

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Thursday, the fourteenth day of December,
One thousand nine hundred and seventy eight.

PRESENT:

The Honourable Mr. Justice: Ramanujam

Civil Revision Petition No. 2848 of 1976.

V.M.S. Mylammal

.. Petitioner (Appellant)

Vs

Authorised Officer
(Land Reforms), Coimbatore.

.. Respondent (Respondent)

Petition under section 83 of the Tamil Nadu Land Reforms Act, 1961 praying the High Court to revise the order of the Court of the Land Tribunal (Principal Subordinate Judge) dated 24th August, 1976 and made in L.T.A.No. 176 of 1976 against the order of the Authorised Officer (Land Reforms), Coimbatore in Ref.No. 20M/MRI/B1, dated 15th May, 1976.

Judgment: This petition coming on for hearing on Thursday, the 30th day of November, 1978 and this day, the Court delivered the following judgment:-

In a draft statement prepared under Section 10(1) of Tamil Nadu Act 58 of 1961 as amended by Act 37 of 1972, the petitioner was taken to hold 22.750 Standard acres as surplus. After receipt of objection from the petitioner, the draft statement was finalised and the petitioner's excess holding was determined at 21.717 Standard acres, the petitioner challenged the final statement under section 10(5) before the Land Tribunal contending that the lands sold by her to her brother, one Sadasivam in pursuance of an agreement of sale entered into prior to the commencement of the Act has wrongly been included in her holding and that the lands which had been surrendered by her husband's grandsons and which had been subsequently sold by them to third parties had been wrongly included in her holdings before the Tribunal, the petitioner also raised a plea that the properties in which she had life estate should not have been treated as her holding in calculating the ceiling area. All these contentions were considered but rejected by the Tribunal. Aggrieved against the order of the Tribunal the petitioner has come up before this court.

The learned counsel for the petitioner reiterated the same contentions as were urged before the Tribunal. Firstly, he contends that the lands sold by the petitioner to one Sadasivam in pursuance of an agreement of sale entered into before the commencement of the Act should be excluded from her holding. In support of this contention, it is pointed out that even on the date of agreement of sale possession having been handed over to the said alienee there has been a part performance of the contract of sale, though the actual sale was executed after the commencement of Act, that in view of Section 53A of the Transfer of property Act the purchaser has acquired an interest in the property sold even before the date of commencement of the Act and that therefore on 15th February, 1970 such lands have ceased to be the lands of the petitioner. I am not inclined to accept this contention based on the theory of past performance. Though the petitioner has alleged that possession was handed over at that time of agreement of sale to the purchaser, no evidence has been adduced by the petitioner before the Authorised Officer or before the Tribunal to prove the same, and the petitioner relied only on the evidence of the karnam and the entries made by him in the adangals. Both the authorised officer and the Tribunal have not accepted the evidence of the karnam and have chosen to hold that possession was not in fact handed over to the purchaser of the date of agreement of sale. On this finding of the authorities below, no question of application of the theory of part performance arises.

Further, even assuming that the petitioner has handed over possession of the properties to the purchaser on the date of agreement of sale, that is long before the execution of the sale deed, I cannot hold that under the theory of part performance the purchaser can acquire title to the properties. Section 53A of the Transfer of Property Act enables the purchaser who has taken possession of certain properties on the basis of agreement of sale to sustain his possession as against the vendor. That section does not create a title in favour of the purchaser merely by virtue of part-performance. Therefore I am unable to accept the theory of part-performance, and the petitioner cannot say that she has been divested of her title before the commencement of the Act in respect of the lands sold in favour of Sadasivam.

The Second contention is that the lands surrendered by the petitioner in favour of certain revisioners which have been sold by those reversioners to third parties should not be included in her holding. Admittedly the petitioner was in possession of those lands said to have been surrendered, on the date of the commencement of the Act. The surrender is said to be oral. In the absence of any document, the petitioner cannot be taken to have divested of her rights in the properties surrendered before the relevant date. No transfer of immovable property whose value exceeds Rs. 100/- can be made without a registered instrument. In this case the lands said to have been surrendered are an extent of 39 acres of dry land. Therefore, unless there is a registered document, the petitioner cannot be taken to have lost her title in such lands before the commencement of the Act. Therefore the authorities below were right in rejecting this contention. It is true the petitioner has come forward with a plea that the surrender was made in pursuance of a family settlement. If the family settlement is evidenced by a document a surrender can be effected on the basis of such family settlement. The authorities below have not accepted this plea of family settlement in the absence of any document to prove the same.

The third contention of the petitioner is that the lands held by her as life-estate holder cannot be included in her holding, treating the same as her absolute ownership. Whatever might have been the position in the Act as originally enacted, after the introduction of explanation to Section 3(26) defining "limited owner" it is quite clear that a person who has a right to enjoy the land during his or her life time shall be deemed to be a limited owner notwithstanding that he has no power to alienate the land. Admittedly, the petitioner has a right to enjoy the land during her life-time even though she has no power to alienate the land. By virtue of explanation she will squarely come under the definition of "limited owner" and having regard to the fact that the definition of "owner" in Section 3(33) included "limited owner" the petitioner should be taken to be the owner of the lands in respect of which she has a life-interest. Therefore, the lands held by the petitioner as "limited owner" would come within the ceiling limit. This contention also cannot be accepted.

The learned counsel then raised a further contention which has been urged before the Tribunal but non considered by it, is that as all through the petitioner has been contending that her holding is within the ceiling limit, she had no opportunity to exercise the option to specify the lands for retention out of her holding and those to be taken over as surplus lands, and that under the statute the petitioner is entitled to be given such option. It is not in dispute that the petitioner has not so far exercised such an option. In this case, in the course of the proceedings under section 10 of the Authorised Officer has chosen to specify certain lands as surplus in exercise of his powers under Section 10(4) Section 10(3) provides that if an option is not exercised by the person holding excess land the authorised officer can specify the lands which are to be taken as surplus. Since the petitioner had been contending all-through that her holding is within the ceiling limit, she has not exercised the option to specify the lands for retention within the ceiling limit. In a statement given by her on 15th February, 1972 before the Revenue Inspector she has specifically stated that her holding is within the ceiling limit and until that question is decided, she is not in a position to exercised the option. Though the petitioner has not exercised the option. either before or at the stage of the proceedings unde section 10, that is due to the fact that she has been challenging the finding of the authorities with regard to the ceiling limit. Therefore, the petitioner bonafide thought that the question of option would arise only when the excess land is declared finally. Though the petitioner could have exercised her option without prejudice to her contention, she has not done so. In my view, the default in not exercising the option appears to be bonafide, Now that the proceedings having not gone beyond Section 10(5) of the Act, no prejudice would be caused to the respondents, if an opportunity which, under the statute the petitioner is entitled to, is given to exercise the option for specifying the lands for her retention within the ceiling limit. Therefore, the final statement under Section 10(5) is set aside and the authorised Officer is directed to give an option to the petitioner to specify the lands for retention within the ceiling limit and then proceed to finalised the statement under section 10(5) The Civil Revision petition is allowed to the limit extent indicated above no costs.

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Sd/ K. V. Ramachandran,
Assistant Registrar.