

(1988) 09 MAD CK 0013
In the Madras High Court

C.S. Sampath and Others

APPELLANT

Vs

The Authorised Officer, Land Reforms

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 21A(b), 3(14)

Citation : (1988) 2 LW 247 : (1990) 1 MLJ 60

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Judgement

Ratnam, J.—In this Civil Revision Petition at the instance of the land owner (1st petitioner) and others, arising under the provisions of the

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (Act LVIII of 1961) (hereinafter referred to as "the Act") the only question that

arises for consideration is, whether the lands settled by the father of the 1st petitioner, one Srinivasa Venkata Raghavachariar (hereinafter referred

to as "Srinivasa for short) in favour of four minor sons and unmarried daughter of the 1st petitioner, can be included in the holding of the family of

the 1st petitioner or not. In the course of the proceedings initiated under the provisions of the Act against the 1st petitioner, the Authorised Officer

held that though Srinivasa had settled on 29.9.1970 an extent of 22.90 ordinary acres equivalent to 10.99 std. acres in favour of his minor

grandsons and unmarried grand daughter, yet, by reason of the definition of "family" u/s 3(14) of the Act, the lands settled should be included in the

holding of the 1st petitioner. On appeal by the 1st petitioner and others in C.M.A. No. 92 of 1982, the Land Tribunal (District Revenue Officer),

Thanjavur, relying upon the decision of this Court in State of T.N. Rep by

Collector of Thanjavur v. Chandra @ Rukmani (1979) T.L.N.J. 139, upheld the clubbing of the lands settled on the minor sons and the unmarried daughter of the 1st petitioner by their grand father, Srinivasa, in the family holdings of the 1st petitioner, though with reference to some other matters, the order of the Authorised Officer was set aside and the matter was remitted to redetermine the family holding of the 1st petitioner as on 15.2.1970. It is the correctness of the view taken by the Tribunal that the lands settled on the minor sons and unmarried daughter of the 1st petitioner by the father of the 1st petitioner, should be clubbed along with the family holding of the 1st petitioner that is questioned in this Civil Revision Petition.

2. The 1st petitioner is the son of Srinivasa, who executed a settlement deed on 29.9.1970 in favour of his minor grand-sons and unmarried grand daughter, viz., Srinivasa, Raghavan, kala, Venkatesan and Varadharajan, in respect of the lands abovementioned, out of natural love and affection and to make provision for their educational and marriage expenses as well. The settlement deed was registered on 30.9.1970. Though u/s 21-A of the Act, the settlement deed so executed by Srinivasa, would be valid, yet, the authorities below took the view that it would not enable the 1st petitioner to claim that the minors, in whose favour the settlement deed was executed, would be taken out of the definition of "family" occurring in Section 3(14) of the Act, and therefore, the lands settled should be treated as part of the holding of the family of the 1st petitioner. u/s 3(14) of the Act, family in relation to a person means, the person, the wife or husband, as the case may be, of such person and his or her - (i) minor sons and unmarried daughters, and (ii) minor grandsons and unmarried grand-daughters in the male line, whose father and mother are dead. Explanation I to Section 3(14) of the Act states that, for the purpose of this clause, in the case of persons governed by Hindu Law, "minor sons" and "minor grandsons" shall not include sons or grandsons - (i) between whom and the other members of the family, a partition by means of a registered instrument has taken place; or (ii) in respect of whose family properties, a preliminary decree for partition has been passed-before the notified date. It would be appropriate at this stage to notice Explanation II (a) to Section 3(14) also. That states - "in the case of persons governed by Hindu

Law, ""unmarried daughters"" and ""unmarried grand-daughters"" shall not include"" unmarried daughters"" or ""unmarried grand-daughters"" - (i) in

whose favour any land had been voluntarily transferred by either of whose parents or grand-parents on account of natural love and affection; or (ii)

in whose favour a preliminary decree for partition been passed - before the notified date". Explanation II (b) deals with cases of persons not

governed by Hindu Law and it need not be noticed for purposes of this case, as there is no dispute that the parties here are governed by the Hindu

Law. Section 5(2) of the Act enacts that all the lands held individually by the members of a family or jointly by some or all the members of such

family, shall be deemed to be held by the family. u/s 7 of the Act, is provided that on and from the date of commencement of this Act, no person

shall, except as otherwise provided in this Act, but subject to the provisions of Chapter VIII, be entitled to hold lands in excess of the ceiling area.

