

(1988) 08 OHC CK 0046
In the Orissa High Court
Case No : O.J.C. No. 543 of 1981

Anusuya Rath and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-08-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa Land Reforms Act, 1960 — Section 37

Citation : AIR 1989 Ori 1 : (1988) 66 CLT 774

Hon'ble Judges : H.L. Agrawal, C.J;R.C. Patnaik, J;P.C. Misra, J

Bench : Full Bench

Advocate : N.C. Panigrahi, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Judgement

Agrawal, C.J.—The significant issue which members in this writ application referred to a large-Bench may be precisely formulated in the following terms : --

"Whether the properties held by a married daughter of a "family" prior to the appointed date mentioned in Section 37(b), Orissa Land Reforms Act (for short "the Act") would be liable to be clubbed with the property of the family?"

2. The facts -

Petitioner 1 is the daughter of petitioned. She had been married way back in the year 1940 and has been living with her husband all along.

On the basis of the report of the Revenue Inspector, Bonger-Bojha, a proceeding under the Act was started against petitioner 2 who subsequently filed a return on 14-5-1974 (after the expiry of the stipulated period). On the publication of the Draft Statement on 16-8-1975, objections were filed by the said landholder and his adopted son (Gadadhar Das) separately on 15-9-1975 raising various points. In the said proceeding, an inquiry was also made which revealed that petitioner J was the only legitimate daughter of petitioner 2 who was married at Jeypore and was residing with her husband and had got A. 15.72 of lands recorded in her

name in Khata No. 8 in village Dehana. The revenue authorities, by the impugned orders (Annexures-- 1, 3 and 4), have held that the lands of the daughter would also be taken to the account of petitioner 2 for the purpose of fixation of ceiling area in view of the Revenue Department Circular dt/-11-3-1976. According to them, the Act did not envisage exclusion of the property held by a major married daughter even though it was specific with respect to the major married son living separately by partition or otherwise before 26-9-1970.

3. The Division Bench, considering the importance of the point and doubting the correctness of certain observations made and views expressed in some other decisions of this Court, referred it to a larger Bench for an authoritative pronouncement. This is how the question indicated above arises for an answer.

4. The difficulty that arises is on account of the definition of the term "family" in the Act. Section 37(b) defines "family" as follows : --

" "family" in relation to an individual means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970."

The artificial and statutory definition of "family" speaks nothing regarding married daughters like a married son who, if major and separated by partition or otherwise before the appointed date goes out of the net of "family".

Section 37-B speaks of persons not entitled to hold land in excess of the ceiling area. It says that on and from the commencement of the Orissa Land Reforms (Amendment) Act, 1973, no person shall, either as landholder or raiyat or as both, be entitled to hold any land in excess of the ceiling area. The explanation to this section is as follows : --

"For the purpose of this section all lands held individually by the members of family or jointly by some or all the members of a family shall be deemed to be held by the family."

5. According to the Mitakshara Law, a joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters, A daughter ceases to be a member of her father's family on marriage, and becomes a member of her husband's family. This position is well settled and no discussion is called for. A Hindu coparcenary, however, is a much narrower body than a joint family which includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are the sons, grandsons and great grandsons of the holder of the joint property for the time being. Obviously, therefore, the conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor (or three degrees exclusive of the ancestor) (See Articles 212 to 214 of Mulla's Hindu Law). It is equally well settled that no female can be a

coparcener although a female can be a member of a joint Hindu family. If any decision is needed for this proposition, reference may be made to the case of Pushpa Devi Vs. Commissioner of Income Tax, New Delhi, .

6. Though the present definition of "family" in Section 37(b) of the Act was inserted by President's Act 17 of 1973 with effect from 29-9-1973, 26-9-1970 has been provided as the relevant date, the legislative intention obviously being that a partition beyond 26-9-1970 could not be acted upon. In the absence of any indication to the contrary, it would not take away the existing rights operating prior to the coming into force of the Act.

