

(1997) 04 MAD CK 0077
In the Madras High Court
Case No : Appeal No. 440 of 1991

N. Rajammal (Died) and another	Vs	APPELLANT
P. Maragathammal and 28 others		RESPONDENT

Date of Decision : 12-04-1997

Acts Referred:

Gift Tax Act, 1958 — Section 2(xxiv)
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 10(3),
10(4), 7, 8
Transfer of Property Act, 1882 — Section 5
Urban Land (Ceiling and Regulation) Act, 1976 — Section 22, 6

Citation : (1998) 1 CTC 314 : (1998) 1 LW 594 : (1998) 1 MLJ 184

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. V.T. Gopalan, for M/s. Damodaran, for the Appellant; Mr. R. Janakiraman and Mr. D. Rajendran, for the Respondent

Judgement

1. Plaintiff in O.S.No. 57 of 1990, on the file of Subordinate Judge, Tiruppur, is the first appellant.

2. Suit filed by her was one for partition claiming one- fifth share in the plaint schedule items and also to direct the defendants to put her in

possession of the share so allotted. Consequent relief as to payment of profits was also sought for. She also prayed for costs of suit.

3. Material averments in the plaint may be summarised as follows:-

Plaintiff and defendants 1 to 4 are sisters, being daughters of late Appasami Naidu. All the schedule items belong to Appasami Naidu either

ancestral or by purchase. He had no male issues. With a view to escape from the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling

on Land) Act, 1961, and also to avoid surrendering surplus lands to the Government, Appasami Naidu brought about a partition deed dated

30.9.1970 between himself, plaintiff and defendants 1 to 4. Under this partition, Appasami Naidu purported to divide all his properties, treating them as joint properties of himself and his daughters. Separate schedule of properties were given regarding allotment to Appasami Naidu and all Ms daughters. Proceedings were initiated against late Appasami Naidu under the Land Reforms Act. Appasami Naidu contended that his holding was within the ceiling limits and that he had no property to surrender. This contention was not accepted by the Authorised Officer. As per his order dated 9.5.1974, the partition deed dated 30.9.1970 was held to be a void document, on the ground that it was brought about to defeat the provisions of the Act, and all the properties were treated as the properties of late Appasami Naidu. Appasami Naidu filed an appeal in Sub-Court, Coimbatore, in L.T.A.No. 270 of 1974, without any success. The appeal was dismissed on 20.2.1975. When revision was preferred before this Court in C.R.P.No. 1101 of 1975, which also met with the same fate. It is contended that as a result of the Order passed by the Authorised Officer, as confirmed by the Sub-Court and this Court, Appasami Naidu surrendered the excess land to the Government. The lands so surrendered were included in Survey Nos. 234, 235, 237/1 and 626/2. Shortly thereafter, Appasami Naidu died. It is said that at the time of his death, the schedule properties belonged to Appasami Naidu. He is survived by plaintiff and defendants 1 to 4 as his heirs, and they succeeded to the plaint schedule properties. There was no partition between plaintiff and defendants 1 to 4 after the death of Appasami Naidu. It is further averred that the partition deed dated 30.9.1970 was brought about by Appasami Naidu for a specific purpose of circumventing the provisions of the Land Ceiling Act, and it was never acted upon. It was also held to be inoperative by the Authorities under the Act. While surrendering the Lands, Appasami Naidu not only surrendered the properties allotted to his share but also surrendered the properties allotted to his daughters under the deed. According to the plaintiff, the partition deed dated 30.9.1970 is non-est, and the plaintiff ignores the same. It is further averred that the partition deed is not a transfer, and it is not necessary to have the same set aside.

