellant on 24.9.1970 by her son was in satisfaction of her right to maintenance under Hindu law, which was in existence even on 15.2.1970, the date of commencement of the Act. It must, therefore, be held that she was holding this land even from 15.2.1970 even though such right to maintenance crystallised into the land on 24.9.1970.

12. On the other hand, learned counsel for the State contended that merely because the partition deed dated 24.9.1970 had been accepted as a valid document under section 21A, the land could not be excluded from the holding of the first appellant. The non-obstante clause in section 21A does not override section 3(42). The alternative submission of the appellants based on section 3(42) could not also be accepted because the mere existence of a right to maintenance against the joint family property as on 15.2.1970, the date of commencement of the Act, was not sufficient for the purpose of treating the said property as "held" by the 1st appellant's wife on that date and it must be

established that she was in possession of the land as owner and in her own name as on 15.2.1970. Reference was made to section 3(19) of the Act which defines the words 'to hold land'. It was argued that the allotment of the land on 24.9.1970, under the partition deed with her son, even if it be in recognition of the right of maintenance was not sufficient to satisfy the conditions laid down in Section 3(42).

13. We shall initially refer to the relevant provisions in sections 3(19), 3(42), 5(4)(a) and 21A as they stood after the amendment by Amending Act 17/70 (which came into force on 15.2.1970) and before the Amending Act 37/72 (which came into force on 1.3.1972).

> "Section 3(19): "to hold land" with its grammatical variations and cognate expressions means to own land as owner or to possess or enjoy land as possessory mortgagee or as tenant or as intermediary, or in one or more of those capacities."
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> "Section 3(42): 'stridhana land' means any land held on the date of commencement of this Act by any female member of a family in her own name."
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> "Section 5 (4)(a): Subject to the provisions of sub-section (5), where the stridhana land held by any female member of a family together with the other land held by all the members of that family, is in excess of 15 standard acres the female member concerned may hold, in addition to the extent of land which the family is entitled to hold under sub-section (1). Strindhana land not exceeding 10 standard acres:
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> Provided that where any extent of stridhana land held by a female member is included in the extent of land which the family is entitled to hold under sub-section (1) and in case where the extent so included is-
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> (i) 10 or more than 10 standard acres, she shall not be entitled to hold any stridhana land in addition to the extent so included; or
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> (ii) less than 10 standard acres, she may hold in addition to the extent so included an extent of stridhana, land, which together with the extent so included, shall not exceed 10 standard acres.
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> (b) where the extent of stridhana land held under clause (a) by any female member of a family consisting of more than five members....."
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> 21-A: Certain partitions and transfers to be valid - Notwithstanding anything contained in section 22 or in any other provision of this Act and in any other law for the time being in force, where, after the date of commencement of this Act but before the notified date.
>
> (a) any person has effected by means of a registered instrument a partition of his holding or part thereof; or
>
> (b) .....
>
> (c) .....
>
> such partition or transfer shall be valid:

....."

14. We shall now deal with the issues raised before us. Do, the words 'notwithstanding anything in any other provisions of this Act' occurring in Section 21A override Section 3(42)?

15. It is true that the Tribunals below had accepted that the partition deed dated 24.4.1990 was executed after 15.2.1970 and before 2.10.1970 and was therefore, a valid document. Section 21A says that that section shall have effect "notwithstanding anything, contained in Section 22 or in any other provision of this Act and in any other law for the time being in force". The contention of the appellants is that if the partition deed is valid in view of Section 21 A, then in view, of the above non-obstante clause, the respondents cannot insist that the land allotted to the second appellant under the dated on 24.9.1990 shall further conform to the conditions contained in the definition of 'stridhana land' in Section 3(42), namely, that she must be holding the land as on 15.2.70.

16. It is well settled that while dealing with a non-obstante clause under which the legislature wants to give overriding effect to a section, the Court must try, to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Vs. Arabinda Bose [AIR 1952 SC 369]. Patanjali Sastri, J. observed: "The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously". In Madhay Rao Scindia Vs. Union of India [1971 (1) SCC 85 (at 139)]. Hidayatullah, CJ observed that the non-obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining with provisions answers the description and which does not".

17. It will be noticed that Section 21A refers specifically to Section 22 of the Act but with regard to other provisions of the Act, it is silent. It says that certain partitions and transfers are to be valid notwithstanding any other provision of the Act, otherwise have been invalid. Now section 3(42) does not deal with invalidity of partition or transfers but deals with stridhana land. The subject matter of the enacting part of section 21A does not have any connection with subject matter of Section 3(42). Hence it is clear that the non-obstante clause in section 21A was not intended to override any thing in section 3(42).

18. Learned counsel for the appellants has placed reliance on the judgment of this Court in Sushila Devi Ammal & Others Vs. State of Madras [1993 Supp. (1) SCC 462]. That case no doubt dealt with section 21A and held that if the case fell within section 21A, then section 23 would not be applicable, relying up on the words in section 21A "in any other provision of this Act". We are here not concerned with section 23 and the above decision cannot, therefore, be of any help of the appellants. 'Stridhana land' under section 3(42) is not the same thing as known to Hindu law:

19. Appellants want to rely upon the right to maintenance inhering in a female under Hindu law for the purpose of construing the definition of 'stridhana land' in section 3(42) of the Act. Question arises whether while dealing with definitions under Land Ceiling laws - which are applicable to persons governed by different personal laws - it is permissible to construe the 'definitions' in the light of personal laws.

