
(1979) 08 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No's. 114 and 115 of 1975

Dattajirao Parashram Ranaware

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-08-1979

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 14, 6

Hindu Succession Act, 1956 — Section 14

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 45(2)

Citation : (1979) 08 BOM CK 0002

Hon'ble Judges : Sharad Manohar, J; S.C. Pratap, J

Bench : Division Bench

Advocate : M.A. Rane, Y.V. Patil, V.A. Throat and V.R. Bhonsale, in Special Civil application Nos. 114 and 115 of 1975, for the Appellant; W.S. Devnani, A.G.P. for respondent No.1 in Special Civil Application Nos. 114 and 115 of 1975, for the Respondent

Judgement

Sharad Manohar, J.—The above petitions arise out of the proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, which is referred to hereinafter as "the Act". A few facts may be set out briefly which give rise to the questions which have been raised on behalf of the petitioners in both these petitions.

2. The lands which are the subject-matter of these proceedings (hereinafter referred to as "the lands") belonged originally to one Parashram. It is not clear whether he was the last surviving coparcener or whether they were self-acquired lands by him, but for the purpose of the questions arising in these petitions that question has not relevance. Said Parashram died on 23-1-1957 leaving behind as his sole heir his widow Saraswatibai. Saraswatibai adopted Dattatraya (who is petitioner in Special Civil Application No. 114 of 1975) on 6-2-1957. It is alleged that the adoption was accompanied by some kind of document. It was not a registered document. On 11-9-1958, allegedly, there was some kind of transaction between Saraswatibai on the one hand and Dattatraya on the other,

by virtue of which the lands owned by Saraswatibai were divided between the adoptive mother and the adoptive son. Both the petitioners describe this transaction as a partition. It is admitted that no partition deed as such, was executed but it is contended that some partition Yadi was made and that as per the said Yadi, out of the total area of 72 acres 6 gunthas held by Saraswatibai, land admeasuring 47 acres 27 gunthas was given to the adoptive son Dattatraya. As is well known, the Act came into force with effect from 25-1-1962 and under the Act, the Appointed Date is 4-8-1959. On 14-1-1960, the petitioners claim, a Wardi was given by or on their behalf to the Talathi informing him about the transaction of partition dated 11-9-1958. We are advisedly using the words "transaction of partition" be caused as will be presently pointed out, we have come to the conclusion that the transaction cannot be in reality described as a partition at all. It is contended that as per the Wardi dated 14-1-1960 mutations were effected in the revenue records as per the partition Yadi. There is not a word brought on record either before us or before any of the lower authorities that the partition Yadi which is sought to be produced before us today was produced before the Talathi at that time.

3. This is genesis against which the questions falling for consideration in these petitions are to be decided.

4. As stated above, the Act came into force on 25-1-1962 and in pursuance of the provisions of the Act, both the petitioners, viz. the adoptive mother and the adoptive son, filed returns. It is not necessary to give details about the returns at this stage. It is sufficient to state that the returns were based upon the so-called partition dated 11-9-1958 and on the basis of those returns, the petitioners were able to satisfy the Collector that no land was held by either of them as surplus land. Consequently, order in that behalf was passed by the Collector accordingly in both the proceedings.

5. However, the Commissioner held suo motu inquiry in connection with the order passed by the Collector in this behalf and notice for suo motu revision of the said order u/s 45(2) of the Act was given by the Commissioner to both the petitioners separately. The sum and substance of the notice only need be stated here. By the notice both the petitioners were informed that the alleged partition of 11-9-1958 was illegal, "Pokal" and invalid and it was of no legal consequence. By separate notices issued to both the petitioners they were called upon to show as to why all the lands which were shown to be belonging to Saraswati and Dattatraya separately should not be clubbed together and as to why they should not be shown to be belonging to Saraswatibai alone. The notices pertained also to the transfers effected by Saraswati subsequent to 26-1-1962, but the correctness of the point raised by the Commissioner in that behalf is not disputed before us by the petitioners. The next item about which notice was given to the petitioners was regarding land admeasuring 2 acres 24 gunthas which, it was contended by the petitioners, was in the form of Wasti, well and engine shed. According to the Commissioner, this was erroneous. Lastly, as per the said

notices, the petitioners were informed that the lands shall have to be reclassified and the nature of classification was mentioned in the notices. At the conclusion, it was pointed out to the petitioners that the total acreage of land held by the together was 332 acres 36 gunthas. It was pointed out that Saraswati was entitled to retain only 108 acres out of the same so that there was a surplus of 224 acres 36 gunthas. Both the petitioners were called upon to show cause as to why the orders passed by the Collector should not be revised as suggested by the said notices.