4. After the death of Appasami Naidu, plaintiff and first defendant requested defendants 2 to 4 to have an amicable settlement. They did not agree

for the same. Therefore, first defendant, after issuing notice to all the other sisters, filed O.S.No.122 of 1986, on the file of Subordinate Judge, Tiruppur. Though, the plaintiff was made a defendant, she also shared the expenses with the first defendant. O.S.No.122 of 1986 was listed for trial on 9.8.1989, and the same was adjourned on two occasions, for reporting settlement. First defendant thereafter, in collusion with the other defendants, allowed the suit be dismissed for default. Even after the dismissal of O.S.No.122 of 1986, defendants 1 to 4 had been assuring the plaintiff that they will join her as vendors whenever any portion of the property was sold, and also agreed that the sale proceeds can be shared equally. When it was found that the intention was only to defeat the rights of the plaintiff, she filed I.A.No. 1239 of 1989 to restore the suit O.S.No.122 of 1986. It is said that on the date of filing of the present suit, the restoration application was pending. It is said that after the restoration application was filed, defendants 1 to 4 entered into an agreement in respect of portions of the property which are most valuable, and they have taken huge sums from the prospective purchasers. The present attitude of the defendants that the partition deed dated 30.9.1970 is not a void document and it binds them is against the claim put forward in O.S.No.122 of 1986. Plaintiff says that ignoring the deed dated 30.9.1970, all the properties had to be divided by metes and bounds.

5. In the written statement filed by defendants 2 and 3, they disputed the claim of the plaintiff that the partition deed dated 30.9.1970 was brought into existence with a view to escape from the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act. It is said that the plaintiff is estopped from putting forward such a contention when she herself has taken a stand before the Authorities concerned, that the document is valid. It is said that under Sec. 22 of the Tamil Nadu Land Ceiling Act, aforementioned, any transaction is invalid only against the Government, and, as between the parties to the transaction, the same is genuine and binding on them. It was not open to the parties to contend that the transaction which was inter se between them, was not binding. The contractual obligations which will flow under the document will stand. The allegation that the plaintiff is in joint possession of the plaint properties is denied. They further contend that ever since 30.9.1970, parties were in

separate enjoyment in pursuance of a family arrangement which came into existence prior to the partition deed. Since they have been exercising separate rights of ownership, each sharer has perfected title to the respective share allotted to them, and, therefore, the claim of the plaintiffs is barred by limitation and-adverse possession. It is also hit by the principle of estoppel and also the principle of res judicata. They pray for dismissal of the suit.

6. Fourth defendant filed a written statement raising the same contentions, and also supporting the claim of the other defendants, and prayed for dismissal of the suit.

7. Defendants 1 and 5 remained ex parte.,

8. Trial Court, after recording evidence in detail, came to the conclusion that the plaintiffs are not entitled to any relief as claimed, but granted a preliminary decree for partition insofar as the properties retained by Appasami Naidu under the partition on deed dated 30.9.1970 are concerned, excluding the properties taken over by the Government. In respect of other properties, the suit was dismissed. The parties were directed to suffer their own costs.

9. Not satisfied with the decree of the lower Court, plaintiff has preferred this appeal.

10. After filing the appeal, the appellant died. Her legal representative has been impleaded as additional second appellant.

11. Learned counsel for the appellants attacked the judgment and decree of the Lower Court on the ground that when a transaction is held to be

void, it is void for all purposes. A transaction cannot be void, and also valid at the same time. In this case, the Authorities under the Land Ceiling

Act have held that the partition deed is void and, therefore, it has to be taken that there is no such document at all. Later Appasami Naidu

continued to be the owner of all the properties, though on paper, i.e., under the partition deed dated 30.9.1970, the properties are alleged to have

been allotted to his daughters. He died intestate and, therefore, a partition by metes and bounds of all the properties left behind by Appasami

Naidu excluding the properties taken over by the Government, has to be effected. According to the learned counsel the partition deed was

intended to defeat a law of the land and, therefore, invalid and cannot take effect.

12. As against the said contention of learned counsel, it was argued that a transaction entered into by owner of the property will be valid as

between the parties to the transaction. It is not binding on the Government. It is invalid only to the extent that it defeats the ceiling provisions of the

Act. Further, there is no co-ownership in respect of the properties allotted to the daughters as per the deed. It continued to be owned by the

daughters to whom the property was allotted. The Authorities have only held that the partition deed executed by Appasami Naidu and defendants

1 to 5 is invalid to the extent it defeats the rights under the Act. It was never declared as a void document.

