IN THE HIGH COURT OF JUDICATURE AT MADRAS

Present: Mr. Justice T. Ramaprasada Rao

C.R.P. No. 2578/75, dated 23rd October 1977

R. Manki Bai Ammal .. Petitioner

Vs.

The State of Madras by Authorised Officer, Land Reforms, Thanjavur, having his office at West Main Street, Thanjavur .. Respondent

Madras Land Reforms (Fixation of Ceiling on Land Act (LVIII of 1961), Sections 3(14), Explanation (1) and 5(1) — Scope

It should be noted that the word 'family' appearing in Section 3(2) has to be read in juxta position and in conjunction with the word 'family' as defined in Section 3(14). Read as such, the inevitable conclusion is that, notwithstanding the fact that an individual member of such as artificial family under the enactment holds the lands in his own name of obtained the same in a manner known to law, yet such a holding of such a member individually held by him and obtained in any manner whatsoever, should be tackled on to the land-holdings of the other members of the artificial family and after such consolidation such lands should be deemed to be held by the family as such.

It is, therefore, rightly contended that the holding of the minor son in the instant case, though secured by him under a settlement deed executed by his mother, should not be treated as property held by him in individual capacity within the meaning of Section 3(2) but should be tackled on and reckoned along with the holdings which the other members of the family have and so calculated the mother's share of the lands also should be added to the minor son's share for the purpose of fixing the ceiling under the Act. This is not a case in which there is any semblance of co-ownership between the minor sons and his mother, which indicia, can only be the sine qua non for partition between even the members of the artificial family under the Act.

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Petition under Section 83 of Madras Act LVIII of 1961 praying the High Court to revise the order of the Subordinate Judge, Thanjavur, dated 12th February 1965 and made in Civil Miscellaneous Appeal No. 23 of 1965 (M.R. I. 45/M. Thanjavur on the file of the Authorised Officer, Land Ceiling, Thanjavur). T.P. Kuppuswami Ayyar and T.R. Venkataraman for petitioner. Additional Government Pleader (V. Ramasami, for respondent).

JUDGMENT: This civil revision petition raises an interesting question under the Madras Land Reforms (Fixation of Ceiling on Land Act LVIII of 1961).

The petitioner one Manki Bai Ammal was possessed of large extents of lands. By a settlement deed dated 29th August 1959, she settled her properties on her three major sons and one minor son, then represented by her, eldest son as guardian thereto. Pursuant to such a settlement of the properties by her and on her own violation, the petitioner did not include in her returns under Act, LVIII of 1961, the properties so settled by her in favour of her minor son, apparently under the belief that such a settlement constituted a partition within the meaning of section 3(14), Explanation (1). The Land Ceiling Officer, however, included such holding of the minor, so settled by her, in the return filed by her in her undivided capacity, and treated such lands of the minor as if the same were held by her in her individual capacity, as the person constituting the family of herself and her minor son. At the time of hearing of objections of the petitioner, she is reported to have filed a statement, dated 26th March 1965, wherein inter alia she pleaded that certain excludable under Section 73(vi) of Act LVIII of 1961, as according to her, they were coconut thopes. The Authorised Officer, enquired into the matter and rejected the contention of the petitioner that there was a partition between herself and her minor son, and observed, as regards the exemption, since the Special Tahsildar is stated to have reported that the lands did not come within the purview of Section 73(vii).

On appeal, the learned Subordinate Judge once again accepted the contention of the Government that there was no partition between the persons of the petitioner and her minor son within the meaning of Section 3(14) of Act LVIII of 1961. While

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dismissing the appeal, the learned subordinate Judge added that the petitioner did not put forward any contention that a portion of her holding has meaning of Section 73, clause (vii) of the Act. He was of the view that the contention was not raised by the petitioner before the Authorised Officer. As against this order of the learned Subordinate Judge of Thanjavur, the present civil revision is filed.

