

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Monday the sixth day of July
One thousand nine hundred and eighty one

PRESENT:

The Honourable Mr. Justice: Ratham

Civil Revision Petition No. 2706 of 1979

S.S. Chockalingam Chettiar ... Petitioner (Respondent/Appellant)

Vs

The Authorised Officer ... Respondent
(Land Reforms), Madurai. (Petitioner/Respondent)

Petition under Section 83 of Tamil Nadu Land Reforms Act 1961 - Act LVIII of 1961 as amended praying the High Court to revise the order of the Court of the Principal Subordinate Judge, Madurai, dated 25th June 1979 and made in C.M.A. No. 10 of 79 (MRI/S 174/MLR Act 17/70 Authorised Officer (L.Ref. Madurai).

ORDER: This petition coming on for hearing on this day upon perusing the petition, the order of the Lower Court and the record in the case and upon hearing the arguments of A. Ramanathan Advocate for the petitioner and of Mr. Jermian for Additional Government Pleader, on behalf of the Respondent the Court made the following order:--

In the course of the proceedings under the Tamil Nadu Land Reforms Act, 17 of 1970, (herein after referred to as the Act) a draft statement under section 10(1) of the Act with reference to the lands held by the petitioner on 15th February 1970 was published in the Tamil Nadu Government Gazettee, dated 9th June 1976. A copy of that statement was also served on the petitioner on 23rd July 1976 on receipt of which the petitioner preferred objections on 17th August 1976. The mother of the petitioner also preferred her objections on 5th October 1976. Though before the Authorised Officer and the Land Tribunal, several objections had been raised by the petitioner, only two such objections survive now. The first objection that is raised is that an extent of 10.36 ordinary acres gifted by the petitioner to his mother on 10th January 1970 under Ex.A.2 should be deleted from the holdings of

the petitioner. In order to appreciate this, certain other facts may now be adverted to. The father of the petitioner was one Sinnan Chettiar who had two wives and the petitioner is a son through the second wife of Sinnan Chettiar. One Krishnasami Chettiar is the son of Sinnan Chettiar through his first wife. On 10th January 1970, there was a partition of the family properties between Krishnaswami Chettiar and his son and the petitioner. At the time of entering into the partition deed, the petitioner was a minor and he was represented by his mother Muthayee Achi as guardian. A and B schedule properties were allotted to Krishnaswami Chettiar and his son and the C Schedule properties were allotted to the petitioner herein, while the D Schedule properties were kept in common. In the D schedule properties, Krishnaswami Chettiar and his son were entitled to a half and the petitioner is entitled to the other half share. In the said partition, no property was allotted to the mother of the petitioner. It was only under Ex.A.2 dated, 10th January 1970 that certain properties were gifted by the petitioner in favour of his mother and these properties have been included in the holdings of the petitioner by the authorities below.

The question for consideration is whether the petitioner is well founded in his objection that the properties settled by him in favour of his mother under Ex.A.2 should be excluded from the holdings of the petitioner. The document Ex.A.2 had been written on 10th January 1970 long prior to 15th February 1970, the notified date. The document has been registered on 11th April 1970 and therefore, the document will relate back and be effective as and from 10th January, 1970. The authorities below had taken into account certain suspicious features found in the document to hold that the settlement deed Ex.A.2. should have been brought into existence by the petitioner subsequent to the notified date in order to evade the rigour of the applicability of the provisions of the Act. A perusal of Ex.A.2 shows that the stamp papers stand in the names of Kaveri Ammal, Veerappan, Pachiyappan, Katha Pillai, Murugan, Guruswami, Rajammannickam and Alagappa Chettiar and these stamp papers have been secured from Salem, Madurai, Tirupattur and other places. The petitioner has not been in a position to explain as to how the stamp papers in the names of different persons had been made use of for the purpose of executing Ex.A.2. It is not even whispered that

there was any difficulty about the securing of the required stamps in the place of the petitioner on the particular date in question. At any rate, the stamp papers could have been purchased in the name of the petitioner's mother or even in the name of the petitioner. The use of stamp papers of the year 1969 purchased in the names of other persons indicated that all is not well with the document Ex.A.2. In the ordinary course if Ex.A.2 has been executed, the petitioner would have purchased the stamp papers at a particular place either in his name or in the name of his mother and there would not have been any necessity to secure the stamp papers from different stamp vendors in different places in the state. Under these circumstances, the authorities below were perfectly justified in holding that no weight can be attached to Ex.A.2 and that it cannot be considered to be a bonafide transaction. No circumstances to contradict this conclusion of the authorities below has been placed before this court. Consequently, it must be held that Ex.A.2 is highly suspicious and the circumstances leading to its execution have not been satisfactorily established. The conclusion, therefore, is irresistible that Ex.A.2 has been brought into existence by the petitioner in order to claim the properties comprised therein as properties not forming the subject matter of his holdings. On the materials, the authorities below are perfectly justified in holding that Ex.A.2 cannot be recognised for purposes of the Act.

However, the learned counsel for the petitioner urges that the mother of the petitioner was entitled to a share in the family properties and that Ex.A.2 merely gives effect to it is that a certain extent of property had been settled on her by the petitioner. In this connection, the learned counsel for the petitioner also relied upon the judgment of the Supreme Court in Gurupad Khandappa Magdu, V. Hirabai Khandappa Magdu and others (AIR. 1978 SC 1239) Though the petitioner would state in the course of his objections that a deed of gift had been executed by him on 15th February 1970 and the extent of property comprised therein cannot form part of his holdings, the mother of the petitioner who filed an objection statement dated 5th October, 1976 does not lay any claim to the properties on the basis of Ex.A.2. A perusal of the objections filed by the mother of the

petitioners on 5th October, 1976 indicates that she has claimed possessory right over the properties since 1970 and not title to the same as a result of the document of gift Ex.A.2 dated 10th January, 1970. It is thus evident that even according to the mother of the petitioner, she does not claim any interest in the properties under the terms of the document. Since the petitioner has disclaimed title to the properties settled in favour of his mother under Ex.A.2, only by reason of the execution of Ex.A.2 and the mother of the petitioner does not claim any interest by virtue of that document and adjudication with reference to the truth and validity of Ex.A.2. would be sufficient for the present purposes and it would be unnecessary to embark upon the question whether apart from Ex.A.2., the mother of the petitioner was entitled to claim any interest in any property as a member of the family of the petitioner. Under these circumstances, the conclusion of the authorities below that Ex.A.2. cannot be accepted is unexceptionable.

The next contention of the learned counsel for the petitioner is that an extent of 21 cents should have been exempted as a tope. on the evidence, it has been found by the authorities below concurrently that only an extent of two cents out of 21 cents is coconut tope and not the rest. That conclusion is one of fact which is amply supported by the evidence on record and under these circumstances, it is not open to the petitioner to claim exemption with reference to the entire extent of 21 cents. Consequently, the conclusion of the Tribunal is upheld and the civil revision petition is dismissed. No cost.

The present adjudication is only for purposes of giving effect to the provisions of the Tamil Nadu Land Reforms act in relation to the petitioner and if the mother of the petitioner has independent rights against the petitioner, it would undoubtedly be open to her to work out such rights as she may have in appropriately constituted proceedings.

Sd/- K. V. Ramachandran,
Assistant Registrar.

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