13. The trial Court accepted the case of the respondents and held that the document is valid as between the parties to the transaction and it is

invalid only as against the Government, and that too, only insofar as the excess lands are concerned.

14. The only point that requires consideration in this appeal is, whether the partition deed dated 30.9.1970 is void for all purposes, whether it is

valid as between the parties to the transaction. Incidentally, a question may arise as to whether the document is valid only to the extent it defeats

the provisions of the Tamil Nadu Land Ceiling Act.

15. Before considering the validity of the document, we have to consider the relevant provisions of the Act.

16. In the preamble portion of the Act, it is said that there is a great disparity in the ownership of agricultural land leading to the concentration of

such land in the hands of certain persons, and it is necessary to reduce such disparity in the ownership of agricultural land in the State, and,

therefore, it is necessary to fix a ceiling on the agricultural land holdings, and for the said purpose, it is necessary to acquire the agricultural land in

excess of the ceiling area and distribute such land to the land less and other persons among the rural population, etc. (*Italics supplied*).

17. Chapter II of the Act deals with fixation of ceiling limits. Sec. 7 says that on and from the date of commencement of this Act, no person shall,

except as provided in this Act, but subject to the provisions of Chapter VIII, be entitled to hold land in excess of the ceiling area. (A proviso is

also there in that section, but it is not necessary for our purpose). Sec.8 directs that a person holding land in excess of the ceiling area, shall file

returns to the Authorised Officer appointed under this Act. Sec. 9 deals with collection of information. Sec. 10 deals with preparation and publication of draft statement as regards land in excess of the ceiling area. Sec. 11 deals with the power of the Authorised Officer to decide question of title in certain cases. Sec.12 deals with publication of final statement. Sec. 18 says that after the publication of the final statement under Secs. 12 or 14, the Government shall, subject to the provisions of Secs. 16 and 17, publish a notification to the effect that the surplus land is required for a public purpose. As soon as may be after the publication of a notification under this section, the Authorised Officer shall cause to be published in every village or town in which any part of the land specified in such notification is situated, a proclamation containing the terms of the notification. He shall also cause a copy of the notification to be served on the persons concerned, the creditors, persons whose names appear in the final statement published under Sec. 12 or 14 such other persons as may be specified in the rules made by the Government. Sub-section (3) of Sec. 18 of the said Act says that on the publication of the notification under sub-section (1), the land specified in the notification together with the trees standing on such land and buildings, machinery, plant, apparatus, wells, filter points or power lines constructed, erected or fixed on such land and used for agricultural purposes shall, subject to the provisions of the Act, be deemed to have been acquired by the Government for a public purpose and vested in the Government free from all encumbrances with effect from the date of such publication. Chapter III is the most important Chapter so far as this case is concerned. Sec. 19 of the Act says that on and after the notified date, no document relating to any transfer to land shall be registered unless a declaration in writing is made in duplicate in such form as may be prescribed and filed by the transferee and the registering authority shall forward the declaration to the Authorised Officer concerned. Sec.20 deals with penalty for future acquisition in contravention of Sec. 7. It says that if, as a result of any transfer of land either by sale, gift, etc, effected on or after the notified date, the extent of land held by the transferee exceeds the ceiling area, the excess also shall vest in the Government. Sec. 21 deals with ceiling on future acquisition by inheritance, bequest or by sale in execution of decree, etc. Sec. 22 reads thus:-

Where, on or after the date of the commencement of this Act. but before the notified date, any person has transferred any land held by him by

sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by bequest

(or has effected a partition of his holding or part thereof the Authorized Officer within those jurisdiction such land, holding, or the major part

thereof is situated may, after notice to such person and other persons affected by such transfer or partition and after such enquiry as he thinks fit to

make, declare the transfer or partition to be void if he finds that the transfer or partition, as the case may be, defeats any provisions of this Act"".

18. It is on the basis of this section, learned counsel for the appellant argued that the transaction dated 30.9.1970 is void transaction for all

purpose. If the interpretation given by appellants is accepted, they will succeed otherwise, the finding of the lower Court has to be confirmed.

