

(1976) 08 BOM CK 0030
In the Bombay High Court
Case No : Spl. C. A. No. 2830 of 1976

Kamalabai and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 19-08-1976

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 3, 3(3)
(c)(ii)

Citation : (1977) MhLj 450

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : S.S. Deshmukh for B.N. Deshmukh, for the Appellant; A.C. Agarwal, Asstt. Govt. Pleader For Opponents Nos. 1 and 2, for the Respondent

Judgement

G.N. Vaidya, J.—A short but important point arises in the above Special Civil Application, directed against the judgment, dated March 29, 1976, passed by the Maharashtra Revenue Tribunal, Aurangabad, dismissing an appeal against the decision of the Surplus Lands Determination Tribunal, Nilanga, dated December 27, 1975, declaring that the Petitioner No. 1 Kamalabai holds surplus land to the extent of 17 acres, 15 gunthas under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The validity of the declaration will depend on the question as to whether the Tribunals erred in law in excluding from consideration the share of the mother-in-law of Petitioner No. I, Sheshabai, u/s 3 (3) (c) (ii) of the Ceiling Act.

2. Petitioner No. 1 Kamalabai filed a return u/s 12 of the Ceiling Act claiming that her husband, Govindrao, died on 27-8-1975, leaving behind him, herself, two minor daughters and his father and mother. Notwithstanding this, the Tribunals ignored the mother's share in the property which is equal to that of the wife as the mother is a Class I heir under the Schedule to the Hindu Succession Act; and the heirs in Class I have to succeed equally u/s 8 of that Act.

3. It is not in dispute at this case that the mother and lather together did not hold more than one acre and 17 guathas of land. It cannot be disputed that Sheshabai is entitled to 1/4th share under the provisions of the Hindu Succession Act, and if her share is considered in her family unit, the Petitioner No. 1 cannot be declared as a surplus holder at all.

4. The Revenue Tribunal has rejected the claim of the mother on the ground that she did not care to appear before the Surplus Lands Determination Tribunal or before itself to make a claim for her share in the property. The Revenue Tribunal and the Surplus Lands Determination Tribunal have no jurisdiction to change the law enacted by the Legislature,

5. The Law in section 3 in so far as it is relevant, is as follows:

3. (3) where any land-

.....

(c) is held by a person jointly with others,

.....

and the holding of such person or of a family unit of which such person Is a member including the extent of share of such person, 8" any, in the land answering "to any of the descriptions in clauses (a), (b), (c) or (d) above exceeds the ceiling area on or before the commencement date or on any date thereafter (hereinafter referred to as the relevant date), then for the purpose of determining the ceiling area and the surplus land in respect of that holding, the share of such person in the land aforesaid shall be calculated in the following manner:

.....

(ii) in the land held in or operated by a co-operative society or held jointly with others or held by a firm, the share of the person shall be taken to be the extent of land such person would hold in proportion of his share in the co-operative society, or his share in the joint holding or his share as partner in the firm, as if the land had been so divided and separately held on the relevant date.

6. The words "would hold" and "as if the laud has been so divided and separately held on the relevant date" Nearly indicate that the partition contemplated is not an actual partition by metes and bounds; but a notional partition to be legally conceived only for the purpose of calculating the holdings of the family unit or of the person.

7. The Tribunals have erroneously assumed that in a case like the present one, the mother ought to have made a claim before the Tribunal for the purposes of section 3 (3) -(c) (u) of the Act before her share can be recognised while calculating the surplus land. Such an assumption, in my opinion, is unwarranted by the provisions of law. The law only requires a calculation to be made of the

surplus land on the basis of a fictional or notional partition to be conceived by the mind only for the purpose of calculating the holdings.

8. The shares have to be determined in accordance with the provisions of the Hindu Succession Act where that Act applies and not on the basis of the claims made by the members. Whether more or less or no claim is made by them, it is the duty of the authorities to calculate the shares in accordance with the provisions of the Hindu Succession Act, as the words which are to be emphasised are: "the share of the person shall be taken to be the extent of land such person would hold in proportion of his share in the joint holding".

9. Mr. Agarwal, the learned Assistant Government Pleader, contended that sub-section (3) of section 3 of the Act can have no application to the case of a mother who does not come forward to claim any share in the property under the provisions of the Hindu Succession Act. He contended that the words "where any land is held by a person jointly with others" would apply only if the mother is enjoying the property and is in possession of the property along with others and not where she does not even claim a share in the property as in the present case.

10. He argued that there may be a case where a member may have abandoned his share in the joint family property or surrendered his share to others, in which case it would not be necessary for the authorities to include his share when calculating the surplus holding. We are not concerned here with a case of an abandonment or surrender. Kamalabai, who filed a return herself, has shown that the mother of her deceased husband has a share in the lands;

11. Therefore, it must be held that the mother was holding the land jointly with Kamalabai; and the minor daughters of the deceased Govindrao. It is unnecessary to embark upon an inquiry as to what would happen if any one abandons or surrenders his share in the facts and circumstances of this case.

12. In the result, the Surplus Lands Determination Tribunal and the Maharashtra Revenue Tribunal committed an error apparent on the face of the record in not excluding the mother's share from consideration when calculating the Petitioner No. 1's surplus holding contrary to the provisions of section 3 (3) (c) (ii) of the ceiling Act. Their orders declaring the surplus land are, therefore, quashed and set aside; and instead it is declared that the Petitioner No. 1 is not a surplus holder.

13. Rule absolute with costs.