

Valliammal Vs. the Authorized Officer, Land Reforms, Coimbatore

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Court : Chennai

Decided On : Nov-02-1972

Reported in : AIR1973Mad321; (1973)1MLJ377

Judge : V. Ramaswami, J.

Acts : Tamil Nadu Land Reforms Act, 1961 - Sections 83; Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 - Sections 5, 3(42), 8, 21 and 22

Appeal No. : C.M.P. No. 11356 of 1972 in C.R.P. 916 of 1971

Appellant : Valliammal

Respondent : The Authorized Officer, Land Reforms, Coimbatore

Judgement :

ORDER

1. This is a petition to review the judgment, dated 6-1-1972, of Ganesan, J., in C. R. P. 916 of 1971, which was filed under Section 83 of the Tamil Nadu Land Reforms Act, 1961.

2. The petitioner, Velliammal is the wife of one Palanisami Gounder. The husband of the petitioner filed a Return in form II, as required under S. 8 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. (hereinafter referred to as the Act) in which he had shown that he was in possession of an extent of 44-061 standard acres, after excluding the exempted lands. He had also shown that his

wife, Valliammal, had inherited 11-075 standard acres on the death of her son on 25-3-1962. The husband of the petitioner claimed in that return that as per the Act, he was entitled to retain 30 standard acres as holding of the family and that his wife Valliammal, the petitioner herein, was entitled to hold 10 standard acres as Stridhana property. After issuing notices to the petitioner and her husband, the authorized officer. Land Reforms, Coimbatore, by his order dt. 3-12-1969 held that since the petitioner and her husband form a Hindu joint family, the family as a unit, was entitled to hold only 30 standard acres, and that the petitioner herein was not entitled to retain any land as stridhana property. Both the petitioner and her husband preferred appeals to the Land Tribunal, Coimbatore. The tribunal held that since the Act defined 'stridhana lands' as meaning any land held on the date of commencement of the Act, by any female member of the family in her own name and since the petitioner herein inherited the land on the death of her son only on 25-3-1962 i.e. subsequent to the commencement of the Act, she was not entitled to retain any land as stridhana property. It may be mentioned that the Act came into force on 6-4-1960. The petitioner filed thereafter C. R. P. No. 916 of 1971 to this Court. By an order dated 6-1-1972, Ganesan. J. dismissed the revision petition on the ground that in view of the definition of Stridhana land in Section 3(42) of the Act, the petitioner was not entitled to hold 10 standard acres as stridhana property, in addition to the 30 standard acres allowed to the family consisting of herself and her husband. It is to review this order that the above petition has been filed.

3. A preliminary objection is taken by the learned counsel for the respondent that since the very point in issue was considered by the learned Judge, no review petition would lie merely on the ground that the view expressed by the learned Judge is erroneous in law. But the learned counsel for the petitioner submitted that the order of the learned Judge is liable to be reviewed on account of the error of law apparent on the face of the record, under Order 47, Rule 1, Civil P.C Rule 1 of Order 47 provides that any person considering himself aggrieved by a decree or order may apply for a review of the judgment 'on account of some mistake or error apparent on the face of the record'. The mistake or error within this provision is not confined to mistake or error of facts. Even of a mistake or error of law, if apparent on the face of the record, the order is liable to be reviewed. This

was also the view expressed by a Division Bench of this court in *Marari Rao v. Balavant Dikshit* ILR 46 Mad 955 AIR 1924 Mad 98. In that case the suit was dismissed on the ground that as between the plaintiffs, who were the various agnates, and the defendants, who were the sister's sons of the last male owners, the latter were the preferential heirs under the Mitakshara Law prevailing in Madras State, contrary to the decision in *Kamala Bai v. Bhagirathi Bai* ILR 38 Mad 45 AIR 1916 Mad 925. A review petition was held to be maintainable on the ground of an error of law apparent on the face of the record.

4. I am satisfied, in this case that the view expressed by the learned Judge in the decision in C.R.P No. 916 of 1971, is contrary to the provisions of the Act, and, therefore, a review is called for I, therefore, overrule the preliminary objection on the maintainability of this view petition.