19. While interpreting an enactment, the intention of the Legislature has to be considered, and also the principles connected with that.

20. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , in paragraph 22 (at page 674) heir Lordships held thus:-

It is a sound rule of construction of a statute firmly established in England as far back as 1584 when - *Heydon's case*, (1584) 3 Co Rep 7 a; 76

E.R. 637 was decided that-

for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are

to be discerned and considered:

1st What was the common law before the making of the Act.

2nd What was the mischief and defect for which the common law did not provide.

3rd, What remedy the Parliament hath resolved and appointed to cure the disease of the common wealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and

advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and "pro privato commodo", and to add force

and life to the cure and remedy, according to the true intent of the makers of the Act, "pro bono publico"".

In "*In rer Mayflower Property Co*", 1898 (2) Ch. 28 at pate 35 (W) Lindley M.R.

in 1898 found the rule "as necessary now as it was when Lord

Coke reported "Heydon's case, 1584 (3) Co Pep. 7a: 76 E.R. 637 (V). In - Eastman Photographic Material Co. v. Controller General of Patents,

Designs and Trade Marks"1898 A.C. 571 (X) Earl of Halsbury reaffirmed the rule as follows:-

My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act

and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared, I

cannot doubt the conclusion".

21. The said decision was followed in R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , wherein, in paragraph 6 of the judgment, it was

held thus:-

.....It is argued by Mr. Palkhivala that the language of the enactment being clear and unambiguous, it is not open to us to read into it a limitation

which is not there, by reference to other and extraneous considerations. Now, when a question arises as to the interpretation to be put on an

enactment, what the Court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually

used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other

materials. "The literal construction then", says Maxwell on Interpretation of Statutes, 10th Edn., page 19 "has, in general, but prima facie

preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to

consider, according to Lord Coke; (1) What was the "law before the Act was passed; (2) What was the mischief or defect for which the law had

not provided; (3) What remedy Parliament has appointed; and (4) the reason of the remedy". The reference here is to Heydon's case (1584)3 Co

Rep 7 ; 76 E.R. 637 (A-1). These are principles well settled, and were applied by this Court in The Bengal Immunity Company Limited Vs. The

State of Bihar and Others, . To decide the true scope of the present Act, we must have regard to all such factors as can legitimately be taken into

account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which is intended

to suppress and the other provisions of the statute, and construe the language of S.2 (d) in the light of the indications furnished by them". (Italics supplied)

22. In Kedar Nath Singh Vs. State of Bihar, their Lordships held thus:-

....It is also well-settled that in interpreting an enactment the Court should have regard not "merely to the literal meaning of the words used, but

also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. Viewed in that light, the

provisions of the sections should be so construed as to limit their application to acts involving intention or tendency to create disorder, or

disturbance of law and order, or incitement to violence..." (Italics supplied)

23. If two alternative constructions are equally possible, the one which is consistent with the scheme envisaged by the enactment and which

promotes the purpose and object of the provision is to be preferred. The legislative intent and purpose behind the provision and the result sought to

be achieved will have to be considered. The meaning to be attributed must be consistent with the intent and result sought to be achieved. The

adoption of a wider meaning any result in extending the scope of the provision to matters which may not be necessary to be provided for under the

scheme of the Act or for the purpose of the Act and to attribute such wide meaning may lead to undesirable results. In such cases, the adoption of

a wider meaning ought to be avoided. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve

the purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder

construction based on the view that Parliament would legislate only for purpose of bringing about an effective result. See Hakes v. Dencaster

Amalgamated Collieries Ltd. (1940) A.C. 1014 (Italics supplied).