20. As shown below, unless the 'definitions' in land ceiling laws themselves refer to personal laws, it is not permissible to resort to the personal laws while interpreting 'definitions' in land ceiling laws. It may be that for purposes of computation of the ceiling area, the land ceiling law may itself refer to the personal laws or it may be necessary to refer to personal laws but that is different.

21. Under this very Act, Venkataramaiah,J. (as he then was) in M. Ramakrishnan Vs. State of Madras [1979 (4) SCC 209] stated that the definition of 'stridhana land' in section 3(42)' is not used in the Act in the sense in Hindu law. The Act is applicable to Hindus as well as others governed by 'personal laws'. In that case, it was argued that certain land which had devolved on the declarant's wife on 20.4.62 upon death of one Sivagami Achi on the basis of the latter's should be treated as 'stridhana land' of the declarant's wife. Under section 3(42) as it then stood, such land should have been held by the female as on 6.4.60, which was the then date of commencement of the principle Act, 1961. Such a contention was rejected by stating that though under the personal law - the Hindu law, applicable to the declarant's wife, the land would have normally been treated as 'stridhana', still the definition under the land ceiling law as to what was 'stridhana' was different. The definition required the land to be held by a female as on 6.4.60 in her own name and if she came to hold the land on a latter date, viz. 20.4.62, then it-could not be treated as 'stridhana land' for purposes of the Act.

22. Similarly in Vengdasalam Pillai Vs. Union Territory of Pondichery [l985 (2) SCC 91], this Court was dealing with the definition of 'family' in the Pondichery Land Reforms (Fixation of Ceiling on Land) Act, 1973, and a plea was raised that once the minor sons of the declarant partitioned their property with their father, they could not be treated as part of their father's family. Rejecting the said contention, it was observed that it was erroneous to assume that the definition of 'family' in the Act was used in the sense known to Hindu law. It was held that the 'provisions of the Act are applicable to holders of land ..... irrespective of religions, communities etc.' The lands might be held by Hindus, Christians, Muslims or by persons belonging to other religious faiths. All of them were equally governed by provisions of the Act. The concept of Joint family was totally foreign to the personal laws of these communities. It was, therefore, manifestly wrong to approach the interpretation of sections of the Act with the preconceived notion that in using the expression 'family', the Legislature had intended to connote an undivided family as known to Hindu Law and that after partition with minor sons had taken place in a Hindu joint family, there could not be a 'family' consisting of the father and his divided minor sons. The land ceiling law could define a 'family' as consisting of the father and minor sons and such minor sons could also be divided minor sons, though such a concept was not known to customary Hindu laws.

23. We are, therefore, of the view that it is not permissible for the appellants to introduce principles relating to maintenance of a wife or mother into the interpretation of the word 'stridhana land' in section 3(42) of the Act. Can it be said that the second appellant was 'holding' the land on 15.2.70?

24. Even assuming that the right to maintenance of a wife or mother as known to customary Hindu law could be used to construe the definition of 'stridhana land' in section 3(42), the question would be whether the second appellant could be deemed to be 'holding' this extent of land on 15.2.1970, the date of commencement of the Act in view of the allotment of the land on 24.9.1970 under the partition deed in recognition of such a pre-existing right of maintenance.

25. We have already referred to section 3(19) of the Act which defines the words 'to hold land'. Under that definition, a person is said to hold land if he owns land as owner or possesses or enjoys land as possessory mortgagee or as tenant or as intermediary or in one or more of those capacities.

In the context of section 3(42) defining 'stridhana land', a person can be said to hold the land if she owns as owner or possesses the same with elements of title.

26. The word 'hold' or held' in the context of land has come up for consideration in several cases before this Court. In State of U.P. Vs. Sarjoo Devi [l977 (4) SCC 2], while dealing with the said word in section 3 (14) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, A.S follows:

> "The word 'held', occurring in the above definition which is a past participle of the word 'hold is of wide import. In the Unabridged Edition of The Random House Dictionary of the English Language, the word 'hold' has been inter-alia stated to means' to have the ownership or use of; keep as one's own. In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance the word 'held' means to possess by 'legal title'. Relying upon this connotation, this Court in Bhudan Singh and Another Vs. Nabi Bux and Another [1969 SCC 481] interpreted the word 'held' in section 9 of U.P. Zamindar; abolition and Land Reforms Act, 1950 as meaning possession by legal title."

27. Again in State of Andhra Pradesh Vs. Mohd. Ashrafuddin [1982 (2) SCC 1], it was held as follows:

> "According to Oxford Dictionary 'held' means: to possess; to be the owner or holder of tenant of; keep possession of; occupy. Thus, 'held' connotes both ownership as well as possession, end in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession."