The artificial definition of "family" has been adopted obviously with a view to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers. The concept of family is totally foreign to the personal laws of the communities. The agrarian reform is the basic statutory perspective to adopt the definition so that there would not only be equitable distribution of land but also there would be no undue imbalance in society resulting in a landless class on the one hand and concentration of land in the hands of a few on the other. But the scheme also envisages the raising of economic standards and bettering the rural health and social conditions. Thus, the goal of the legislation is to make the surplus land available for working out justice and the rural development.

The constitutional invasion of the legislative competence has already been silenced by a large number of authoritative decisions of the Supreme Court, the latest being *Ambika Prasad Mishra v. State of U. P.* .

7. Let me now consider some of the cases on the subject where some observations made may throw some guidance to decide the ticklish question.

In *Ambika Prasad's* case (supra), the question of constitutional invalidity of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act I of 1961 was considered on the ground that the provisions showed a concession to a tenure holder who had property less adult sons by allowing him to keep two more hectares for such son, but nothing for any unmarried daughter. The court repelled the contention that the property less son did not get any right in the land on this score, but the father was permitted to keep some more of his own "for feeding this extra mouth". "If an unmarried daughter had her own land, this legislation does not deprive her any more than a similarly situated unmarried son". Both were regarded as tenure " holders. A subsequent observation in the decision is more eloquent and I feel tempted to quote that :--

"Legal injury can arise only if the daughter's property is taken away while the son's is retained or the daughter gets no share while the sons gets one. The legislation has not done either. So, no tangible discrimination can be spun out."

The Court on referring to the definition of the word "family" in the Act, while answering the contention of gender justice and sex security, in para 23 observed

that -

"The anti-female link is patent in that the very definition of family discloses prejudice against the weaker sex by excluding adult daughters without providing for any addition to the ceiling on their account. In the case of an adult son, Section 5(3)(a) of the Act provides for the addition of two hectares of irrigated land for each of his (tenure holder's) sons where the family has a strength of less than five."

In para 26, a more forceful observation with respect to the masculine flavour of this law was made in these words :--

"Section 5(3) reduces daughters or wives to the status of stooges. It forbids excessive holdings having regard to rural realities of agricultural life. "Family" is defined because it is taken as the unit for holding land a fact of extant societal life which cannot be wished away. This is only a tool of social engineering in working out the scheme of setting limits to ownership. Section 5(3) does not confer any property on an adult son nor withdraw any property for an adult daughter. That provision shows a concession to a tenure-holder who has propertyless adult sons by allowing him to keep two more hectares for such son. The propertyless son gets no right to a cent of land on this score but the father is permitted to keep some more of his own for feeding this extra mouth. If an unmarried daughter has her own land, this legislation does not deprive her any more than a similarly situated unmarried son. Both are regarded as tenure-holders. The singular grievance of a chronic spinster vis-a-vis a similar bachelor may be that the father is allowed by Section 5(3) to hold an extra two hectares only if the unmarried major is a son. Neither the daughter nor the son gets any land in consequence and a normal parent will look after an unmarried daughter with an equal eye."

The learned Judge (if I may say so) reconciled himself by simply observing that-

"The Court may sympathise but cannot dictate that the landholder may keep more land because he has adult unmarried daughters. That would be judicial legislation beyond permissible process."

The Court, however, purported to indicate the distinction made between an adult son and an adult daughter for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised, and thus answered the attack of discrimination on the ground of sex.

A similar observation was made by the apex Court in *Seth Nand Lal and Another Vs. State of Haryana and Others*, at p. 2104 of the report, it was said : --

"It was presumed that daughters would in normal course get married and would become members of their husbands' units and that is why no separate provision was made for giving additional land for every unmarried major daughter living with the family."

8. However, there are two Bench decisions of this Court which have taken the view that a daughter, though married much before the amending Act came into force when the definition of "family" was introduced by the legislature, would come within the ambit of the definition. In neither of the cases I find much discussion for reaching the conclusion as the conclusion in both the judgments has been drawn on the assumed authority of an earlier Full Bench judgment of this Court in *Nityananda Guru and Vs. State of Orissa and Others*, . Let me first deal with this Full Bench case itself before proceeding to notice the two cases deciding the point taking purported support from this Full Bench case.

