

N. RAMANATHAN IYER - Vs. - THE AUTHORISED OFFICER
(THANJAVUR) RAMANUJAM, J.

C.R.P. No. 785 of 1966

Petition under Section 83 of Act 58 of 1961 praying the High Court to revise the order of the Sub-Court, Thanjavur in C.M.A. 74 of 1965 - M.R.I. 90/R/K.B.K., dated 19th June 1965, Authorised Officer, Thanjavur.

Madras Land Reforms (Fixation of Ceiling on Land) Act, 58 of 1961, Section 3(14) and 10 - 'family' definition of - cannot be equated to Hindu Joint Family - Oral partition between father and minor son - over-riding of personal law by the definition in the Act - Hindu Law - effect.

"3(14) of the Land Ceiling Act defines a family in relation to a person as meaning himself, his spouse and minor sons and unmarried daughters and minor grand-sons and unmarried grand-daughters in the male line whose parents are died, and "the family" as defined in this Act cannot be equated to a Hindu joint family. Though the mother is normally a member of a Hindu Joint Family she cannot be brought in within the special definition of the family as she is not one of these enumerated in the definition.

The contention that a divided minor son on the basis of a partition, though oral, cannot be treated as a member of the family runs counter to the definition of the family in S-3(14).

Though under the present law a minor son who gets himself divided from the family by the an oral partition cannot be treated as a member of the family, the family as defined in S.3(14) will be taken in such a divided member S.4 is intended to override the personal law of the parties and S.3(14) is intended to cover not only Hindus but all persons governed by any personal law.

It is true, there is no provision in the Act prohibiting a divided minor son acquiring or disposing of the property, before the date of the commencement of the Act. But the statute does not purport to invalidate those transanctions. It only

provide that notwithstanding the alleged oral partition the minor son will be treated as a member of the family for the purpose of fixing the ceiling area of the family of the minor's father and nothing more. It is not possible for the court to accept the contention that S.3(14) of the Act is intended to cover only cases where the members continue as joint family. The explanation to the definition before the date of the commencement of the Act and it ~~excludes~~ only minor sons or minor grand-sons who have gone out of the family by means of a registered instrument of partition or a preliminary decree for partition and not otherwise.

Held:- The petitioners cannot seek the exclusion of his minor son under the explanation from his family on the basis of an oral partition, though oral partition is recognised under his personal law.

M.R. Ramamoorthy Iyer for Petitioner.

The Assistant Government Pleader for Respondent.

O R D E R

The petitioner's family consisted of himself, his wife, mother a minor son and two minor daughters. Proceedings were initiated by The Authorised Officer under Section 10 of the Madras (F.C.L.) Act, 1961 and inspite of the various notices issued by the Authorised Officer, the petitioner did not appear but filed a written statement by post on 19th June 1965. In that written statement he stated that his family has become divided through a Karaiolai dated 27th September 1959 and as such there was no surplus lands in his hands, and that in any case his family consisted of six members including his mother and as such it is entitled to hold 35 standard acres, as against its present holding of 31.76 standard acres. The Authorised Officer did not accept the Karaiolai dated 27th September 1959 as it was not registered. He also refused to reckon the petitioner's mother as a member of the family in view of S.3(14) of the Act which constitutes the person, the wife, or husband, as the case may be, of such person, and his or her sons and unmarried daughters as a family. The said view of the Authorised Officer has also been accepted by the Land Tribunal, on appeal. The correctness of the decision of the authorities below is questioned herein.

The learned counsel for the petitioner contends that the Koraiolai dated 27th September 1959 though unregistered has been acted upon and that therefore, it has to be accepted by the Authorised Officer and the minor son excluded from the petitioner's family for purposes of fixing the ceiling area. It is pointed out that there has been a separate assessment on the minor son under the Agricultural Income Tax Act and that separate pattas had been issued by the Revenue authorities on the basis of the said unregistered 'karaiolai' and that the explanation to the artificial definition of 'family' in S.3(14) cannot take away the petitioner's minor son's right to be treated as divided member of the family. It is contended that notwithstanding the said explanation in S.3(14) an oral partition which has taken place among the members of the family has to be taken into account and that the mother who is normally treated as a member of the family under the Hindu Law who is entitled to be maintained from the assets of the family cannot be excluded from the family. According to the learned counsel a minor son is entitled to demand a partition under the personal law of the parties and once a partition has, in fact, taken place the minor son can no longer be treated as a member of the family and the petitioner's mother being a member of the family entitled to be maintained out of its assets has to be included within the definition of 'family'.

It is seen that if the petitioner succeeds in either of the contentions, that is, either excluding the minor son from the family or by including the mother in the family, there will be no surplus lands in his land. S.3(14) defines a family in relation to a person as meaning himself, his spouse and minor sons and unmarried daughters and minor grandsons and unmarried grand-daughters in the male line whose parents are dead and "the family" as defined in this Act cannot be equated to a Hindu Joint Family. Though the mother is normally a member of a Hindu Joint Family she cannot be brought in within the special definition of the family as she is not one of those enumerated in the definition. Under the explanation minor sons and minor grand-sons who had gone out of the family by means of a registered instrument of partition, or a preliminary decree for partition before the date of the commencement of the Act are alone excluded. Admittedly in this case there has been no registered instrument of partition.

Hence, the explanation will not apply to the fact of this case. As per the definition of the family, the minor sons of the petitioner has to be treated as being included in the petitioner's family. The learned counsel's contention that a divided minor son on the basis of a partition, though oral, cannot be treated as a member of the family runs counter to the definition of the family in S.3(14). S.4 provides that the provisions of the Madras Act 58 of 1961 shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force, or any custom, usage or contract, or decree or order of Court or other authority. Though under the present law a minor son who gets himself divided from the family by an oral partition cannot be treated as a member of the family, the family as defined in S.3(14) will take in such a divided member. S.4 is intended to override the personal law of the parties and S.3(14) is intended to cover not only Hindus but all persons governed by any personal law. The learned counsel for the petitioner, however, states that if the oral partition which is permitted under the personal law of the parties is ignored for the purpose of this Act and if a registered partition is insisted considerable anomalies and hardships will result. He gives an illustration of a minor son who got himself divided from the father by an oral partition selling certain properties even before the commencement of the Act and states that the status makes no provisions for challenging such an alienation. He also gives an illustration of minor divided son after an oral partition acquiring properties in his own name even before the commencement of the Act. It is contended that it will be a hardship on the minor if his acquisitions or alienations before the date of commencement of the Act are to be ignored. It is, true, there is no provision prohibiting a divided minor son acquiring or disposing of the property, before the date of commencement of the Act. But the statute does not purport to invalidate these transactions. It only provides that notwithstanding the alleged oral partition the minor son will be treated as a member of the family for the purpose of fixing the ceiling area of the family of the minor's father and nothing more. It is not possible for this Court to accept the contention of the learned counsel that S.3(14) of the Act is

intended to cover only cases where the members continue as joint family. The explanation to the definition of family in S.3(14) contemplates to situation before the date of the commencement of the Act and it excludes only minor sons or minor grand-sons who have gone out of the family by means of a registered instrument of partition, or a preliminary decree for partition and not otherwise. The petitioner cannot seek the exclusion of his minor son under the explanation from his family on the basis of an oral partition, though oral partition is recognised under his personal law. If the explanation does not apply the petitioner minor son will naturally become a member of the family under S.3(14). I, therefore, agree with the views expressed by the Tribunal.

In the result, the civil revision petition fails and is, therefore, dismissed but in the circumstances without costs.