24. On the above principles of interpretation we have to consider what was the intention of the legislature, and what was the mischief which was

intended to be done away as provided under the Act. For the said purpose, the Court may have to read down to make it convenient to read the

mind of Legislature. I have already extracted the Preamble of the Act. The intention of passing the enactment was that certain persons were owning

large extents of lands and, therefore, there was a great disparity in the

ownership of agricultural land leading, and, so it had become necessary to acquire the excess land, after fixing a ceiling on the extent of land that may be held by a person, and thereafter distribute the lands so acquired, among the landless. The intention is not to do away with the owning agricultural lands, but to fix a ceiling limit. With this in mind, we have to read Sec.22. This section does not say that the transactions referred to therein are void for all purposes. The Authorised Officer, on such enquiry as envisaged in the section, may declare the transaction as void, if it violates the provisions of the Act. That means, invalidation is only to the extent where it exceeds the ceiling limits and not otherwise. Sections. 10(4)(A) and 4(B) of the Act also give a clue that the entire transaction is not declared void. Sec.10 of the Act deals with preparation and publication of draft statement as regards land in excess of the ceiling area. Sub-sec.(3) of Sec.10 permits a person to specify the land which he desires to retain within the ceiling area. Sub- Secs.4(A) and 4(B) of Sec. 10 read thus:-

4-A, Notwithstanding anything contained in sub-sec.(4), where the transfer or partition of any land has been declared to be void under Sec.22, it shall be the duty of the authorised officer to include, subject to the provisions of sub-sec. (4-B), such land within the ceiling area of the transferor or the person affecting the partition, as the case may be, as if no such transfer or partition had taken place:

Provided that in respect of the land so included nothing in this sub-section shall affect the rights of the transferee or of the person in whose favour the partition was effected.

4-B. Where the transfer of any land has been declared to be void under Sec.22 and where the extent of the land so transferred is in excess of the ceiling area of the transferor, the land so transferred shall be included within the ceiling area of the transferor in the following order of preference:

(i) firstly, land transferred to a person who was landless immediately before the date of such transfer and who was not related to the transferor or any member of his family;

(ii) secondly, land transferred to a cultivating tenant who was cultivating that land immediately before the date of such transfer;

(iii) thirdly, land transferred to a person who was not related to the transferor or any member of his family, and

(iv) land transferred to others""'. (Italics supplied)

A reading of these two sub-sections makes it clear that as between the transferor and transferee, the transaction is kept intact, and in the option to

be exercised by the transferor, the land which he has transferred or parted with, will be allowed to be retained, so that the transferee may not be

affected. In cases where lands have been sold in excess of the ceiling the Authorised officer has to give certain preference in identifying the

property to be retained. According to me, the Preamble read with sub-Secs. (4-A) and (4-B), shows that the intention is only to invalidate the

document as against the Government, and, as between the parties, the transaction shall be retained as such. The mischief that was sought to be

remedied is that from the notified date, the person shall not hold extent of land in excess of the ceiling area. Only to that extent, the transaction is

declared invalid. It is not void for all purposes, as contended by the learned counsel. I have also perused Exs.A-2 and A-4 judgments, i.e., the

order of the Land Tribunal and the Order in C.R.P.No.1102 of 1975, respectively. There also, the document was held to be invalid, on the ground

that the same was brought into existence only for the purpose of defeating the provisions of the Act. The contention that Ex.A-1 is void for all

purposes is, therefore, rejected. It is invalid only to the extent it exceeds the ceiling limits of the deceased.

25. Learned Senior Counsel for the appellants contended that Ex.A-1 cannot amount to a partition, nor could there be a family arrangement

between the daughters. It is his case that the daughters have no right during the lifetime of father and hence they cannot be co-owners or co-

sharers. Daughters have no pre-existing right. It is, therefore, his contention that Ex.A-1 is void for all purposes and no rights now from Ex.A-1

and the property must be deemed to continue as belonging to Appasami Naidu. A reading of the partition deed also shows that late Appasami

Naidu wanted to confer ownership on his daughters. Being the owner of properties, he was competent to convey title to them. Even though they

are not co-owners or co-sharers, Ex.A- 1 declares that even before that day, there was a family settlement and various items of properties have

been given to the five daughters as specified in the Schedule. It further declares that thereafter the other sharer will not have any right over the

property, and each of the sharers shall deal with their respective share as absolute owner. What is the effect of such a document though the nomenclature is partition.

