(1955) 09 AP CK 0031

In the Andhra Pradesh High Court

Case No : Special Tribunal Appeal No. 79 of 1954

Narasimhasur Srichandana Deo APPELLANT

Vs

Yerukola and Another RESPONDENT

Date of Decision : 02-09-1955

Acts Referred:

Citation : AIR 1957 AP 569

Hon'ble Judges : Subba Rao, C.J;Bhimasankaram, J

Bench : Division Bench

Advocate : D.V. Reddi Pantulu, for the Appellant; C.V. Dikshitulu and N.V. Ranganadhan, for the Respondent

Final Decision : Allowed

Judgement

Bhimasankaram, J.—This is an appeal against the order of the Estates Abolition Tribunal, Vizianagaram, which, allowed the claim filed by the 1st Respondent u/s 42 of Madras Act XXVI of 1943.

2. The 2nd Respondent was the proprietor of Tarla, which was an importable estate. The Appellant was one of the maintenance holders entitled to be paid maintenance out of the said estate. The Appellant and his deceased elder brother executed a promissory note dated 18th June, 1944 in favour of the 1st Respondent, for a sum of Rs. 9,000. By 8th June, 1953, a sum of Rs. 13,494 was due under that promissory note. The estate of Tarla was notified by the State under the Act and the State had deposited before the Tribunal on 30th'' June, 1951 as advance compensation a sum of Rs. 97,131. The 2nd Respondent filed a claim petition before the.

Tribunal as principal land holder to withdraw the compensation. The Appellant filed two claim petitions for recovery of arrears of maintenance and future maintenance from out of that amount. The 1st Respondent, a creditor of the Appellant, filed a claim before the Tribunal for recovery of a sum of Rs. 13,494 alleged, to be due to her under the aforesaid promissory note. The Appellant contended before the Tribunal that the creditor of a maintenance holder cannot apply u/s 42 of the Act for being paid his debt out of the compensation deposited by the State. This contention was rejected by the Tribunal. The Tribunal by its order allowed the claim to the extent of Rs. 1,200 without prejudice to the 1st Respondent''s right to recover the balance in future. Hence, the appeal.

3. Mr. Reddi Pantulu, learned Counsel for His Appellant, contends that Madras Act XXVI of 1948 does not enable a creditor, of a maintenance holder or claim to be paid out of the compensation. To" appreciate his argument, it is necessary to read the following provisions disclosing the Scheme of the Act:

Section 2.-Iii this Act, unless there is anything repugnant in the subject or context (1) All expressions defined in the Estates Land Act shall have the same respective meaning as in that Act with the modifications, it any, made by this Act.

8. Land-holder includes (i) a joint Hindu family, where the right to collect the vents of the whole or any portion of the estate vests, in such family and (ii) a darmila inamdar.

12. Principal land-holder means the person who held the estate immediately before the notified date.

Section 3.-With effect on and from the notified date and save as otherwise expressly provided in this Act:

(b) the entire estate (including all communal lands and poramboke; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests, mines and minerals; fairies, rivers and streams; tanks and irrigation works; fisheries and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;

(c) all rights and interests created in or over the estate before the notified date by the principal or any other land-holder shall as against the Government cease and determine.

(e) the principal or any other rand-holder and any other person whose rights stand transferred under Clause (b) or cease and determine under Clause (e) shall be entitled only to compensation'', from the Government as provided in this Act.

Section 41:

1. The Government shall deposit in the office of the Tribunal, the compensation in respect of each estate of finally determined u/s 39 in such form and manner and at such time or times and in one or more instalments, as may be prescribed by rules made u/s 40;

Provided that the Government shall be entitled to deduct from the amount to be deposited all moneys, if any, due to them (,i) in respect of "peshkash or (i) in respect of any claim which was secured immediately before the notified date by a mortgage of, or a charge on" the estate or any portion thereof.

2. On the making of such deposit the Government shall be deemed to have been completely discharged in respect of all claims to, or enforceable against the compensation aforesaid.

Section 42.-(1) Every person claiming the compensation so deposited or any portion thereof including the principal or any other land-holder, members of his family claiming any portion of such compensation, whether, by way of a share or by way of maintenance or otherwise, and creditors, whether their debts are secured or not, shall apply to the Tribunal within six months from the date on which the amount was so deposited or within such further time as the Tribunal may in its discretion allow.

Section 44.-(1) As a preliminary to such determination, the Tribunal shall apportion the compensation among the principal land-holder and any other persons whose rights or interests in the estate stand transferred to the Government u/s 3, Clause (b) or cease and determine u/s 3, Clause (c) including persons who are entitled to be maintained from the estate and its income, as far as possible, in accordance with the value of their, respective interests in the estate.

