(1984) 01 BOM CK 0041

In the Bombay High Court

Case No : Spl. Civil Application No. 747 of 1979

Amrit Ganpat Shinde — APPELLANT

Vs

Maroti Amritrao Shinde — RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1984) MhLj 195

Hon'ble Judges : G.A. Paunikar, J

Bench : Single Bench

Advocate : C.P. Kalele, for the Appellant; M.N. Ingle and A.P. Ingle, for the Respondent

Final Decision : Allowed

Judgement

G.A. Paunikar, J.—The petitioner challenged in this petition the order dated 13-9-1978 passed by Maharashtra Revenue Tribunal, Nagpur in Revision Application No. Ten-A-390 of 1976 arising out of order dated 20-8-1976 passed by the Sub-Divisional Officer, Achalpur in Revenue Case No. 3/59(24) of 1973-74 of Mouza Narsari.

2. The petitioner purchased field S. No. 2 area 7 acres 20 gunthas and S. No. 38 area 5 acres 19 gunthas of village Narsari in Rev. Case No. 1042/59 (13) of 1964-65 of Narsari vide sale certificate issued to him. He has one son and 2 daughters. Out of the two married daughters one is provided for and another daughter Geeta wife of Bhaurao is not well provided and has been living with him and is doing agricultural labour. He is old and to provide source of maintenance to her, he wants to gift the said two fields to her. He, therefore, filed an application for permission to gift the said two fields to her as required by section 57 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 to the Sub-Divisional Officer, Achalpur. The Sub Divisional Officer issued proclamation inviting objections. His son Muroti filed objection to the effect that (1) that she is not a member of the family of the applicant and (2) she is staying

with her husband who is a Government servant in Forest Department and she is not dependent on her father and prayed for refusal of permission. The Sub-Divisional Officer held that she cannot be held to be a member of the tenure-holder''s family as required under rule 31 A (g)(ii) framed u/s 57 of the Bombay Tenancy Act and hence, rejected the application vide order dated 20-8-1976. The petitioner preferred an appeal against this order before the Maharashtra Revenue Tribunal and the M.R.T. vide its order dated 13-9-1978 also dismissed the appeal holding the same view that she cannot be treated a member of the family of the applicant. These orders of S.D.O. and M.R.T. are challenged in this writ petition.

3. The learned counsel for the petitioner Shri Kalele urged that the word ''family'' includes all those who are connected by blood relation and would cover married daughters and hence permission sought for by the petitioner could not have been refused by the revenue authorities below. The learned counsel for the respondent Shri Ingle supported the view of the revenue authorities below. The facts in this case are not disputed by the parties at this stage.

4. Section 57 of the Bombay Tenancy and Agricultural Lands (V.R.) Act, 1958 reads as below :

(1) No land purchased by a tenant u/s 41 or 46 (or 49A or 57D or 130) or sold to any person u/s 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.

Rule 31A of the Bombay Tenancy and Agricultural Lands (V.R.) Rules, 1959 reads as below:

31A: The circumstances in which and the conditions subject to which sanction shall be given by the Collector u/s 57 for transfer-(1) u/s 57, the Collector may give sanction for transfer of land in any of the following circumstances, namely:-

(a) x x x x

(b) x x x x

(c) x x x x

(d) x x x x

(e) x x x x

(f) X X X X

(g) that the land is being gifted in favour of-

(i) x x x x

(ii) a member of the tenure-holder''s family.

5. The only crucial point for consideration is, therefore, whether the married

daughter of tenure-holder can be a member of the tenure-holder''s family. It can only be decided on finding the intention of the Legislature in using the word ''family'' and the meaning and scope of the word ''family'' in Rule 31A (g)(ii) above.