The word. 'holds' was again interpreted in Hari Ram and Others Vs. Babu Gokul Prasad [1991 Supp. (2) SCC 608], where it occurs in section 185(1) of the Madhya Pradesh Land Revenue Code, 1959. It was observed:

> "The word 'holds' is not a word of art. It has not been denied in the act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title."

28. We are, therefore, of the view that the word 'held' in section 3(42) is used in the sense that the female must be in possession of the land as owner or with some element of title on 15.2.1970, the date of commencement of the Act. Whether the mere existence of a right to maintenance as on 15.2.1970 is sufficient?

29. In our opinion, it is not sufficient that as on 15.2.1970, the second appellant had a right to maintenance under the customary Hindu Law against this property in satisfaction of which this extent of land was allotted to her on 24.9 1970. A right to claim maintenance against certain property of the Joint family cannot be equated with 'holding' the land as on 15.2.1970.

30. A point almost similar to the one before us arose under the Maharashtra Agricultural (Ceiling on Holdings) Act, 1961 (as amended in 1975) in Rambhau Vs. State of Maharashtra [1995 Supp. (3) SCC 74]. In that case, the tenure holder had two unmarried daughters on the relevant date and he contended that, while calculating the ceiling area of the family, the land ceiling authorities should have taken into account the liability of the family for the maintenance and marriage expenses of these daughters and their share in the land should have been nationally worked out and so much of

the area as would have been found sufficient for their maintenance should have been excluded while determining the ceiling area of the tenure holder. This Court rejected the said contention and in that connection reference was made to section 3(3) of the said Act which referred to the initial requirement of a person who is a member of a family to 'hold' a share in the family property which share could, for purpose of computation be nationally worked out, by applying the personal law. It was held that the minor unmarried daughters in a Hindu Joint family had basically no right to a share and therefore the question of nationally working out a share, as on the relevant date, did not arise. Sahai, J. observed (p. 76) as follows:

> "An unmarried daughter may be entitled for maintenance and marriage expenses, but she was not entitled to a share on partition either under the customary Hindu law or even under the Hindu Succession Act, 1956 or Hindu Adoptions and Maintenance Act, 1956. Therefore, a daughter being not entitled to share on partition, the notionally working out of her share under Section 3 (3)(i) stands legislatively excluded."

31. We are in respectful agreement with the above view and the above principle is equally applicable to the case before us. Like section 3(3)(i) of the Maharashtra Act, the provision in section 5(3) of the Madras Act, 1961 also provides for notional computation of the share of persons who basically hold a share in joint family property under Hindu law. But such a provision dealing with mode of computation is attracted only to persons who, at the date of commencement of the Madras Act (15.2.l970), 'hold' an undivided share in the property of the Hindu joined family. It must, therefore, be held that section 5(3) read with the Explanation permits notional computation only in respect of those who 'hold' an undivided interest in the joint family property at the date of commencement of the Act. As in the case of unmarried daughters, in the Maharasthra Case, the second appellant before us had no basic right to a share in the Joint family property inhering in her on 15.2.1970 and she cannot therefore be said to be 'holding' stridhana land' as on the date of commencement of the Act, i.e. 15.2.1970, within section 3(42) of the Act. Therefore the fact that she had, as on l5.2.1970, a right to maintenance against this property which later crystalised into the allotment of this property in her favour on 24.9.1970 is not sufficient. Neither under the customary Hindu law nor under the Hindu Marriage Act, 1955 nor under the Hindu Succession Act, 1956 nor under the Hindu Adoptions and Maintenance Act, 1956 is there any provision which gives a share to a wife in the joint family property held her husband nor to a mother in the joint family property allotted to her son in a partition.

32. Learned senior counsel for the appellants placed strong reliance on certain observations in the judgment of S. Murtaza Fazal Ali J. in V. Tulisamma & Others Vs. Sesha Reddy (Dead) by Lrs [1977 (3) SCC 99]. In that case the Court was concerned with section 14(1) and (2) of the Hindu Succession Act, 1956. If the land came to be 'possessed' by the female at the commencement of the Hindu Succession Act, 1956 in lieu of a pre-existing right of maintenance, the land would become her absolute property under section 14(1) of the Act. For the purpose of holding that a female in a joint Hindu family had a pre-existing right to maintenance under Hindu Law and that the case fell within section 14(1) and not under section 14(2), Fazal Ali, J. in a separate judgment described a Hindu wife as one half of the body of her husband and as one who could be treated as a 'co-owner' of the property in a subordinate sense. The context in which those observations were made was different. Further, we do not, however, find any such observations in the majority judgment of Bhagwati, J. (as he then was) with whom A.C. Gupta, J. agreed. We are of the view, as already stated that a wife or a mother in a Hindu joint family does not basically have a share in the joint family property and she has only a right to maintenance and the mere existence of such a right

against the joint family property as on 15.2.1970 could not, in law, be treated as being equivalent to 'holding' a share in the joint family property as on that date. The fact that the land was reduced to the possession of the second appellant on 24.9.1970, could not be equated with her possession on 15.2.1970.

33. For the aforesaid reasons, this appeal fails and is dismissed but in the circumstances, without costs.