

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Friday, the Thirtieth day of March
One Thousand Nine Hundred and Seventy Nine

PRESENT:

The Honourable Mr. Justice ISMAIL

Civil Revision Petition No. 3224 of 1978

Arulrajan .. Petitioner (Appellant)

Vs.The Authorised Officer (L.R.), .. Respondent
Tirunelveli.

Petition under Section 82 of Tamil Nadu Land Reforms Act 58 of 1961 praying the High Court to revise the order of the Land Tribunal (Principal Subordinate Judge), Tirunelveli, dated 31st August 1978 and made in C.M.A. No.5 of 1977 (K. MRI/65 A NGR Authorised Officer (Land Reforms), Tirunelveli.

JUDGMENT:

This petition coming on for hearing on this day the Court delivered the following judgment:-

Though the Land Tribunal as well as the Authorised Officer had written long orders they have not come to grips with the point in controversy which itself was a very narrow one. The question which the Authorised Officer and the Land Tribunal had to consider was whether the partition deed dated 4th March 1974 under which the petitioner claimed to have got 52.33 ordinary acres equivalent to 16.589 standard acres would be hit by Section 20 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 or not.

Section 20 of the Act talks of a person acquiring land in excess of the ceiling area in contravention of provisions of Section 7 of the Act as a result of any transfer of land whether by sale, gift (other than gift made in contemplation of death) exchange, surrender, agreement, settlement or otherwise effected on or after the notified date.

There is no controversy that real partition in a Hindu undivided family or among the co-owners will not be covered by Section 20, because partition in such cases does not affect any

transfer of property. In the present case, the partition is stated to have been effected on 4th March 1974 that is subsequent to the notified date. Hence if it was really a partition as known to law under which joint right of different persons in a particular property is converted into separate rights of those parties in respect of different items of properties, Section 20(1) will not be attracted. However in this case neither the order of the Authorised Officer nor that of the Land Tribunal makes it clear that they have arrived at the conclusion that the transaction dated 4th March 1974 was not a real partition at all though they have held that the said transaction is hit by Section 20 of the Act. There is a stray sentence in the order of the Authorised Officer to the effect that the petitioner had no title to the properties involved in the document dated 4th March 1974 by virtue of his birth. Similarly in the order of the Land Tribunal there is a statement that if under the guise of a partition, transfer had been effected there was nothing wrong in taking it to have been included in Section 20 of the Act. Notwithstanding this stray sentence there is no specific finding that the document dated 4th March 1974 did not constitute a partition and what the petitioner got under the document was not in recognition of his pre-existing right in the joint properties or that the petitioner had no prior title or interest whatever in the properties in question and therefore the transaction was not really a partition but only a transfer styled as partition. This crucial point has not been considered and a finding rendered one way or the other by either of the authorities. Under these circumstances, I have no alternative but to allow the civil revision petition and set aside the order of the Land Tribunal as well as the Authorised Officer and remit the matter back to the Authorised Officer for fresh disposal. The Civil Revision Petition is accordingly allowed. There will be no order as to cost.

(Sd.) K.V. RAMACHANDRAN,
Assistant Registrar (A.S.)

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