
(1988) 07 KL CK 0034
In the High Court Of Kerala
Case No : C.R.P. No. 2251 of 1897

K. Raman

APPELLANT

Vs

The Taluk Land Board and Others

RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 84, 84(1A), 85, 85(5)

Citation : (1988) 2 KLJ 241

Hon'ble Judges : M. Fathima Beevi, J

Bench : Single Bench

Advocate : N.K. Sreedharan, for the Appellant;

Judgement

M. Fathima Beevi, J.—The Taluk Land Board rejected the claim of the revision petitioner for restoration of possession of 4.84 acres of land taken possession of as excess land held as determined in the ceiling case. The application under sub-section (10) of S. 85 of the Land Reforms Act was rejected for the reasons that the order of the Board had merged in the order of the High Court and that there had been no gift falling under sub-section (1A) of S. 84 of the Act as claimed. S. 84 (1A) of the Act validates gifts executed by persons holding excess land during the period between 1-1-1970 and 5-11-1974 provided the requirements under the Section are satisfied. Under sub - section (10) of S. 85 of the Act the Board is to restore the ownership or possession or both of land to the person entitled to restoration by virtue of sub-section (1A) of S. 84 Thus under these provisions where land transferred under valid gift has been taken possession of in pursuance to the final order determining the extent and identity of the excess land, the party is entitled to restoration of possession. The provision contained in Sub section (10) is an independent provision. Therefore notwithstanding the determination of the excess land in accordance with the provisions of S. 85(5) or (7) and the fact that the order of the Taluk Land Board has merged in the order of this Court or the Supreme Court it is open to the Court to consider the question of restoration in a case which falls, under S. 84(1A) by virtue of the non

obstante clause therein which provides that notwithstanding any judgment, decree or order of any court or other authority, any voluntary transfer effected by means of a gift deed by a person owning or holding land in excess of the ceiling, area in favour of his son or daughter or the son or daughter of his predeceased son or daughter such gift shall not be invalid. An application under sub-section (10) cannot be construed as an application falling under sub-section (9) of S. 85 which empowers the Taluk Land Board to set aside its order and proceed afresh under sub-section (5) or (7) as the case may be. The proceedings under sub-section (10) do not contemplate reopening of the proceedings and passing fresh orders determining the excess land. It only provides that the land converted by valid gifts if already taken possession of shall be restored to the person entitled to be in possession. The doctrine of merger does not, therefore, apply in such a case. The Board was, therefore, clearly in error in having rejected the application on the ground that the order of the Board has merged in the final order of this Court.

2 The declarant had in the course of the proceedings before the Board raised the contention that the properties belonged to the joint family consisting of himself and two major sons That controversy had been set at rest by the decision of the Supreme Court in the present case. The order of the Board that the properties were the separate properties of the declarant over which he had absolute rights had been upheld by this court in C.R.P. 1868 of 1975 and the appeal before the Supreme Court, C. A. No. 1096 of 1976 was dismissed. The claim for restoration was made on the ground that the declarant and his sons had executed a partition deed in the year 1973, the properties allotted to the share of the two sons had to be treated as properties gifted as they had no pre-existing rights over the properties and these gifts would fall under sub-section (1A) of S 84. The document purports to be a partition deed executed between the father and the sons on the assertion that the properties belong jointly to the executants. It is on a wrong understanding of the rights of the parties that the assertion has been made. The father who was the absolute owner had by executing the document created rights over the property in favour of his sons. It is not the nomenclature of the document that decides the real character of the transaction. It is open to the court to look into all relevant circumstances including the nature of the rights the executant had, the relationship between the parties, the intention and the attendant circumstances. When the father alone had absolute rights over the properties included in the document and the allotment of shares to the sons with the declaration that the properties allotted shall be enjoyed by them absolutely the clear intention is that the property shall vest in the allottees who had no pre-existing title or right over the same. The transfer in favour of the sons under such circumstances can only be construed as gifts. I am supported in this view by the decision of this court in Ponnu v. Taluk Land Board, 1981 KLT 780. After a review of the decisions bearing on the question, Bhat, J. said:-

It is clear that too much importance should not be attached to the nomenclature of a document. Nomenclature of the document may at times conceal the real

transaction. Nomenclature may be given with or without any motive or under a wrong understanding of the rights of the parties or of the law applicable to them. When the question regarding construction of such a document arises for consideration, one may have to look behind the facade or the covering and identify the essence and reality of the transaction. That will depend on a variety of circumstances such as real rights of the parties intention of the parties entering into the transaction, the terms of the document and the surrounding circumstances.

The present case is on all fours with the case considered therein. The argument of the learned Government Pleader that when the father has joined execution of the partition deed asserting joint right no intention to gift the properties to the sons can be gathered cannot, therefore, be accepted. It follows that the gifts of 1973 by the declarant in favour of his adult sons are not invalid as the extent of the land included in the gifts exceeds 4.84 acres which had been declared as excess land and taken possession of the donees are entitled to restoration of possession of the entire land under the provisions of sub-section (10) of S.85. The order of the Taluk Land Board is, therefore, clearly erroneous and is hereby set aside. The Taluk Land Board is directed to pass appropriate orders in the light of what has been stated above.

The revision is disposed of as above. No costs.