Mr. T.S. Kuppusami Ayyar, learned counsel for the petitioner contends that the property of the minor, secured by him under the deed of settlement, dated 29th August 1959, being individual or separate property of his should not be tacked on to the lands of his mother as they should be deemed to have been partitioned as the definition of 'family' in the Act is highly artificial, the gift made over by the mother in favour of herself explanation of the trial Court, that the petitioner would be entitled to the benefit if her contentions are well-founded under Section 73 (vii), has not at all been considered by the Lower/Appellate Court, and she had no opportunity to look into the alleged report of the Special Tahsildar and make her own submissions thereon. In this behalf, learned counsel would say there has been failure of the principles of natural justice. Learned Additional Government Pleader, however, invites my attention, in answer to the above contentions, to section 5 in Chapter II of Madras Act LVIII of 1961. This chapter which deals with the fixation of ceiling on land holdings, prescribes another artificial definition as to what is a holding of a family Section 5, clause (2) provides that, for purposes of that section, all the lands held individually shall be deemed to be held by the family. It should be noted that the word family appearing in this section has to be read in juxata position and in conjuction with the word 'family' as defined in Section 3(14) of the Act. Read as such, the inevitable conclusion is that, notwithstanding the fact that an individual member of such an artificial family under the enactment holds the lands in his own name, own or obtained the same in a manner known to law, yet such a holding of such a member individually held by him and obtained by him in any manner whatsoever, should be tacked on to the land holdings of the other members of the artificial family and after such consolidation such lands should be tacked on to the landholdings of the other members of the artificial family be deemed to be held by the family as such.

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It is, therefore, rightly contended by the learned Additional Government Pleader that the holdings of the minor son in the instant case, though secured by him under the settlement deed executed by his mother, should not be treated as property held by him in his individual capacity within the meaning of Section 5(2) for purposes of fixing the ceiling on the land holdings but should be tacked on and reckoned along with the holdings which the other members of the family, have and that calculated the mother's share of the lands also should be added to the minor son's share and that added the claim of the Government for surrender of a portion in excess of the prescribed limit is well in order. There is considerable force in this contention. The answer is found in Section 5(2) itself, and as I have already stated that is not a case in which there is any semblance of co-ownership between the minor son and his mother, which indicia, according to my view, can only be the sine qua non for partition, between members of even the artificial family under this Act. But the decision in that case, it was this view that expressed in Civil revision petition No. 2412 of 1965. But the decision that case turned on merits of different facts, and it is not applicable to the stated circumstances in this petition. I am, therefore, satisfied that the claim of the State, as is established in the court below, is well-founded, and the petitioner's case that the settlement deed effected by her on 29th August, 1959, should be quated to a partition within the meaning of Section 3(14) of the Act is not to be accepted.

There is however, considerable inequity done to the petitioner in that the appelant court failed to advert to an important fact which the petitioner urged before the Authorised Officer and of which there is record thereto. The Authorised Officer in fact negatived the concession claimed for by the petitioner under Section 73, clause (vii), on the ground that the report of the Special Tahsildar ought to prevail. It is the common case that the report of the Special Tahsildar as such was not made available to the petitioner. The appellate court, however, would not even refer to this fact, expressly found in the order of the Authorised Officer. But the appellate Judge would say that the contention is belated and cannot be allowed to be entertained at that stage. This is very unfortunate by reason of such non-advertance to facts

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already on record the petitioner has suffered and considerable prejudice has been caused. In order to give the petitioner reasonable opportunity to sustain her case as to the statutory concession, the only order that can be passed, in the result, is to set aside the order of the learned Subordinate Judge and to remit the matter to this Court for fresh appraisal of the facts already on record. The petitioner is at liberty to adduce such further documentary or oral evidence in support of her claim for concession under Section 73, clause (vii) of the Act. Even so, the respondents do have such a liberty.

The civil revision petition is, therefore allowed. But there will be no order as to costs.

Petition allowed.

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