26. In *Made Gouda v. Chenne Gouda* AIR 1925 Mad. 1174 a learned Judge of this court held thus :

The formal requirements of the Transfer of Property Act cannot be avoided by calling a transaction by a particular name under the Hindu Law. A

person cannot by the mere recognition of another as a co- sharer of his convey title to him of immovable property, without observing any of the

formalities required by law for it".

27. In *The Controller of Estate Duty, Andhra Pradesh Hyderabad Vs. Kancharla Kesava Rao*, , their Lordships accepted the principle enunciated

in *Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel*, , wherein a decision of this Court reported in *Gutta Radhakristnayya*

minor, by mother and guardian *Nagarattamma Vs. Gutta Sarasamma*, was quoted with approval. The relevant portion of the decision reads thus:-

A partition is not a transfer in a strict sense. It is an adjustment of the rights of the various members of the family. In *Commissioner of Income Tax,*

Gujarat Vs. Keshavlal Lallubhai Patel, this Court quoted with the approval a passage from the decision of the Madras High Court in *Gutta*

Radhakristnayya minor, by mother and guardian *Nagarattamma Vs. Gutta Sarasamma*, . That passage reads thus:-

Partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severality. Each one of the sharers had an

antecedent, "title and, therefore, no conveyance is involved in the process, as a conferment on a new title is not necessary".

This Court had to consider the meaning of the word "disposition" occurring in Sec.2 (xxiv) of the Gift Tax Act, That section defined the expression

"transfer of property" thus:-

2. (xxiv) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and,

without limiting the generality of the foregoing, includes-

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of

any person other than the donee of the power partnership or interest in property;

(d) any transaction entered into by any person with intent thereby to diminish directly ""or indirectly the value of his own property and to increase

the value of the property of any other person"".

The question for consideration in that case was, inter alia, whether a partition is a "disposition". Dealing with this question this Court in The

Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, observed:

A reading of this section clearly goes to show that the words ""disposition"", ""conveyance"", ""assignment"", ""settlement"", ""delivery"" and ""payment"" are used as some of the modes of transfer of property. The dictionary gives various meaning for those words but those meanings do not help us. We

have to understand the meaning of those words in the context in which they are used. Words in a section of a statute are not to be interpreted by

having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a ""section, one must take into

consideration the setting in which those terms are used and the purpose that they are intended to serve. If so understood, it is clear that the word

disposition"" in the context means giving away or giving up by a person of something which was his own, ""conveyance"" means transfer of the claim,

right or property to another, ""settlement"" means settling the property, right or claim conveyance or disposition of property for the benefit of

another, ""delivery"" contemplated therein is the delivery of one's property to another for no consideration and ""payment"" implies gift of money by

someone to another. We do not think that a partition in a H.U.F. can be considered either as ""disposition"" or ""conveyance"" or ""payment"" or

alienation"" within the meaning of those words in Sec.2 (xxiv)"".

We see no reason why we should not place the same interpretation on the word "disposition" in Sec.24 of the Act"".

28. If Ex.A-1 cannot amount to a partition since the daughters are not co-sharers, and the ownership is also conferred on them, what is the legal

effect of that document. It can only be a gift. For, a right in praesenti is created. A person who had no antecedent right is conveyed ownership by

virtue of this document though it may not be a gift which was validity under

Sec.21-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act.

29. In *Ponnu v. Taluk Land Board* 1981 K.L.T. 780 J., as he then was, considered the distinction between a gift" and a "partition", and held thus:-

A gift is essentially a transfer. A donee cannot have, any pre-existing right in the subject matter of the gift. Partition is a transaction by which an

adjustment of mutual rights of joint owners or co-owners in common property is effected. Partition involves a conversion of joint ownership and

joint enjoyment into one in severality. Parties to a partition have pre-existing title to the property dealt with therein. That being so, a partition does

not involve conveyance of right or transfer for property. The partition deed in this case of property. The partition deed in this case was of property.

