

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the Twentythird day of February

One thousand Nine hundred and Seventy eight

PRESENT:—

The Hon'ble Mr. Justice NAINAR SUNDARAM

Civil Revision Petition No. 1068/75

1. A.R. Meenakshi Achi

2. Soundaram

Petitioners/
Appellants

Vs.

The Authorised Officer (Land Reforms)
holding his Office at Madurai-2.Respondent/
Respondent

Petition under Section 83, Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, Section 115 C.P.C. praying the High Court to revise the order of the Court of the Prl. Subordinate Judge of Madurai (Land Tribunal) dated 6th August 1974 and made in C.M.A. No. 28/73 (against the order of the Authorised Officer) (Land Reforms) Madurai and made in MEI/M49/MLR).

ORDER: This petition coming on for hearing on this day, upon perusing the petition, the order of the Lower Court and the records in the case and upon hearing the arguments of Mr. R. Thiagarajan, Advocate for the petitioner and the Additional Government Pleader, for the respondent, the Court made the following order:—

The land owner and the alienee in respect of proceedings under the Tamil Nadu Land Reforms Act, 58/61 herein referred to as the Act are the petitioners in this revision. There was an attempt to uphold a gift deed dated 2nd June 1972 in favour of the 2nd petitioner. It was ignored by the Authorised Officer, obviously under section 22 of the Act on the ground that it was intended to defeat the provisions of the Act. There was an appeal to the Land Tribunal in C.M.A. No. 428/73 and the Land Tribunal (Subordinate Judge), Madurai confirmed the orders of the Authorised Officer in this behalf. The present revision is directed against the orders of the Land Tribunal).

Sri R. Thiyagarajan, learned counsel for the petitioner submits that certain factors have been taken into account by the forums below which are not very germane to decide the question in issue in that the forums below have made adverse comments about the agreement the gift which was entered into 6th February 1970 to negative the plea of the landowner to uphold this gift which actually came to be executed and registered on 2nd June 1972. The learned counsel explains that there was a need to enter into such an agreement in view of certain disputes which were prevailing with reference to this property in connection with proceedings under the Act taken against the original owner (Vendor).

I have gone through the orders of the forums below and I find that apart from consideration of this aspect they have considered factors which shows that the gift did not pass title to the donee and there are factors to indicate that it was a sham and nominal transactions. No material has been placed before the Forums below that possession was delivered pursuant to the gift that enjoyment was given to the donee and she enjoyed the lands in question. Ex. P-4 series, kist receipts have been found by the forums below to have been fabricated in the sense that the name of the donee has been interpolated therein. Admittedly, there has been no mutation in the revenue registry. No other factor to prove that there was a passing of title under the gift deed in question has been placed before the forums below. It is true that only those transactions which are sham and nominal and which are not intended to pass title will have to be ignored as per the dictum laid down by the decisions of this Court. But, in the absence of proof that pursuant to the gift deed, a mutation was effected, possession was delivered and enjoyment was given to the donee, it is not possible to uphold the transaction as a bonafide transaction and not a sham and nominal one. In this respect, I do not find that the forums below have erred in any manner with reference to the principles to be applied to the question involved. Their conclusions are justified and I do not see any reason to interfere in revision. No other point is urged before me in this revision. Hence, this revision is dismissed, but, there will be no order as to costs.

(Sd.) G.R. GOPALAKRISHNAN
Assistant Registrar A.S.

(True copy)