

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday the Eighteenth day of April
One Thousand Nine Hundred and Seventy Nine

PRESENT:

The Honourable Mr. Justice NAINAR SUNDARAM

Civil Revision Petition No. 605 of 1977

Antony Viagulam Fernando,
through his power of Attorney
Augustine.

Petitioner
(Appellant-land holder)

Vs.

The Authorised Officer
(Land Reforms) Kovilpatti,
Tirunelveli District.

Respondent
(Respondent-Government)

Petition under section 82 of Land Reforms Act, 1961 LVIII of 1961, praying that the High Court to revise the order of the Court of the Land Tribunal (Subordinate Judge) Tuticorin dated 21st September 1976 and made in C.M.A. (Land Tribunal) No. 2 of 1976 (MRI/64/R/SKL, dated 26th March 1976 of the Authorised Officer, Land Reforms Kovilpatti.

ORDER: This petition coming on for hearing on Friday the 20th day of October, 1978 and Thursday, the 8th and Friday the 9th day of March 1979 and having stood over for consideration till this day. The Court delivered the following judgment.

Antony Viagulam Fernando — the landowner within the meaning of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, LVIII of 1961, herein after referred to as the Act, is the petitioner in this revision. The landowner held an extent of 25.49 ordinary acres. He had a son by name Selvakumar, who held an extent of 43.09 ordinary acres. The landowner has a wife by name Calin Costa. The landowner also has an un-married daughter by name Marina. Out of the total extent of 25.49 ordinary acres the landowner executed a deed of settlement on 30th September 1970, giving his un-married daughter Marina an extent of 7.53 ordinary acres. On the same day, the mother of the landowner and the grandmother of Marina settled on Marina an extent of 7.00 ordinary acres. The son Selvakumar died on 16th November 1967. He is said to have left a will dated 30th May 1967

under which the lands held by him of an extent of 43.09 ordinary acres have been bequeathed in equal moieties of the mother Celin Costa and to one Francis Baldane, said to be a close associate of Selvakumar. Proceedings under the Act have been taken by the Authorised Officer (Land Reforms), Kovilpatti in respect of the above holdings. All the lands, viz. 25.49 ordinary acres which stood in the name of the landowner, including 7.53 ordinary acres gifted away to his daughter Marina, 43.09 ordinary acres which stood in the name of Selvakumar, the revenue registry in respect of which is transferred in the name of the mother Ceilin Costa subsequently; and 7 ordinary acres gifted to Marina by her grandmother have been pooled for the purpose of the Act and the Authorised Officer passed orders under section 9(2)(b) of the Act. The Authorised Officer declined to give effect to the Will and did not take note of the settlement in favour of the daughter, Marina.

Aggrieved by the order of the Authorised Officer, the landowner preferred an appeal C.M.A. (Land Tribunal) No. 2 of 1976 which was heard and disposed by the Land Tribunal (Subordinate Judge) Tuticorin and the Land Tribunal except with regard to the settlement in favour of the daughter Marina, found no justification for interference and dismissed the appeal. In respect of the lands covered by the settlements in favour of the daughter Marina, the Land Tribunal directed that the matter could be agitated in the course of enquiry under section 10(5) of the Act. The present revision is directed against the judgment and decree of the Land Tribunal.

Mr. K. Parasaran, learned counsel appearing for the petitioner impeaches the judgment of the Land Tribunal on four grounds. It must be noted that the submission of the learned counsel are only on the very same four grounds on which the Land Tribunal would not countenance the claim of the landowner. The first ground on which the Land Tribunal declined to countenance the will dated 30th May 1967 said to have been executed by the son Selvakumar is that the said will come within the mischief of Section 213(1) of the Indian Succession Act, XXXIX of 1925, Section 213(1) reads as follows:-

"No right as executor or legates can be established in any court of justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the will annexed".

The will is stated to have been executed by the deceased Selva-Kumar in Ceylon. There is no dispute that with regard to the Will in question, on Court of competent jurisdiction in India has granted probate of the same or granted letter of administration with the will or with a copy of an authenticated will annexed, within the meaning of Section 213(1) of the Indian Succession Act. The submission of Mr. K. Parasaran on this question is, the Authorised Officer functioning under the Act is, neither a Court nor a 'Court of Justice', so that it would be stated, that the satisfaction of Section 213(1) of the Indian Succession Act is mandatory for the purpose of establishing the rights under the Will. According to the learned counsel, the Authorised Officer functions for a specified purpose adumbrated in the Act and he cannot be equated to a court or a court of Justice, so as to say that before the Will could be pressed into service to show the devaluation of the rights, in the properties covered by the Will, it ought to have been probated within the meaning of Section 213(1) of the Indian Succession Act. This submission of the learned counsel is not without substance. Mr. K. Venkatasami, learned Additional Government Pleader, appearing for the respondent, does not dispute the proposition that if the Authorised Officer is not a 'Court' or a 'Court of Justice' (within the meaning of Section 213(1) of the Indian Succession Act, the satisfaction of the requirements under that Section cannot be insisted upon before the devolution of the rights in the properties as set out in the Will could be countenanced. The bar to the establishment of the rights under Section 213(1) of the Indian Succession Act is only for its establishment in a 'Court of Justice' and not its being referred to and relied on in other proceedings before administrative or other tribunals. Hence, the question that comes up for consideration is as to whether the Authorised Officer functioning under the Act is a 'Court' or 'Court of Justice' within the meaning of section 213(1) of the Indian Succession Act. Halsbury's Laws of England, Fourth Edition, Volume 10, paragraph 701 deals with the meaning of 'Court' as follows:—

'701 Meaning of 'Court', originally the term 'Court' meant among other things, the sovereign's palace. It has acquired the meaning of the palace where justice is administered and has further come to mean the persons who exercise judicial functions under authority derived either directly or indirectly from the sovereign.

All tribunals, however, are not courts, in the sense in which the term is here employed. Courts are tribunals which exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction. Thus, arbitrators, committees of clubs and the like although they may be tribunals exercising judicial functions are not 'courts in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term even though the Chief part of its duties is not judicial. Parliament is a court. Its duties are mainly deliberative and legislative; the judicial duties are only part of its functions. A coroner's court is a true court although its essential function is investigation".

Again, at paragraph 702, as to what is a court in law is set out in the following terms:—

'702 what is a court in law. The question is whether the tribunal is a court, not whether it is a court of justice, for there are courts which are not court of justice. In determining 'whether a tribunal is a judicial body the facts that it has been appointed by a non judicial authority that it has been no power to administer an oath, that the Chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute setting it up prescribes a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing, subject to a power to exclude the public in a proper cases and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings'.

A Tribunal is not necessarily a court in strict sense of exercising judicial power merely because (1) it gives a final decision (2) it hears witnesses on oath; (3) two or more contending parties appear before it between whom it has to decide; (4) it gives decisions which effect the rights of subject; (5) there is an appeal to a court and (6) it is a body to which a matter is referred by another body.

In R.M. Seshadri V. Second Additional I.T. Officer, AIR 1.54 Mad. 506 ILR 1954 Mad. 1236 a Division Bench of this Court consisting of Satyanarayana Rao and Raja Gopalan, J. had occasion to consider the question as to whether the Income tax appellate