The partition deed in this case was not between joint owners ""or co-owners but between a person who owned the land exclusively and another

person who had no pre-existing title or right. Though the transaction is called ""partition"" by the parties thereto, it did not involve any mutual

adjustment of rights between joint-owners or co-owners and therefore, in effect and in reality it was not a partition. Whatever be the nomenclature

given by the parties to a transaction, a Court or Tribunal is entitled to go behind it and look into the real nature of the transaction. 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"". (italics supplied)

30. In the case on hand, even though it may not be a valid gift, under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act and may be

invalid for the purpose of this Act as between the donor and the daughters, it amounts to a gift and the ownership also passes on to the daughters.

If so, the present suit for partition is not maintainable.

The plaintiff cannot be treated as a co-owner along with her sisters, far as the properties allotted under various schedules. Plaintiff will be a co-owner only in respect of those properties retained by Appasami Naidu under Ex.A-1. for which a decree has already been granted by the Court below.

31. Learned counsel for the appellants contended that there cannot be any question of partition between the father and daughters. There cannot be a family settlement also since the daughters do not have a claim during the lifetime of the father. If so, the entire transaction is invalid. For the said purpose, learned counsel relied on the decision reported in *Hiraji Tolaji Bagwan* (since deceased by L.R's) Vs. *Shakuntala*, wherein their Lordships held that there cannot be a question of family settlement if there is no partible right. In that decision, it was held thus:

The family settlement which is accepted by the courts in lieu of partition, is a settlement which gives share to the parties as per their legal entitlement and not a settlement which is made or purported to have been made to circumvent the law. A partition of the property can only be among the parties who have a pre-existing right to the property. Under the Hindu Law, a female, major or minor, has no share in the ancestral property. A female is given a share either in the self-acquired property of the husband or the father, or in the share of the husband or the father in the coparcenary property after the property is partitioned. There cannot, therefore, be a partition and hence a family settlement with regard to the ancestral property so long as it is joint, in favour of either the wife or the daughters"".

32. Learned counsel for the appellants also relied on a recent judgment of the Supreme Court reported in *Sk. Sattar Sk. Mohd. Choudhari Vs.*

Gundappa AMabadas Bukate, wherein, in paragraph 22 of the judgment, their Lordships have held thus:-

Sec.5 of Transfer of Property Act contemplates transfer of property by a person who has a title in the said property to another person who has no title. A family arrangement, on the contrary, is a transaction between members of the same family for the benefit of the family so as to preserve the family property, the peace and security of the family, avoidance of family dispute and litigation and also for saving the honour of the family.

Such an arrangement is based on the assumption that there was an antecedent title in the parties and the agreement acknowledges and defines what

that title is. It is for this reason that a family arrangement by which each party takes a share in the property has been held as not amounting to a

conveyance of property"" from a person who has title to it to a person who has no title"".

I do not think that decision will have any application to the facts of this case. Since I hold that a right in praesenti is conferred on the basis of Ex.A-

1, even if Ex.A-1 is not a partition deed, it may be construed as a transfer, i.e., a gift in favour of the daughters. In this connection, it may also be

noted that in Ram Charan Das Vs. Girjanandini Devi and Others, , a family settlement was considered to be valid, and in such cases, "family" is not

to be understood in narrow sense of being a group of persons, where the landlord is having a succession, or having a claim to a share in the

disputed property. In that case, their Lordships held thus:-

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property

amongst members of a family. In this context the word "family" is not to be understood in a narrow sense of being a group of persons whom the

law recognises as having a right of succession or having a claim to a share in the disputed property. The consideration for a family settlement is the

expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations. That consideration having passed

by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be impeached thereafter"".

33: In Kale and Others Vs. Deputy Director of Consolidation and Others, their Lordships further went on and held thus:-

The family settlement must be a bona fide one as to resolve family disputes and rival claims by a fair and equitable division or allotment of

properties between the various members of the family.

xxx

The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.

xxx

The family arrangement may be even oral in which case no registration is

necessary. The registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and is, therefore, not compulsorily registrable.

XXX

The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.