6. At the time of the hearing of the proceedings pursuant to the said notices, it was contended on behalf of the petitioners before the Commissioner that the adoption had the effect of relating back to the date of death of Parshram. On this basis, it was contended that the partition dated 11-9-1958 was perfectly valid. It was contended that the partition was proved beyond doubt by examining D.P. Ranaware and one Buwashab Ranaware who, it was alleged were the signatories to the so-called partition deed. In support of the partition, the wardi dated 14-1-1960 was also relied upon. It was, therefore, contended that the partition was a genuine transaction and as per the partition, Datratraya was entitled to hold the land as shown in the proceedings before the Collector. We have already mentioned above that no points were urged as regards the transfers effected by Saraswati subsequent to 26-1-1962 and the correctness of objection raised by the Commissioner in that behalf was not disputed before the Commissioner. Even as regards other point regarding 2 acres 24 gunthas sought to be excluded on account of their being in the nature of Wasti, well and engine shed, the point was not pressed before the Commissioner and the Commissioner's decision in that behalf was conceded to be correct. As regard the point regarding the classification, the only contention that appears to have been raised is that an area of 20 gunthas had been acquired for road and that the same would have to be excluded. On behalf of Datratraya, it was further contended that there was no block of 7 acres 14 gunthas referred to in the notice as Items No. 2(5) of point No. 5, in the said notice.

7. The decision of the Commissioner regarding these contentions is the subject-matter of the present petitions. It is enough here to state the conclusions arrived at by the Commissioner in connection with each of the points on which the order passed by the Collector was proposed to be revised by the Commissioner. Firstly, the Commissioner arrived at the conclusion that Saraswatibai had become an absolute and full-fledged owner of all the lands inherited by her from her husband Parshram who died on 23-1-1957, that is to say, after the advent of the Hindu Succession Act. The Commissioner, therefore, held that there could arise no question of there being any partition between the adoptive mother Saraswatibai and the subsequently adopted son Datratraya. The Commissioner negatived the contention urged on behalf of the petitioners that the adoption related back to the date of death of Parashram. The Commissioner held that the adoption could date only from the date of the adoption as from 6-2-1957 when all the lands were already vested in his adoptive mother Saraswatibai and as per

the provisions of the Hindu Adoptions and Maintenance Act, the adoption could not have the effect of divesting the adoptive mother of the properties already vested in her. The Commissioner also considered some other circumstances and held that in view of all those circumstances the so-called partition deed which was in fact only a partition Yadi was an illegal and hollow transaction and hence was of no legal consequence. He, therefore, arrived at the conclusion that the entire land admeasuring 72 acres 6 gunthas would have to be held to be belonging to Saraswatibai alone and the calculations regarding the surplus land held by her will have to be made on threat basis.

8. The only question that remained to be considered by him was regarding the renewal of classification of the lands and the arithmetical calculation as regards the surplus of land to be found in the hands of the petitioners. The Commissioner made necessary calculations and he arrived at the conclusion that after making the necessary conversion as contemplates by the provisions of the Act, Saraswatibai must be deemed to be holding 332 acres 35 gunthas. Deducting therefrom the area of 108 acres which she was entitled to retain with her, the Commissioner held that an area of 224 acres 35 gunthas was surplus. The Commissioner, therefore, called upon the petitioners to make their choice as regards the land which they were prepared to surrender and passed the consequential order in that behalf.

9. Mr. Rane, the learned Counsel appearing for both the petitioners, raised the question in the first place about the correctness of the view taken by the Commissioner that the transaction which he called the partition dated 11-9-1958 was not a valid transaction or was of no legal consequences. Mr. Rane did not support the contention raised before the Commissioner that the adoption of Dattratraya related back to the date of death of his adoptive father Parsharam. He also conceded that the adoption could not have the effect of divesting Saraswatibai of the property already vesting in her with effect from 23-1-1957. He, however, contends that the inevitable result of the adoption was that Dattratraya, the adoptive son, become a member of the joint family consisting of himself and his adoptive mother Saraswatibai. If we understood Mr. Rane correctly, he means to say that by virtue of the adoption, some kind of right was engendered in favour of Dattatraya by virtue of the adoption in so facto. According to Mr. Rane, the portion dated 11-9-1958 was in the nature of a family arrangement and it was perfectly open for the adoptive mother and the adoptive father to effect a partition by way of a family arrangement. Mr. Rane conceded that the partition was not by any partition deed as such, nor was it registered, but that it was effected only by a partition Yadi; but he pointed out that the wardi was given on the basis of this partition Yadi as early as on 14-1-1960. Mr. Rane contends that the Act came into force on 25-1-1962. and hence there is no reason to believe that the transaction dated 11-9-1958 was not a genuine transaction.