Brother Misra in his well considered referring order has noticed this Full Bench case had also assimilated the facts of that case. In the Full Bench case, the question for consideration was whether a partition effected in the family of the landholder consisting of himself and his minor and unmarried sons and daughters, though in the year 1965, i.e., much before the appointed date, would be operative for the purposes of saving the landholders from the mischief of the provisions of the Act. The answer being obvious, it was given against the landholder. Though brother R. C. Patnaik in course of discussion in the judgment had posed a question whether the lands held by a married daughter, major or minor, or by a divorced daughter living with the parent(s) could be clubbed with the land held by them, he expressed apprehension as to whether the lands held by a daughter who has become the wife or in another family could be clubbed twice, i.e., once as a spouse while determining the ceiling of the husband and again as a daughter while determining the ceiling of the parent(s). But the question was not specifically answered.

9. The first decision of this Court is in the case of *Maharani Bewa v. State of Orissa* (1985) 60 Cut LT 55 where the proceeding was initiated against the widow of the landholder who had filed a return u/s 40-A with respect to the properties allotted to her share in a family settlement in the year 1967 between her two married daughters and herself. The revenue authorities treating the married daughters as members of the family determined the surplus area and accordingly the daughters came to this Court. This Court took the view that -

"The two married daughters continue to be her children notwithstanding their marriage. Therefore, the family in relation to the mother "would include the married daughters. Our view is supported by the decision of the Full Bench of this Court reported in *Nityananda Guru and Vs. State of Orissa and Others*, ..."

S. G. Mohapatra, J. who delivered the judgment for the Bench referred to a passage in the Full Bench judgment which had no relevance to the question in issue and as already stated, under the impression that the point was covered by the Full Bench did not give any reasoning for the view.

The second case is an unreported decision in the case of *Srimati Dei v. Revenue Officer-cum-Tahasildar, Dharmagarh* O. J. C. No. 2553 of 1981 decided on 5-7-1988. In this case also the land allotted to a married daughter much before

the appointed date was added while determining the ceiling surplus land in the hands of her mother, It has been observed in this case that -

"....what it excludes from the purview of the family is a "major married son who, as such had separated by partition or otherwise before the appointed day". Therefore, a married daughter would squarely come within the aforesaid definition. The same question no longer remains res integra in view of the Full Bench decision of this Court in the case of Nityananda Guru and Vs. State of Orissa and Others, . In view of the aforesaid authoritative pronouncement there is no force in the contention of Mr. Ray for the petitioner that a married daughter will not be included within the definition of "family" while determining the ceiling surplus land in the hands of the mother".

Several other authorities were also cited at the Bar, but they are entirely confined to the facts of those particular cases and deal with the definition in the sister statutes, and I need not encumber my judgment by discussing them since they are of no help.

10-11. Strong reliance was, however, placed on behalf of the petitioner on the case of B.K.V. Radhamani Ammal Vs. Authorised Officer, Land Reforms, Coimbatore, which arose out of a proceeding under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 where some lands had been settled absolutely on an unmarried daughter by the landholder in the year 1955. The daughter was later on married in 1963. In 1973, the proceeding was started and the order of the properties of the widow and the daughter of the landholder were aggregated, the appointed day in this case being 15-2-1970. When the matter came to the Supreme Court, it was held that --

"....Balgopal's daughter Jayakumari was married in May, 1963, and, therefore, the family of which she was at one time a member consisted solely of the widow on the notified date. It seems to us plain that, on this consideration, the land which was settled upon the daughter could not possibly be clubbed with the land which was settled upon the widow."

I shall consider the relevancy of this decision a little later.

12. On behalf of the State, reliance was placed upon Vengadasalam Pillai Vs. Union Territory of Pondicherry, and T. Venkata Reddy and Others Vs. State of Andhra Pradesh, as also Gopal Singh Vs. State of U.P. and Ors, . In the first case, the question was the inclusion of the minor in the definition of "family" who on definition was held to be includible. The second case is entirely under a different Act. In the third case, the question was whether the definition of "family" in the U. P. Imposition of Ceiling on Land Holdings Act (1 of 1961) discriminated between the major unmarried daughter and the minor unmarried daughter of a tenure-holder. In the short judgment, on referring to the case of Ambika Prasad (supra), it was held that the point did not survive. I have already said on reference to the Hindu Law that an unmarried daughter on getting married is excluded from the family of her parents.