XXX

Even if bona fide disputes, present or possible which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

xxx

... that assuming, that the said document was compulsorily registrable the family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. ..." (Italics supplied)

34. Plaintiff will be estopped from disputing the validity on the principle of estoppel. She was also taken the benefit under the transaction. She has also admitted that there was earlier a family settlement. So, Ex.A-1 is a gift pursuant to a family settlement. In the decisions cited by learned counsel for the appellants, i.e., *Hiraji Tolaji Bagwan (since deceased by L.R's) Vs. Shakuntala*, and *Sk. Sattar Sk. Mohd. Choudhari Vs.*

Gundappa A Mabadas Bukate, , these questions did not come for consideration. In fact, in these two cases, the decision was by a smaller bench,

i.e., by Bench consisting of two Judges, whereas the other cases are by a larger Bench.

35. Learned counsel for the appellants also relied on two Bench decisions of this Court, both reported and Mariamma Varghese v. K.V.

Balasubramaniam and 11 others 1994 (1) L.W. 391 and Samiappa, B.P. (Died) and 4 others v. Arunthavaselvan and 3 others 1994 (1) L.W.

399. Both these cases were under the Tamil Nadu Land Ceiling Act, In those cases, the suit was one for specific performance. Their Lordships

said that u/s 6 of the Urban Land Ceiling Act, the transaction was prohibited and was declared to be null and void. In those circumstances, their

Lordships said that the discretionary relief of granting specific performance should not be exercised. Their Lordships said that if specific

performance is granted, that will nullify the statutory provision. In the other decision also, the question that arose was in respect of a suit for specific

performance. In that case, the land agreed be sold was carved out in the excess area. So, naturally, this court held that if specific performance is

granted, that will go against the provisions of Sec.22 of the Act. This Court held that if a transaction is void and is also declared so under the Act,

the court will not lend its support to such a transaction. An argument was put forward in that case that as between the parties to the agreement, it is

valid. This argument was met by the Division Bench in paragraph 13 of its judgment (at page 44 of the Reports). It is seen therefrom that the very

agreement was filed before the Authorised Officer, who declared the same as invalid. When the property agreed to be sold is considered as one of

the items of the excess area and the agreement is also declared as invalid, their lordships said that it is not binding as between the parties and the

specific performance cannot be enforced. I do not think the above decision helps the appellants in any way.

36. Finally, we may also take note of the decision reported in Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others, .

That is an appeal against the order passed by Ramanujuam, J. reported in S. Naganatha Ayyar and Others Vs. The Authorised Officer and

Others, therein this court held that while interpreting Sec.22, if the transaction is bond fide, the same will not be hit by that section, and it cannot be

declared as invalid. The said finding of the learned Judge of this court was set aside by their Lordships of the Supreme Court in *Authorised Officer,*

Thanjavur and Another Vs. S. Naganatha Ayyar and Others, while considering the same, in paragraph 14 of the judgment, it was held thus:-

....Moreover, when the whole purpose of the section is to prevent any alienation which defeats any of the provisions of the Act, it is impermissible

to introduce any requirement, other than is mentioned in the section, as a condition for its operation. Obviously, the provision seeks to provide

social justice for the landless and it defeats the purpose ""if, by the interpretative process, soft justice to large landholders is brought about. We

consider the "literal" meaning of the section which reduces or impairs the otherwise available extent of surplus land beyond the ceiling "defeats...

....the provisions of this Act". This is the plain meaning of the meaning which gives no room for doubt or justification for importation of any further

condition like sham, bogus, etc"".

37. On the above discussion, my conclusions are: Ex.A-1 partition is not a void document altogether. It is void only to the extent that it exceeds the

ceiling limits of late Appasami Naidu. The transaction under Ex.A-1, though the nomenclature is said as a partition, it is really a gift by Appasami

Naidu in favour of his daughters and they obtained absolute title over the properties allotted to them. There cannot be any co-ownership between

the plaintiff and defendants 1 to 4 in regard to the properties allotted to them under separate schedules. Plaintiff can be a co-owner only in respect

of the properties retained by Appasami Naidu, and it devolved on her on his death.

38. In the result, the judgment and decree of the lower Court are confirmed. The appeal is dismissed, however, without any order as to costs.

C.M.P.Nos.2078 of 1997 are dismissed consequently.