It will not be necessary for the purpose of this case to notice the Proviso to Section 7. Section 21-A introduced by Act 17 of 1970, provided as

follows: "Notwithstanding anything contained in Section 22 or in any other provision of this Act and in any other law for the time being in force,

where, after the 15th day of February, 1970 and before the second day of October, 1970 - (a) any person has effected by means of a registered

instrument a partition of his holding or part thereof; or (b) any parent or grand-parent has voluntarily transferred any land on account of natural love

and affection to any minor son, unmarried daughter, minor grandson, or unmarried grand-daughter in the male line; or (c) any person has voluntarily

transferred any land - (i) to any educational institution; or (ii) hospital - of a public nature solely for the purposes of such institution or hospital, such

partition or transfer shall be valid. The Proviso to Section 21-A dealing with transfer to such educational institution or hospital, is not relevant in this

case.

3. It is in the light of the aforesaid provisions in the Act, the question of clubbing the lands settled by the father of the 1st petitioner in favour of the

minor sons and unmarried daughter of the 1st petitioner, in the holding of the 1st petitioner, has to be considered. Learned counsel for the

petitioner, while accepting that though the decision in State of T.N. v. Chandra @ Rukmini (1979) T.L.N.J. 139 may apply to this case, contended

that, that decision has not taken note of Section 7, as well as the scope of the validation enacted u/s 21-A of the Act. Further, the learned Counsel

also submitted that the object behind the introduction of Section 21-A was to validate the transactions mentioned therein and it could not have

been the intention of the Legislature to give the benefit of validation and at the same time, deprive the benefit of such validation, by enabling the

authorities to club the lands dealt with under the transactions validated, by resorting to the definition of "family" u/s 3(14) of the Act. In other

words, learned Counsel submitted that when once the settlement in this case had been executed between 15-2-1970 and 2.10.1970 which is the

notified date, that transaction would be valid for all purposes and the land settled could not be treated as forming part of the holding of the 1st

petitioner. Reliance was also placed on the decision in J. Antony Costa v. Authorised Officer (L.R.) Tirunelveli 98 L.W. 889 and K.N. Devarajulu

Naidu v. Authorised Officer (L.R) Kancheepuram 100 L.W. 673.

4. On the other hand, learned Government Advocate submitted that though u/s 21-A of the Act, certain transactions effected between 15.2.1970

and 2.10.1970 have been declared valid, yet, that would not by itself have the effect of making the minor sons of the 1st petitioner not members of

the family, unless they were excluded from the family by reason of Explanations I and II (a) to Section 3(14) of the Act, and in its absence, the

holding of the minor sons and grand-daughter would also have to be brought within the holding of the 1st petitioner having regard to the definition

of "family" found in Section 3(14) of the Act. It was also further submitted that the validation of certain transactions u/s 21-A of the Act would not

make any difference to the applicability of the definition of family contained in Section 3(14) of the Act. Reiterating that Section 7 of the Act does

not in any manner affect the position, learned Counsel pointed out that the decision in State of Tamil Nadu Represented by the Collector of

Thanjavurv. Chandra @ Rukmini (1979) T.L.N.J. 139 would govern this case as well and that the decisions relied upon by the learned Counsel

for the petitioners in J. Antony Costa v. The Authorised Officer (Land Reforms), Tirunelveli 98 L.W. 889 and K.N. Devarajulu Naidu v The

Authorised Officer, (Land Reforms), Kancheepuram 100 L.W. 673 do not in any manner alter this position.

5. In this case, there is no dispute that the settlement deed was executed by Srinivasa on 29.9.1970 in favour of four of his minor grandsons and one unmarried grand-daughter out of love and affection and also for providing for educational and marriage expenses and this settlement deed was registered on 30.9.1970. Undoubtedly, therefore, the settlement deed having been executed between 15.2.1970 and 2.10.1970 by the grand-parent, out of natural love and affection, in favour of minor grandsons and unmarried grand-daughter in the male line, would fall u/s 21-A(b) of the Act and would be valid. However, such validation is not couched in a manner so as to exclude the minor grandsons of the settler (minor sons of the first petitioner) from the fold of the family as defined in Section 3(14) of the Act in relation to the first petitioner. The only method by which the benefit of such exclusion of minor sons and minor grandsons from the family could be claimed is under Explanation I to Section 3(14) of the Act.