10. There are, however, insurmountable obstacles in the way of Mr. Rane in the

matter of persuading us to take the view that the transaction dated 11-9-1958 described as a partition was a partition at all or that it was of any legal consequence at all. In the first place, it is impossible to conceive of a partition of property between two persons, one of whom has not a title of little in the property. It is, to our mind, a matter of first principles that a partition of any property presupposes common interest being had by the parties to the partition in the said property. In the instant case, admittedly, the property belonged to and vested exclusively in Saraswatibai on 23-1-1957 and, admittedly, further, the adoption dated 6-2-1957 did not and could not have the effect to of divesting Saraswatibai of the said property. Assuming the highest in favour of Mr. Rane's clients, therefore, that what was constituted by Saraswatibai and Dattratraya was a joint family or even a joint Hindu family at that, it cannot be held that Dattratraya could be said to be having any kind of right, title and interest in the lands in the question inherited by Saraswatibai from her husband parasahram. In this view of things, it is impossible to hold that the transaction dated 11-9-1958 could partake the character of a valid partition.

11. There are two other circumstances of some relevance and significance. The partition deed is not registered. If the partition deed was registered, it was perhaps conceivable that the same could have been treated as a gift deed subject to the provisions of the Stamp Act; but the absence of any registered document renders us helpless even in that respect.

12. Apart from this, we are not satisfied even about the genuineness of the said transaction, although We hasten to add that we do not express any final opinion in that behalf. Very surprisingly enough the partition yadi purports to be signed by Dattratraya. Admittedly, Dattratraya was only fifteen or sixteen years of age at that time. The transaction, therefore, could not be of any legal effect for the simple that in the ultimate analysis, the partition postulated a contract and a contract to which a minor is one of the parties is void ab initio. The second fact which we think to be significant is that nothing is brought on record to show as to what was the nature of the Wardi that was given on 14th January, 1960. We, therefore, do not know whether the document which purports to have been filed before the authorities below was really the document on the basis of which the Wardi was given to and taken by the Talathi.

13. Mr. Rane tried to contend before, us that the adoption deed dated 6-2-1957 contained an ante-adoption agreement and Dattratraya was entitled to have share in the lands in question on the basis of the said ante-adoption agreement. It is rather significant that, in the first place, this point is not urged even remotely before the learned Commissioner. Even in the petitions filed before us by both the petitioners this point is not urged even by any implication. His effort was made to satisfy us by having the necessary record produced before us that the adoption deed contained any ante-adoption agreement on the basis of which the adoptive son was entitled to a share in the property vesting in his adoptive mother. We are, therefore, not satisfied that there is any basis for a plea for such

ante-adoption agreement. But even assuming without holding that there was any ante-adoption agreement, we do not think that any different result can follow. Even an agreement contained in a deed of adoption does not have effect higher than that of an agreement. If there was a provision in the adoption deed that the adoptive mother should give some share in the property vesting in her to the adoptive son subsequent after the adoption had taken place, the agreement remained an agreement and it is well known that the agreement, by itself, does not create any interest in any Immovable property. The agreement could be of any effect only if a necessary deed of gift or some kind of conveyance was effected under a duly registered document by the adoptive mother in favour of the adoptive son. This is the reason on account of which we find that the absence of registration of the so-called deed of partition is significant. We, therefore, held that neither the ante-adoption agreement is satisfactorily proved nor, if it was proved, would it be of any legal consequence. The view arrived at and decision given by the learned Commissioner in this behalf is, therefore, according to us, unassailable. The contentions raised by Mr. Rane in this behalf must, therefore, fail.

14. The point regarding the land admeasuring 2 acres 24 gunthas stated to have been covered by Wasti, wheel and engine shed was specifically given up before the Commissioner. Even before us Mr. Rane was not able to satisfy us that the concession was wrongly made or that the objection raised by the Commissioner in the notice regarding the revision was unfounded. The contention of Mr. Rane in this behalf, therefore, must fail.

