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**(1985) 08 MAD CK 0031**  
**In the Madras High Court**

J. Antony Costa

APPELLANT

Vs

The Authorised Officer (Land Reforms)

RESPONDENT

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**Date of Decision :** 14-08-1985

**Acts Referred:**

**Citation :** (1985) 98 LW 889 : (1986) 1 MLJ 150

**Hon'ble Judges :** K.M. Natarajan, J

**Bench :** Single Bench

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**Judgement**

K.M. Natarajan, J.—This revision is directed against the order passed by the learned Land Tribunal, Tirunelveli in C.M.A.L.T. No. 12 of 1980, confirming the order passed by the Authorised Officer in MRI 64/A/NGR (17/70) and (41/71).

2. The facts involved in this Revision are as follows: One Antony Costa was allowed to hold an extent of 88.170 ordinary acres equivalent to 42.360 standard acres under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58/61. After the Amendment Act 17/70 came into force, he was directed to file his return. Since he failed to do so, notice u/s 9(2)(b) of the Act was issued on the basis of the materials collected by the Field Staff, directing him to appear for the enquiry on 11.4.1977 and during the enquiry, he filed a petition on 25.4.1979 contending inter alia that his family consists of five members including himself, his wife, two minor sons and a minor daughter, as on 15.2.1970, that by virtue of a partition dated 2.10.1970 between him and his two minor sons, his eldest son got 7.625 standard acres while his younger son got 7.533 standard acres and that the Revenue Department had accepted the said partition and patta was issued and that the mother of the landholder, Katherinammal Midandas executed a gift settlement deed dated 25.2.1970 in favour of the two minor sons and by virtue of the same the eldest son was given 7.360 standard acres while the youngest son was given 7.445 standard acres. By virtue of another gift deed dated 10.4.1970, the unmarried grand-daughter was given 8.750 standard acres. Proceedings were instituted u/s 9(2)(b) of the Amendment Act 17/70 and the gift transactions made by the grand-mother under the gift deed dated 25.2.1970 in

favour of the two minor sons of the landholder and the gift deed dated 10.4.1970 in favour of the unmarried daughter of the landholder were held valid u/s 21-A of the Act. The partition effected by the landholder on 10.2.1970, will not have the effect of excluding the minor sons from the family unit, because Explanation 1 u/s 3(14) of the Act relates only to partition among the members of Hindu family. Similarly, the gift deeds, though held to be valid u/s 21-A of the Act, the properties devolved on the minors will be included in the family unit of their father, viz., the landholder and accordingly, the revised order was passed by the Authorised Officer holding that the total surplus of 200.83 ordinary acres equivalent to 60.836 standard acres will be the holding by the landholder. The learned Land Tribunal upheld the said order. Hence, the aggrieved landholder has preferred this Revision.

3. The learned Counsel for the petitioner Mr. T.R. Mani submitted that when the two gift deeds were held to be valid u/s 21-A of the Act, as they took place within the two dates viz., 15.2.1970 the date of commencement of the Act and 2.10.1970, the date of the Notification, they ought to have been excluded from the holding of the landholder and further in view of Explanation II(b) to Section 3(14) of the Act, which is applicable to persons other than the Hindus, in the instant case, admittedly, the parties being Christians, the said benefit ought to have been extended to the petitioner, even though Explanation I is not applicable and as such, the order passed by the learned Authorised Officer including the lands gifted by the grandmother in favour of the minor sons and unmarried daughter under the gift settlement deeds has to be set aside and the said extents have to be excluded from the holdings of the landholder altogether. I find much force in the above submission, Mr. Jermiah, appearing for the respondent, relying on the decisions of this Court in *State of Tamil Nadu represented by the Collector of Thanjavur v. Chandra (alias) Rukmani* (1979) T.L.N.J. 139, *V. Kalyana Rama Iyer etc. Vs. The State of Madras*, and *R. Manki Bai Ammal Vs. The State of Madras* by Authorised Officer, Land Ceilings, submitted that in view of the ratio laid down in the above decisions, the said findings of the Authorised Officer confirmed by the learned Land Tribunal are not liable to be set aside. In *Chandra's Case* (1979) T.L.N.J. 139 mentioned above, Ramanujam, J. had occasion to consider the effect of a settlement executed by the mother - the landholder in favour of her minor son. The question that arose in the said case was that though the Authorised Officer held that the settlement deed in favour of the minor son is valid u/s 21(A)(b) of the Act, whether the said property is liable to be clubbed with the holding of the family on the ground that the minor son is a member of the family. In the above quoted case, the Tribunal held that the minor son's property should be taken outside the holding of the family, in view of Explanation II(b) to Section 3(14), under which the minor child in whose favour the land has been voluntarily transferred by his parents or grandparents on account of the natural love and affection cannot be treated as member of the family as defined in Section 3(14), since admittedly the parties are Hindus and they are governed by Hindu Law and in the above case, it was held that the said

Explanation II(b) is not applicable to the minors and on that account also, the said finding of the learned Land Tribunal in that case is not tenable and in respect of the minor sons governed by Hindu Law only Explanation I that applies and not Explanation II and under Explanation I, it is only minor sons between whom and their parents there is a registered deed of partition, who will stand excluded from the definition of "family". The earlier decisions of this Court in R. Manki Bai Ammal Vs. The State of Madras by Authorised Officer, Land Ceilings, and V. Kalyana Rama Iyer etc. Vs. The State of Madras, were referred to in the above quoted decision.

4. The ratio laid down in the above two decisions are not applicable to the facts of the present case as they relate to cases prior to the Amended Act 17/70 came into force. The principles enunciated in Chandra's Case 1979 T.L.N.J. 139 support the case of the petitioner fully so far as the two gift deeds are concerned. Thus, it is crystal clear that by virtue of the Explanation II(b) to Section 3(14) now added in the said Amended Act 17/70, the two gift deeds in favour of the minor sons and unmarried daughter, who are admittedly Christians and non-Hindus are valid and those lands cannot be included in the holdings of the father, the landholder. For the foregoing discussions, the Revision is allowed in part and the Authorised Officer is directed to give effect to this order and exclude those lands concerned in the two gift deeds dated 25.2.1970 and 10.4.1970 from the holdings of the petitioner. This Revision is ordered accordingly. There will be no order as to costs.