

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Tuesday the Fourteenth day of February

One thousand nine hundred and Seventy eight

PRESENT:

Honourable Mr. Justice SURYAMURTHY

Civil Revision Petition No. 2651 of 1975

1. S.R. Ramasamy Naidu	..	Petitioners
2. S.R. Venkatasami Naidu	..	Petitioners

Vs.

The State of Tamil Nadu represented by the Authorised Officer (Land Reforms) Ramanathapuram at Madurai.	Respondent
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Petition under section 155 of Act V of 1908 praying the High Court to revise the order of the court of the Land Tribunal (Principal Subordinate Judge) Ramanathapuram at Madurai dated 5th September 1976 and made in Land Reforms Appeal No. 2 of 1975 (reference No. 8765 of 1974) Authorised Officer (Land Reforms) Ramanathapuram at Madurai.

ORDER: This petition coming on for hearing on Monday the 13th day of February 1978 and on this day upon perusing the petition the order of the Lower Courts and the record in the case and upon hearing the arguments of Mr. M.S. Umapathy of Messrs. Raj and Taj Advocates for the petitioner and of Mr. Gomathi for the Additional Government Pleader on behalf of the respondent, the Court made the following order.

This is a civil revision petition against the judgment of the land tribunal (Principal Subordinate HJudge) Ramanathapuram at Madurai in Land Reforms Appeal No. 2 of 1975.

This revision directed against a declaration by the Authorised Officer, that 14.10/std. acres are the surplus lands of Ramasamy Naidu, the first revision petitioner, ignoring release deed dated 29th September 1970 executed by him in favour of Kosalai and

Rajagopal, One of the contentions raised by the learned counsel for the revision petitioners is that by reason of Section 21 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (to be hereinafter called the Act) the release deed which is in effect a partition deed is a valid transaction and is not liable to be declared void by the Authorised Officer. There is no substance in this contention, because this release deed has been executed by the first revision petitioner Ramasamy Naidu in favour of the Children of his wife's brother Gopalasami Naidu. They were not members of coparcenary with him. They were not co-owners of coshares in this land. Partition means the surrender of a portion of a joint right in exchange for a similar right from the co-shares. It is the division made between several person, of joint lands which belong to them as co-proprietors so that each may become the sole owner of the part which is allotted to him. The assence of a partition (is that the property is transferred into estates in severaly and one of such estates assigned to each of the former occupants for his sole use and as his sole property. This is not the kind of partition entered into under what is styled as a release deed. Kosalai and Rajagopal had any right in the properties jointly with Ramasamy Naidu and Ramasamy Naidu released his right alone in the said properties. It is in substance a deed of gift in favour of Kosalai and Rajagopal, the property admittedly belonged exclusively to Ramasamy Naidu as his self-acquired properties. However, the Land Tribunal has proceeded on the assumption that these properties are covered by a will executed by Narayanasamy Naidu, the father-in-law of the first revision petitioner. It is now concerned by the learned counsel for the revision petitioners that the properties which are devised under the will are not the subject matter of the present proceedings. It would appear that the said will was executed in favour of Kothaiammal, the wife of the first revision petitioner, who is the daughter of Narayanasamy Naidu, and Kosalai Ammal and Rajagopal children of Gopalasamy Naidu son of Narayanasami Naidu and that the first revision petitioner was appointed as the executor of the will. It is stated that under this will, an extent of 41 acres and 72 cents of lands out of which 2 acres and odd alone are wet lands was bequeathed in the aforesaid manner. These lands are called wet lands emphemistically because they are said to be situated in the Srivilliputhur taluk area which is preverbially drought affected. The contention of the learned counsel for the revision petitioners is that out of the income from these properties, the executory had secreted

a lot of money and had purchased 131.53 acres i.e., 32.89 std. acres and when Kosalai and Rajagopal demanded a partition of these properties, he had sudden and acute contribution of the heart and executed the release deed. Whether or not this contention is preposterous need not be gone into now except for stating that the deed dated 29th September 1970 though styled a 'release partition', is neither a release nor a partition. It is neither flesh, nor fist nor even good ked herring. It is a transaction of a doubtful nature and from the manner in which it has been executed a penumbra of suspicion is whereon around its genuineness. In any event, the validity of the document need not be gone into in the absence of the donees. It is now contended by the learned counsel proceedings are not maintainable and are vitiated. That is a matter to be considered if the proceedings are challenged by the donees, to wit, Kosalai and Rajagopal. The revision petitioners have no locus standi to impugn the proceedings on the ground that somebody else has not been given notice. In these circumstances, I find that the order of the tribunal below is perfectly correct. The civil revision petition is consequently dismissed. There will be no order as to costs.

(Sd.) C.R. GOPALAKRISHNAN
Assistant Registrar

(True copy)