Section 21-A of the Act does not in any manner touch upon or affect Explanation I to Section 3(14) of the Act. u/s 22 of the Act, a transfer or partition or a transaction of the nature mentioned therein made on or after the date of the commencement of the Act, i.e. 15.2.1970, but before the notified date, i.e. 2.10.1970, could be declared void. While Section 21-A of the Act declared the validity of certain types of transactions enumerated therein entered into between 15.2.1970 and 2.10.1970 that was for the purpose of giving effect to those transactions of the kind mentioned therein despite Section 22 of the Act. No doubt in Section 21-A of the Act, it has also been stated that notwithstanding anything contained in any other provisions of the Act and in any other law for the time being in force, transactions of the types mentioned therein entered into between 15.2.1970 and 2.10.1970 would be valid. Even so, it is difficult to read into Section 21-A of the Act that it was intended that by the validation of the transfers in the manner provided for under that Section, an exclusion of the minor sons and minor grandsons or unmarried daughters and unmarried grand-daughters in the male line, from the definition of the family u/s 3(14) of the Act was contemplated, except in the manner provided for under Explanation I and Explanation II (a) of Section 3(14) of the Act. In other words, despite the validation of the transactions u/s 21-A of the Act, the exclusion of certain persons from the fold of the family was left to rest with Explanation I and Explanation II

(a) u/s 3(14) of the Act. In this case, in the settlement deed executed by Srinivasa, he had purported to deal with the lands as well as the building housing a motor pump set. A Pump House cannot be brought under the definition of "land" occurring in Section 3(22) of the Act and necessarily that extent has to be excluded. With reference to the land settled, applying Explanation II (a) u/s 3(14) of the Act, to the unmarried grand-daughter of Srinivasa (daughter of the first petitioner), it follows that in her favour lands had been voluntarily transferred by the grandfather on account of natural love and affection before the notified date, viz., 2.10.1970. Even so, while considering the members of the family of the first petitioner, minor Kala has to be considered only as the unmarried daughter of the first petitioner and in such an event, in order to enable her to be taken out of the fold of the family as a member thereof, the lands should have been transferred by the first petitioner on account of natural love and affection prior to 2.10.1970. That is not the case here. Likewise, in so far as the minor sons of the first petitioner are concerned, even on the footing that their grandfather, Srinivasa, had settled properties on them out of natural love and affection, they would all be members of the family of the first petitioner, being the minor sons of the first petitioner, unless, by applying Explanation I to Section 3(14) of the Act they are taken out of the family.

In this case, there is no partition by means of a registered instrument between the minors and the other members of the family prior to 2.10.1970.

No preliminary decree for partition has also been passed in respect of the family properties prior to that date. Therefore, the first petitioner cannot claim that the minor sons would be outside the family as defined u/s 3(14) of the Act. Under almost identical circumstances, in State of Tamil Nadu represented by the Collector of Thanjavur v. Chandra @ Rukmani 1979 T.L.N.J. 139, it was held that minor sons, in the case of persons governed by the Hindu Law, can claim exclusion from the family only under Explanation I to Section 3(14) of the Act and if the benefit of such exclusion under Explanation I was not available, there is no question of the minors being otherwise excluded from the family. This decision would squarely apply to this case as well. J. Antony Costa v. The Authorised Officer (Land Reforms) Tvunelveli 98 L.W. 889 dealt with a case relating to Christians and falling under Clause (b) to Explanation II u/s 3(14) of the Act and cannot, therefore, have any application. The decision in K.N.

Devarajulu Naidu v. The Authorised Officer, (Land Reforms) Kancheepuram 100 L.W. 673, also does not in any manner assist the petitioners, as

that case dealt with a bequest under a will by the grandfather in favour of the grand-daughter and on the death of the grand-father the lands stood

registered in the revenue records in the name of the grand-daughter and naturally those lands were held not to belong to the father. That decision

has, therefore, no application to the facts of this case. Section 7 of the Act also does not in any manner militate against the aforesaid interpretation

put upon Section 3(14) of the Act as well as Explanation I and Explanation II (a) thereunder and the contention that Section 7 has not been

noticed in the decision in State of Tamil Nadu Represented by the Collector of Thanjavur v. Chandra @ Rukmani 1979 T.L.N.J. 139 has

therefore, no merit. It is significant that Explanation II to Section 3(14) and Section 21-A were introduced by the Tamil Nadu Land Reforms

(Reduction of Ceiling on Land) Act, Act 17 of 1970, but even so, Explanation I providing for the exclusion of minor sons had been retained and

kept in tact and that also clearly indicates that apart from the cases contemplated by Explanation I to Section 3(14) of the Act, the minor sons

cannot be otherwise excluded from the fold of the family as defined as members thereof. Consequently, the authorities below were right in clubbing

the lands settled by Srinivasa on 29.9.1970 in favour of the minor sons and unmarried daughter of the first petitioner, as forming part of the

holdings of the first petitioner. The Civil Revision Petition is dismissed. There will be, however, no order as to cost.