15. The only question which then remains for consideration is as to whether the renewed classification made by the Commissioner suffered from any patent error. In this connection, Mr. Rane has placed on record a table showing the arithmetical errors committed by the Commissioner. The table shows the calculations made by the Collector and the calculations made by the Commissioner and it is the contention of Mr. Rane that there was no Justification for the Commissioner to depart from the calculations made by the Collector unless it was shown that the Collector's calculations suffered from any legal or arithmetical error. He invited our attention to the position that the Commissioner gave no reason to depart from the calculations made by the Collector the basis on which the calculations were made. Mr. Rane has further pointed out an obvious error contained in the notices themselves. He has pointed out that the Commissioner had taken the view that the total acreage held by Saraswatibai was 332 acres 36 gunthas but on arithmetical calculation it would be found that the total acreage deemed to be held by her was 331 acres 1 guntha. It may be mentioned here that this last mentioned error is admitted by Mr. Devnani appearing for the State. He has conceded that the total acreage that Saraswatibai must be deemed to be holding should be 331 acres 1 guntha and not 332 acres 36 gunthas. Taking the above circumstances into account, Mr. Rane says that on a correct arithmetical calculation based upon the provisions of the Act, an area of 118 acres 36 gunthas is wrongly held by the Commissioner

to be surplus land. According to him, therefore, only an area of 212 acres 5 gunthas could be considered to be surplus in the hands of both the petitioners taken together and deducting therefrom the area of 108 acres which Saraswatibai was entitled to hold before the amendment of the Ceilings Act, Saraswatibai would be liable to surrender an area of only 104 acres 5 gunthas and not 224 acres 34 gunthas as held by the Commissioner.

16. We find considerable force in this argument, but we must hasten to add that this is so only because the Commissioner has not given any reasons for the purpose of departing from the classification made by the Collector. For though we know, there may be certain errors in the calculations made by the Collector himself and the Commissioner might have been perfectly justified in correcting those errors. But we do not have any material before us to find as to whether the Commissioner was justified in that behalf or not. It is, however, noteworthy that this point is being raised before us for the first time at the time of the hearing of these petitions. No point in this behalf was raised by the petitioners in the petitions and no challenge to the order passed by the Commissioner seems to have been made on that ground in the petitions.

17. However, we would not like to deprive the petitioners of their properties on account of such errors of omission. Mr. Rane has agreed before us that he has no objection if we give a direction that he would surrender the 104 acres of land which he is admittedly liable to surrender to the Government. Mr. Rane says that sufficient time should be given to him for the purpose of making the choice of the lands to be retained by him and at the expiry of the said time he would have no objection to surrender an area of 104 acres to the Government. In view of this agreement, we have taken the view that the Commissioner should reconsider the question of the classification that he has made, de novo, in respect of the lands. The procedure that should be followed in this behalf would be as follows :

18. The matter would be remanded to the Commissioner for consideration whether the classification made by him as per the impugned order dated 20-10-1974 was correct or not. Before the Commissioner, it will be open for both the petitioner, to show that the calculations made by the Collector were correct and that in the light of those calculations, the calculations made by the Commissioner by the impugned order dated 20-10-1974 were wrong. On the other hand, it would be equally open for the Government Pleader appearing on behalf of the State to point it out to the Commissioner that the calculations made by the collector or the basis upon which the calculations were made were themselves erroneous and that the final order passed by the Commissioner in connection with the renewed classification and renewed arithmetical calculations was correct. It is, however, made clear that the proceedings before the Commissioner will not be, in any event, held up on account of the fact that the proceedings regarding surrender of the admitted surplus area of 104 acres 5 gunthas will be going to before the Collector. We direct that the petitioner Saraswatibai should exercise her choice u/s 16 of the Act within a period of one

month from the date of receipt of the writ in this behalf from this Court by the Collector and shall hand over possession of the same to the authorities concerned according to law. It is made clear that it is not the entire matter but only the question regarding the reclassification of the lands that is being remanded to the Commissioner. The Commissioner shall give notice to both the parties, shall hear them fully on that question and shall give his decision in accordance with the provisions of law. We make it clear that we have held that Datratraya had no right, title and interest in any of the lands in dispute. Special Civil Application No. 114 of 1975 filed by him is, therefore, hereby dismissed. If he contends that he is in possession of any of the lands in dispute, the order already passed by the Commissioner against him is binding upon him and he shall have no right to resist the proceedings regarding surrender of possession of the lands at any time. Rule in Special Civil Application No. 114 of 1975 is, therefore, discharged with costs. Special Civil Application No. 115 of 1975 is partly allowed. The matter is remanded to the Commissioner for his decision only on the question referred to in the judgment hereinabove. The rule in Special Civil Application No. 115 of 1975 is made absolute to the extent as mentioned above. There shall be no order as to costs in the said petition.