

(1987) 06 BOM CK 0044

In the Bombay High Court

Case No : Letters Patent Appeal No. 245 of 1984 in Writ Petition No. 4141 of 1976

Indubai (Mrs.) Mohajan and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-06-1987

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 3(3)

Citation : (1988) 1 BomCR 128 : (1987) MhLj 974

Hon'ble Judges : H.W. Dhabe, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.R. Deshpande, for the Appellant; A.M. Tayade, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a letters patent appeal arising out of the proceedings under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the Ceiling Act).

The only question raised in this letters patent appeal is whether the petitioner No. 1, who is the wife of the petitioner No. 2 is entitled to a share u/s 3(3)(i) of the Ceiling Act on a notional partition as contemplated by the said sub-section. The learned Counsel for the appellants has urged that unless there is a partition by metes and bounds between the father and the son, the mother is not entitled to get any share in the joint family property. In support of the proposition the learned Counsel for the appellant has relied upon the judgment of the Privy Council in the case of AIR 1936 20 (Privy Council) and of the Gujarat High Court in the case of Modi Nathubhai Motilal and Others Vs. Chhotubhai Manibhai Desai, .

2. It may be seen that although the above proposition may be a correct statement of the general law applicable to Hindus, what we concerned with is the special provision of section 3(3)(i) of the Ceiling Act. It is, therefore, necessary

to interpret the said sub-section. For its proper appreciation, it is reproduced below :

"3(3)(i)---

in the land held by a family of which the person is a member, the share of each member of the family shall be determined so that each member who is entitled to a share on partition, shall be taken to be holding separately land to the extent of his share, as if the land have been so divided and separately had on the relevant date."

3. It is clear from the provisions of sub-section (3) of section 3 that when any land is held by a family of which the person concerned is a member then in the land held by the family of which he is a member share of each member of the family has to be determined so that each member, who is entitled to a share on partition, shall be taken to be holding separately the land to the extent of his share as if the land has been so divided and separately held on the relevant date. It is also clear from the aforesaid provision that it creates a fiction as it contemplates a national partition by metes and bounds on the relevant date. In our view the phraseology use therein clearly shows that if the notional partition were to take place by metes and bounds on the relevant date, the share of the member concerned of the family has to be found out on such a notional partition on that date, which share according to the said sub-section the member concerned would be holding separately. The said sub-section thus contemplates notional partition metes and bounds so that the total holding of the member of the family concerned can be determined for the purpose of the Ceiling Act.

4. In the instant case what will have to be, therefore, found out is if the national partition were to take place between the husband of the petitioner and her son by metes and bounds on the relevant date, what the share of the appellant would be in such a partition. It is not disputed that under the general law if the partition takes place by metes and bounds the mother is entitled to a share on partition. We, therefore, have no hesitation in rejecting the above contention raised on behalf of the appellant. The view taken by the learned Single Judge is correct and has to be upheld.

In the result, the instant letters patent appeal fails and is dismissed. However, in the circumstances, there would be no order as to costs.