
(1984) 01 MAD CK 0054
In the Madras High Court

M.K. Swaminathan

APPELLANT

Vs

Authorised officer (Land Reforms), Tirunelveli

RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 6, 7

Citation : AIR 1984 Mad 97 : (1984) 97 LW 61 : (1984) 1 MLJ 295

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : Thiru B. Kumar, for the Appellant; Thiru Jermiah, for Addl. Govt. Pleader, for the Respondent

Judgement

Ratnam, J.—In this Civil Revision Petition arising u/s 83 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act. 1961 (hereinafter referred to as "the Act") at the instance of be land-holder the question that arises for consideration is whether the claim of the land-holder that certain items of properties ire trust properties and should- he dealt with as such under the provisions of the Act is sustainable. The authorities below were not inclined to accept the stand of the petitioner in this regard. Principally, there are three items of properties of the extent of 1 acre and 75 cents, 31 cents and 53 cents respectively, and the petitioner claims that a trust had, been created in respect of those properties. The trust is sought to be spelt out on the basis of clauses 7 to 9 in the Will executed by the father of the petitioner in relation to those items. The relevant clauses run as under: (Matter in vernacular hence omitteded.).

2. The learned counsel for the petitioner contended that the testator had created a trust in respect of the items dealt with under Clauses 7 to 9 of the Will and, therefore, the authorities below were in error in treating those extents of lands as Properties belonging to the Petitioner and in proceeding to compute the holding and declaring the surplus as well. On the other hand, Mr. Jermiah. appearing on behalf of the Additional Government Pleader submitted that the clauses in the Will would at best create a charge over the properties and there

was no creation of trust or vesting of the properties in a trustee but that the petitioner had been directed merely to expend a Portion of the income from the properties for the purposes stated in the Will and to appropriate the balance to himself it was also his further contention relying upon Section 3(36-A) and the Explanation thereto as well as the second Explanation to Section 5(3)(b) of the Act that even assuming that there was some kind of a trust, as contended -by the petitioner such holding has to be brought in for purposes of computing the ceiling area of the Petitioner.

3. The nature of the disposition under the Will has first to be considered and decided. Under Clause 7 of the Will, the testator has stated that he has been for the salvation of his soul doing abishekam to Sri Subramania. Swami at Kurukkuthurai every year in the month of Chitral in Karthigai Nakshtram and neivedyam as well and had directed the petitioner herein to continue to do that and for that purpose the Properties in schedule 3 of the extent of 1 acre and 75 cents had been set apart. There is a further direction that from out of the income from that property a sum of Rs. 150/- should be expended for the purpose of performing the abishekam and neivedyam and that the balance remaining should be taken and enjoyed by the petitioner it is thus seen that the testator has merely directed that a portion of the income realised from 1 acre and 79 cents should be expended and the balance should be taken by the petitioner. There is no creation of any trust with reference to this item of property or the vesting of this Property in the Petitioner in his capacity as a trustee. Clause 7 of the Will cannot therefore be construed as one creating trust in respect of that item of property but only a charge in respect of expenditure has been created over a portion of the income from the property with the further direction that the balance should be appropriated by the petitioner. Clause 8 of the Will deals with Property of an extent of 31 cents. With reference to that item, the testator has stated that from out of its income the petitioner should pay the kist and deliver 11/2 kottahs of paddy per crop to the trustees of the temple for the purpose of doing neivedyam and obtain a receipt. Regarding this item also the testator has merely earmarked a portion of the income from the property for the performance of neivedyam in the sastha temple of Sindupundurai. In the opening part of Clause 9 of the Will. the testator has no doubt used the expression""

with reference to an extent of 53 cents dealt with thereunder; But merely from the "use of this expression it cannot be inferred-that there was any outright dedication or men the creation of a trust, for the subsequent clause which has to be read along with the earlier clause discloses that even as regards this item the testator had directed that from out of the income from the property the kist had to be Paid and half a kottah of paddy had to be delivered to the poojari doing the pooja and a receipt obtained. Thus even under Clause 9 of the Will, the testator had merely directed the delivery of paddy to the Poojari of the temple in order to ensure the performance of Pooja in the temple without any break. A consideration of the recitals relating to the disposition made by the testator by

the clauses referred to above clearly indicates an intention on the Part of the testator that the ownership in the property should still remain only in the petitioner but that from out of the income certain charities have to be performed and the surplus income has to be taken and enjoyed by the petitioner. There is no vesting of these items of properties in the petitioner in a capacity other than that of the owner. There is also nothing to indicate that the -charities directed to be performed consumed the entirety of the income that could be realised from these items of properties. Further even. under Clause 9 there is a direction that apart from the outgoings; directed to be spent as indicated, all other movable and immovable properties should be taken by the petitioner. A further clause occurring later also indicates that these properties should be taken by the petitioner and his heirs and these charities should be performed and that after the life time of the petitioner the properties should be taken by the heirs and the charities performed so that there is I break in the performance of the charities directed to be done.

A harmonious reading of all these clauses leads to the irresistible conclusion that under the terms of the Will the testator was merely charging the income over certain items of properties for the Performance of the charities in that view there was no creation of any trust as such by the father of the petitioner under his Will and therefore the claim of the petitioner that the properties have to be treated as trust properties and, should be excluded from computation is unacceptable.

4. The learned counsel for the Petitioner next contended that the authorities below erred in not applying Section 6 of the Act in computing the holding of the petitioner. This argument proceeds on a total misconception and on an assumption that there has been a public trust created for religious or charitable purposes- Earlier it has been seen how under the terms of the Will the testator had merely directed the performance of pooja and neivedyam in some of the temples from out of a portion- of the income from the properties and how there had been no absolute dedication even inasmuch as it had not been established that the amounts directed to be spent had equaled or exceeded the income from those items of properties has also further been noticed that there is no question of vesting the properties of the trust in a trustee for the Purpose of carrying out the objects of the so called trust. On the contrary the specific direction in the Will was that the property should be taken by the petitioner and his successors in order to see to it that the pooja and neivedyam were continued to be -performed without a break. Under these circumstances, there is no question of any trust being involved at all and, therefore. the petitioner cannot be heard to contend- that Section 6 of the Act should have been applied. This contention of "the learned counsel for the Petitioner has also to be rejected,

5. Lastly the learned counsel for the petitioner contended that in the matter of surrender of surplus lands the landholder has got an unfettered choice and that choice having been exercised by the petitioner in a particular manner the authorities below were in error in having rejected the lands so offered by the

petitioner as surplus. It is seen from the orders of the authorities below that the Petitioner had offered as surplus lands over which a charge for the performance of Pooja and neivedyam had been created under the terms of the Will. Clearly such an offer is unacceptable as those lands cannot be subjected to convenient enjoyment. Ultimately the surplus taken over has to be distributed to the and less poor and if the lands now offered by the petitioner are accepted and eventually distributed, there is every chance of such persons being disturbed in their enjoyment of the properties so given to them by the enforcement of the charge created over those items of properties. In other words the enjoyment may be inconvenient and interrupted as well To avoid such a state of affairs, the authorities below rightly declined to accept the offer of surplus lands made by the petitioner. There is nothing legal or irregular in the rejection of the offer so made by the petitioner. No other Point was urged.

6. Consequently the authorities below were quite correct in holding that three items of properties should also be treated as belonging to the petitioner computing his holding and in refusing to accept the offer of surplus lands made by the petitioner. There is nothing illegal or irregular in the order of the authorities below which merits interference in the exercise of the revisional jurisdiction of this court u/s 83 of the Act. Consequently the Civil Revision Petition fails and is dismissed with costs.

7. Revision dismissed.