5. Under Section 5 of the Act, the ceiling area in the case of every family consisting of more than five members shall be 30 standard acres, subject to the provisions of sub-sections(4) and (5) of that section. 'Family' in relation to a person, is defined in Section 4(14) as meaning the person his wife or husband, as the case may be, of such person and his or her minor sons and unmarried daughters and minor grandsons are unmarried grand-daughters in the male line, whose father and mother are dead. Clause 2 of Section 5 provides that for the purpose of finalizing the ceiling, all the lands held individually by the members of the family or jointly by some or all of the members of such family, shall be deemed to be held by family. But, these provisions are subject to sub-sections(4) and (5) of Section 5. The scheme of Section 5 is that the ceiling in respect of a family shall be 30 standard acres. But, if certain conditions are satisfied, the family can hold lands upto the extent of 60 standard acres. An extent of 5 additional standard acres over and above the 30 standard acres is allowed for every member of the family in excess of 5. The female member is also allowed to hold 10 standard acres. Sub-section(4) provides that if in the extent of 30 standard acres held by the family, any Stridhana lands of the female members is included then to that extent the stridhana lands of 10 standard acres allowed to a female member under the Section shall have to be reduced. If all the ten standard acres are included within the ceiling area of 30 standard acres, then the female member is not entitled to

hold any stridhana land in addition to the ten standard acres which has formed within the ceiling area of 30 standard acres. This, in short, is the ceiling area fixed for under Section 5 with reference to the date of commencement of the Act, viz., 6-4-1960. Section 7 provides that on and from the date of commencement of the Act, no person shall be entitled to hold in excess of the ceiling area. Explanation (b)(ii) to sub-clause(3) of Section 5, Section 21 and 22 deal with inheritance and acquisition of lands by any person of the family subsequent to the commencement of the Act. Under explanation (b)(ii) to sub-section(3) of Sec. 5 if an acquisition was after the commencement of the Act and before the date of preparation of the draft statement under sub-section(1) to Section 10 those lands also will have to be included and taken into account before the publication of the final statement under Section 12 is made. If the acquisition or inheritance was subsequent to the publication of the final statement Section 21 of the Act requires the submission of a fresh return in form 16 or 17 of the Act, as the case may be. The Act is not intended to fix the ceiling with reference to the lands held by any person at the time of commencement of the Act alone, but it also prohibits any person holding any land in excess of the ceiling area on and after the commencement of the Act. The Act is also neither intended nor in terms, abrogates or prohibits the inheritance by females subsequent to the commencement of the Act. The only consequence provided under the Act is that if the lands inherited subsequent to the commencement of the Act together with the land already in possession, exceed the ceiling area, a duty is cast on the person to submit a return to the authorized officer in form 16 or 17, as the case may be. As already stated, 'family' is defined in relation to a person as including the person, the wife or husband of that person and his or her minor sons and unmarried daughters. Thus, if the person holding the property is a female member, she is obliged to file the return. Section 21 does not make any distinction between inheritance by a male or female.

6. The learned Judge, who heard the civil revision petition, mainly relied on the definition of 'stridhana property' for holding that no woman is entitled to hold any stridhana property if the same was acquired or inherited subsequent to the commencement of the Act. Of course, Section 3(42) defines stridhana land as meaning any land held on the date of commencement of the Act by any female

member of a family in her own name. But the meaning is to be adopted 'unless the context otherwise requires'. It has been repeatedly held that the word in the section will have to be interpreted and understood in the context in which it is used in the Section and the definition given for that word in the definition section of the Act could not always govern the interpretation without reference to the context. In the context of Sections 5,7 and 21 and with reference to the scope and object of the Act, I am of opinion that the properties inherited by females as stridhana property subsequent to the commencement of the Act are also entitled to the benefit of sub-section(4) of Section 5 of the Act.

7. It follows, therefore, that the petitioner is entitled to return 10 standard acres as her stridhana property, in addition to the 30 standard acres, allowable to the family to which she was also a member. The review petition is, therefore, allowed and the judgment and decree of the Land Tribunal, Coimbatore, and the authorized officer, Coimbatore, are set aside and the authorized officer, Land Reforms, Coimbatore, is directed to refix the ceiling as provided in this order. There will be no order as to costs.

8. Petition allowed.

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