I have already referred in extenso to the observations of the Supreme Court in Seth Nand Lal and Another Vs. State of Haryana and Others, .

In para 11 of Seth Nand Lal and Another Vs. State of Haryana and Others, Tulzapurkar, J. has adverted to the policy decision taken in the Chief Ministers Conference held in July, 1973. I would do well to extract an observation from page 2104 which seems to be of some help : --

"normally in rural agricultural set up in our country the family is the operative unit and all the lands of a family constitute a single operational holding and that therefore ceiling should be related to the capacity of a family to cultivate the lands personally. It has been pointed out that keeping all those aspects in view that concept of family was artificially defined and double standard for fixing ceiling, one for the primary unit and other for the adult son living with the family was adopted."

Krishana Iyer, J, and Tulzapurkar, J. in Ambika Prasad's case and Nand Lal's case have referred to the changes in the social set up of the families particularly in view of the Child Marriage Restraint Act, 1959 to indicate that in many a family unmarried adult daughters also stay for quite a long time for whose maintenance also some amount is needed.

In Nand Lal's case, as indicated earlier, the Court observed that the State of Haryana should consider sympathetically the case of unmarried daughters living in the family and for that matter, even the case of a divorced daughter who may come back to the family. The said observations were quoted by R. C. Patnaik, J. also in the Full Bench case.

13. While dealing with the argument of arbitrariness in Ambika Prasad's case, it has been observed that legal injury could arise only if the daughter's property is taken away without giving her any share in the ceiling proceeding. In view of these observations of the Supreme Court, I am inclined to take the view that while defining "family", the legislature was conscious of the position of married daughters and in view of the rural and agricultural set up in this part of the country, it was perhaps thought that ipso facto they, on being married away, ceased to be members of the parents' family and become members of the husbands' family and therefore no provision was thought necessary to be made. Giving this interpretation to the statutory definition of the expression "family" would not work out any violation either of the scheme of the legislation or injustice to a daughter exposing her to double jeopardy, once by aggregating her properties with her father's holdings and then with her husband's holdings if her husband happens to be a landholder as such. I find strong support for this view from the observations made in B.K.V. Radhamani Ammal Vs. Authorised Officer, Land Reforms, Coimbatore, .

14. The policy decision taken in the Chief Ministers' Conference, 1973, as indicated earlier, would also be providing a clue for solving the problem as to what were the circumstances taken into consideration for defining "family"

namely, the rural set up in the region. Obviously, taking that as an indication to assist in solving the problem, I am inclined to come to the conclusion that the concept of "family" which was artificially defined in the Statute has deliberately omitted to speak anything regarding a married daughter. The definition as such does not, in my view, cause an obstruction or occasions any conflict for taking such a view. Even applying the principles underlying Article 14 of the Constitution, when the legislature specifically intended to exclude a major married son who had separated by partition before the appointed date, there would be no justification for not giving the same privilege or benefit to a married daughter who by virtue of her marriage stands! at a more distant place than a separated son! on partition from the joint family. A harmonious construction being the essence of the rule of interpretation, I would unhesitatingly hold that a daughter, who is already married by the appointed date, would not come under the definition of "family".

Once this view is taken, it must be held that both the decisions of this Court referred to earlier in para 9 taking a contrary view do not lay down the correct law.

15. For the view I have taken on which the petitioner is going to succeed, it is not necessary to advert to the other question raised by petitioner 1 that he was entitled to a separate notice in the ceiling proceeding.

16. For the above reasons, the answer to the question posed above is given in favour of the petitioners, namely, that the properties of a daughter married prior to the appointed date cannot be aggregated with the property of the "family" of the father.

17. This writ application, therefore, must succeed. It is accordingly allowed and the orders passed by the revenue authorities in Annexures-2, 3 and 4 are hereby quashed. The matter has now to go back to the Tahasildar-cum-Revenue Officer, Nowrang-pur (O. P. 3), who shall redetermine the ceiling surplus land of the proceeding.

In the circumstances, I shall make no order as to costs.

R.C. Patnaik, J.

18. I agree.

P.C. Misra, J.

19. I agree.