6. The Bombay Tenancy and Agricultural Lands (V.R.) Act does not define ''family''. However, the Act has defined "Joint Family" u/s 2 (16). ''Joint Family'' means an undivided Hindu family and in the case of other persons a group or unit, the members, of which by custom or usages are joint in the estate or residence. Chamber'' s Twentieth Century Dictionary gives the meaning of the word ''family'' as the household, or all those who live in one house as (parents, children, servants); parents and, their children, the children alone; the descendants of one common progenitor; honorable or noble descent. The New Webster''s Dictionary of the English Language gives the meaning of ''family'' as unit consisting of parents and their children; the children as distinguished from parents; persons related by blood or marriage; those who are descendants of common progenitor; a clan, noble or distinguished lineage; as, a man of family; the group of persons who live in one household and under one head; a group of people or things with a common or related characteristic, function or origin. The daughter who is married and has gone out of the family is even if residing at other place in her husband''s family still she has now an interest in the property of the father. The question, therefore, arises whether the married daughter who has gone out of the family cannot be considered to be of the family of her father or remaining members. Therefore, the real question is what is meant by the word ''family'' as used in rule 31A (g)(ii) ? Does it mean persons who live under the same roof or has a wider meaning, namely, all those who are connected by blood relation or by marriage with each other ? Can restricted meaning be given to the word ''family'' inasmuch as married daughters are not normally in the family, or at least not residing therein. It is no doubt true that there are observations at page 700 of Mulla''s Hindu Law, para 546, 12th Edition to the effect that a daughter on marriage ceases to be a member of her father''s family and becomes a member of her husband''s family; henceforth she is entitled to be maintained by her husband and after his death out of his estate. It is, however, to be observed that the interpretation to be put OD the ambit of the word ''family'' or its concept cannot be determined with reference to a personal law in a given case. The word is used in a general sense in Rule 31A (g)(ii). In trying to gather the concept in which it is used, it cannot receive a limited meaning given to that word in Hindu Law for the purpose of construction. The restricted interpretation to the word ''family'' can be given in the context in which the word is used in rule 31A(g) (ii).

7. In Syed Shah Maidal Islam and Others Vs. Commissioner of Wakfs and Others, , it has been observed that the word ''family'' is one of great flexibility and is capable of many different meanings according to the connection in which it is used. Even when it is used in a statute it may indeed be of narrow or broad meaning as the intention of the Legislature using it may be made to appear, In

its ordinary sense the term signifies the collective body of persons, living in one house, or under one head or Manager or one domestic Government; it may include all members of the household living under the authority of the bead thereof, as also the servants employed in the house; various other meanings of the term can also be conceived; the term is often used to include those descended or claiming descent from a common ancestor.

8. Thus, it cannot be said that merely because in this case the parties are Hindus, the word ''family'' should receive a restricted interpretation. The word ''family'' used in Rule 31A (g)(ii) seems to be used in broad sense in view of changing advance legislation and would mean all those who are connected by blood relationship and marriage and, therefore, to be considered as belonging to the family. This Court while construing the word ''family'' in section 106 of the Transfer of Property Act in Ramubai v. Jiyaram 1963 Mh. LJ 883=AIR 1964 Bom. 100, para 17, observed as below:

It is not also possible to accept the contention that even in the case of Hindu families girls who are married and go to the husband''s families are not of the family of their father or cease to belong to the family of the father. Whatever may be the concept at one time, under the existing law, even married daughters take substantial interest in the family and the family property. Thus, the prevailing concept as to "family", far from being restricted, has been considerably expanded by creating interest in the family and substantial interest for many persons who had no such interest in the property, such as widows of predeceased heirs, or even married or unmarried daughters or widowed daughters. Thus the whole concept has been enlarged by legislation and it would be putting too narrow a construction on the concept of the word "family" in Hindu law if married daughters are considered to be outside the family. I am inclined to accept the literal interpretation and hold that even married daughters may be said to be of the family.

I am fully in agreement with these observations and hold that the narrow construction put on the concept of the word ''family'' used in Rule 31A(g)(ii) by both the revenue authorities below is not correct. I accept the literal interpretation and hold that even married daughters may be said to be of the family within the meaning and scope of the word ''family'' used in the said rule.

9. In the result, in the view I have taken, the impugned order dated 30-8-1976 passed by the Sub-Divisional Officer, Achalpur and order dated 13-9-1978 passed by the Maharashtra Revenue Tribunal, Nagpur are liable to be quashed and are hereby quashed and set aside. The Sub-Divisional Officer is directed to issue necessary sanction to the petitioner for effecting transfer of the said fields in favour of his daughter Smt. Geeta.

10. The petition is thus allowed. Rule absolute. No costs.

