

T.R. KALLAPIRAN PILLAI

v

The Authorised Officer (Land Reforms) Tirunelveli

Ramanujam J.

30th November, 1978/C.R.P.No. 2795 of 1976 Petition under S. 115 of Act V. of 1908 praying the High Court to revise the order of the Court of the Land Tribunal (Principal Subordinate Judge) Tirunelveli, dated 20th July, 1976 and made in C.M.A.L.T. No. 35/1973 (the Authorised Officer (land Reforms) Tirunelveli dated, 7th September, 1973 and made in M1.13/K.NGR.

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (58 of 1961, as amended by Act 17 of 1970) S.3(14) Explanation (2) 9 and 21 (A) and (b) and Deed, construction 'Family' definition of - settlement of properties in favour of wife and unmarried daughter out of natural love and affection - document styled as 'Partition', held, does not have the effect of taking the transferees outside the definition of 'family' - Voluntary transfers - Effect of Scope of S. 21(a) and (B).

In proceedings initiated under S.9(2)(b) of the Tamil Nadu Act, 58 of 1961, as amended by Act 17 of 1970, the petitioner's holding was proposed to be determined as on 15th February, 1970, dated of commencement of the Act. The petitioner wanted that his wife and two minor unmarried daughters should not be taken to be the members of his family, as certain lands have been transferred to them by him voluntarily on account of natural love and affection under a document, dated 26th September, 1970, and as such they have and as such they have to be excluded from the family under Explanation (2) to S.3(14) which defines the family. The Authorised Officer rejected the said objection of the petitioner, and took the view that notwithstanding the voluntary transfer said to have been made by the petitioner under the document dated 26th September, 1970 the transferees have to be taken as members of the family and the holding of the family should be determined only on that basis, as the document, dated 26th September, 1970 styled as a partition deed will of all only under clause (a) of S.21 (A) of the Act and not under clause (b) of S.2 (B) and that divided unmarried daughters

and wife cannot be excluded from the family under Explanation 1 to S.3(14) of the Act and treated the wife and two minor unmarried daughters in whose favour the said documents have been executed as members of the family and clubbed the extent transferred to them under the document along with other extents held by the petitioner and determined the extent of the land held by the family as 38.35 standard acres (Para 1.)

Held: that the document should be taken to be voluntary transfer by the petitioner of some of his land to his wife and two minor unmarried daughters, notwithstanding the nomenclature given to the document as a partition deed. It is well established that the nomenclature given to a document, is not determinative of the nature of the transaction covered by the document. Its nature has to be gathered from the contents of the document. The operative portion of the document does not say that all the properties of the family had been partitioned. It merely records a transfer of certain properties by the petitioner to his wife and minor daughters out of love and affection. A transfer on account of love and affection can never be treated as a transfer in recognition of a right to claim for partition (Para 4).

In any event, the petitioner's wife who is one of the transferees under the document in question cannot claim to have been excluded from the definition of family. Her inclusion in the family cannot, therefore, be questioned. S.21(A) specifically protects the voluntary transfers of land by a parent or grand parent in favour of unmarried daughters or unmarried grand daughters on account of love and affection, if such transactions take place between the date of commencement of the Act and the notified date. Therefore, the minor daughters of the petitioner to whom voluntary transfer has been made under the document will get the benefit of Explanation (2) to S.3(4) as also S.21(A). (para 6)

C.R.P. partly allowed

Mr. R.G. Rajan for the petitioner.

Mr. A. Sivaji for the Additional Government Pleader on behalf of the Respondent.

ORDER

In proceedings initiated under S.9(2)(b) of the Tamil Nadu Act 58 of 1961, as amended by Act 17 of 1970 (hereinafter referred to as the Act) the petitioner's holding was proposed to be determined as on 15th February, 1970 date of commencement of the Act. At that stage, the petitioner wanted that his wife and two minor unmarried daughters should not be taken to be the members of his family, as certain lands have been transferred to them by him voluntarily on account of natural love and affection under a document, dated 26th September 1970, and as such they have to be excluded from the family under explanation (2) to S.3(14), which defines the family. The Authorised Officer rejected the said objection of the petitioner and after making a local enquiry, determined the holding of the petitioner's family as 48.06 std. acres as on 15th February, 1970, as regards the objection taken by the petitioner that the lands transferred in favour of his wife, Neenumbikai Ammal and unmarried daughters Chellamal and Gomathi Ammal should be excluded from the holding of the family, it took the view that notwithstanding the voluntary transfer said to have been made by the petitioner under the document dated 26th September, 1970, the transferees have to be taken as members of the family and the holding of the family should be determined only on that basis, as the document, dated 26th September, 1970 styled as a partition deed will fall only under clause (a) of S.21(A) of the Act and not under clause s.21(B) and that divided unmarried daughters and wife cannot be excluded from the family under Explanation I to S.3(14) of the Act. It that view, the Authorised Officer held that the wife and minor daughters in whose favour the properties have been given under the document dated 26th September, 1970 cannot be excluded from the definition of the family. Thus, the Authorised Officer treated the wife and two minor unmarried daughters in whose favour the said documents have been executed as members of the family and clubbed the extent transferred to them under the document along with other extents held by the petitioner and determined the extent of the lands held by the family as 38.55 std. acres. Aggrieved against the decision of the Authorised Officer refusing to exclude the lands given to his wife and two minor daughters from the holding of the family, the petitioner filed an appeal before the Land Tribunal.

2. The Land Tribunal also took the view that the document, dated 26th September, 1970 can only be treated as a partition deed and if not so treated, it will fall under clause (a) of S.21(a), and on that basis, there is no scope for exclusion of wife and children from S.3(14) of the Act, which defines the family. In this view, it upheld the decision of the Authorised Officer.

3. In this revision learned counsel for the petitioner contends that the view taken by the Authorised Officer as well as the Tribunal that the document can only be treated as a partition deed, cannot be sustained in law. It is the submission of the learned counsel that the nomenclature given to a document, cannot be material and decisive and that only the substance of the transaction which is evidenced by the document, should be taken as the deciding and conclusive factor. It is urged by the learned counsel that though the document is styled as a partition deed, it cannot in law amount to partition. Firstly, the petitioner is the only sole surviving co-parcener and there is no joint family as such, which necessitated a division of the properties between the members of the family. Secondly, in any event all the properties owned by the petitioner were not taken for division under the document and that the petitioner has chosen to give some items of the properties possessed by him to the three persons referred to in the document. Even as regards the properties given to the three persons mentioned therein, there is no equal allotment, which will by the case in the document is a partition. The document has, therefore, to be treated only as a voluntary transfer by the petitioner under which some properties had been given to the wife and daughters and not as partition deed.

4. On a due consideration of the matter, I am of the view that the document should be taken to be a voluntary transfer by the petitioner of some of his land to his wife and two minor unmarried daughters, notwithstanding the nomenclature given to the document as a partition deed. It is well established that the nomenclature given to a document is not determinative of the nature of the transaction covered by the document. Its nature has to be gathered from the contents of the document. It may be in very many cases the parties may, without proper appreciation of the nature of the transaction give a name to the transactions, which may not be

consistent with the true nature of the transaction. In this case, the petitioner who is the sole surviving co-parcener, cannot be said to have offered a partition with his wife and minor daughters who are admittedly not entitled to claim any partition in the lands held by the petitioner as such sole-co-parcener. Apart from this, all the properties of the petitioner have not come up for division, which would be the case if actual partition is sought to be effected of the properties in the hands of the petitioner. The operative portion of the document does not say that all the properties of the family has been partitioned. It merely records a transfer of certain properties by the petitioner to his wife and minor daughters out of love and affection. A transfer on account of love and affection can never be treated as a transfer in recognition of a right to claim for partition, therefore, under any circumstances, I am not inclined to treat the document, dated 26th September, 1970 as a partition between the petitioner on the one hand and his wife and minor daughters on the other. I am also not inclined to agree with the authorities below that since the document is termed as partition deed, it cannot be treated as a voluntary transfer. In fact, the document is nothing but a voluntary transfer of the petitioner's property in favour of his wife and minor daughters on account of love and affection.

5. Then, the next question is whether as a result of this voluntary transfer, the transferees under the document will go out of the family as defined in S.3(14) of the Act. S.3(14) defines family as the person, the wife or husband as the case may be, of such person and his or her minor sons and unmarried daughters and minor grandsons and unmarried grand daughters in the male line whose father or mother is dead. Explanation (1) however, excludes from the family in the case of persons governed by Hindu Law, minor sons and minor grand sons between whom and the other members of the family, there has been a registered partition in respect of those family properties, a preliminary decree for partition has been passed before the notified date. Explanation (2) to the said section says that in the case of persons governed by Hindu Law, unmarried daughters and unmarried grand daughters in whose favour, any land has been voluntarily transferred by either of whose parents or grand parents on account of natural love and affection, cannot come within the definition of the family.

6. The authorities below take the view that the document in question being a partition deed and a division in respect of unmarried daughters not being contemplated either by Explanation (1) and Explanation (2) to S.3(14) the transferees cannot be taken to be outside the definition of the family. However, now that the document has been taken to be a voluntary transfer by the petitioner in favour of his wife and unmarried daughters the question is whether by virtue of Explanation (2) they can be considered to be outside the definition of family. Explanation (2) talks of unmarried daughters and unmarried grand daughters. Therefore, it will not apply to a case of wife in whose favour the land has been voluntarily transferred by the petitioner. In any event the petitioner's wife who is one of the transferees under the document in question cannot claim to have been excluded in the family cannot, therefore, be questioned. The position of unmarried daughters to whom the document will be different. They will have to be taken to be covered by the Explanation (2) for, the explanation specifically says that unmarried daughters to whose favour their parents, have to be taken outside the purview of the definition. If unmarried daughters are excluded from the definition of family in view of the petitioner's voluntary transfer in their favour, in view of Explanation (2) to S.3(14) the lands transferred to them after the commencement of the Act and before the notified date, cannot be clubbed while determining the extent of the lands held by the family. A perusal of S.21(1) will make it clear. Any voluntary transfer made by the father in favour of minor daughters will come within its scope. S.21(A) specifically protects the voluntary transfers of lands by a parent or a grand-parent in favour of unmarried daughters or unmarried grand daughters on account of love and affection, if such transactions take place between the date of commencement of the Act and the notified date. Therefore, the minor daughters of the petitioner to whom voluntary transfer has been made under the document will get the benefit of Explanation (2) to S.3(14) as also S.21(A). The wife will not get the benefit of either of these sections. In this view, the order of the Tribunal in so far as it permits the clubbing of the extents conveyed to the minor daughters by the petitioner under the document with the petitioner's holding will be set aside.

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