2. The value of those interests shall be ascertained.

(a) in the case of the impartible estates referred to in Section 45, in accordance with the provisions contained in that section and in such rules, not inconsistent with that section, as may be made by the Government in this behalf; and (b) in the case of other estates, in accordance with such rules as may be made by the Government in this behalf.

Section 45.-(1) In the case of an impartible estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the following provisions shall apply:

2. The Tribunal shall determine the aggregate compensation payable to all the following persons, considered as a single group:-

(a) the principal land-holder and his legitimate sons, grand-sons and great grand-sons in the male line living or in the womb on the notified date including sons, grand-sons and great-grandsons adopted before such date (who are hereinafter called sharers) and (b)

(b) other persons who, immediately before the notified date were entitled to maintenance cut of the estate and its income either u/s 9 or 12 of the Madras Impartible Estates Act, 1904, or under any decree or order of a Court, award or other instrument in writing or contract or family arrangement which is binding on the principal land-holder (who are hereinafter called maintenance holders).

3. The Tribunal shall next determine which creditors, if any. are lawfully entitled to have their debts paid from and out of the assets of the impartible estate and the amount to which each of them is so entitled; and only the remainder of the aggregate compensation shall be divisible among the sharers and maintenance holders as hereinafter provided.

4. The portion of the aggregate compensation aforesaid payable to the maintenance-holders shall be determined by the Tribunal and notwithstanding any arrangement already made in respect of maintenance whether by a decree or order of a Court, award of other in tumult m writing or contract or family, null portion shall not exceed ONEFIFTH OF THE REMINDER referred to in Sub-Section 3 except in the case referred to in the second provision to Section 47 and Sub-Section 2.

5. The balance of the aggregate shall be divided among the sharers as if they owned such balance as a joint Hindu family partition thereof had been effected on the notified date.

Section 4after the cornpone -apportioned among the persons 44, Sub-section. (1) or where it is more to do pending such apportionment the take into consideration the creditors other than those dealt Sub-section3), and decide the amount such creditor is entitled and the sons out of whose share or shares of the compensation such amount should be paid.

Section 59.- No claim or liability enforceable Immediately before the notified date against the principal or any other land-holder of an estate, or against any other persons whose rights stand transferred to the Government in pursuance of Section 3, Clause (b), shall, on or after that date, be enforceable against the interest lie has in the estate; and all such claims and liabilities shall (after the date on which the deposit in pursuance of S. 54-A is made) be enforceable.

(a) against the interim payments or the compensation or other sums paid or payable to him under this Act, to the same extent to which such claims and liabilities were enforceable against his interest in the estate immediately before the notified date; and ",b) against his other property, if any, to the same extent to which such claims and liabilities were enforceable against such property immediately before the notified date."

6. The gist of the aforesaid provisions may be stated thus: On the notified date the entire estate stands transferred to the Government and vests in them free of all encumbrances. All rights created by the land-holders in or over the estate shall, as against the Government, cease and the principal landholder or any other person whose rights are determined would be entitled only to compensation from the Government. After the Government deposits in the office of the Tribunal the compensation calculated in accordance with the provisions of the Act, it will be deemed to have been discharged in respect of all the claims to or enforceable against the compensation. After the date of the notification, no claim or liability enforceable immediately before the notified date against the principal or any

other land-holder of an estate or against any other person whose rights stand transferred to the Government can be enforced against the interest he had in the estate and it is enforceable only against the compensation- deposited with the Tribunal.

7. After the compensation Is deposited by the Government and after the claims are made, the Tribunal will apportion the compensation between the principal land-holder and any other person whose rights or interests in the estate stand transferred to the Government u/s 3 (b) or cease and determine u/s 3 (c) including persons who are entitled to be maintained out of the estate. In the case of an impartible estate which has to be regarded as the property of the joint Hindu family, it will determine the aggregate compensation payable to two groups, (1) the principal land-holder, his sons, grand-sons and great grand-sons in the male line and (2) other members of his family, who are entitled to maintenance out of the estate and its income, this group including persons entitled to maintenance under any decree of Court or order, etc., binding on the principal landholder. (The first group is compendiously called the ''sharers'' and the second ''maintenance-holders''). It will then determine the debts payable from and out of the estate and thereafter the maintenance payable to the maintenance-holders and the balance will be divided among the sharers. Thereafter, or if convenient even earlier it will take into consideration the applications of the creditors other than those who are entitled to have their debts paid from and out of the assets and decide*the amount to which each such creditor is entitled and the person or ?persons out of whose share or shares of the compensation such amount should be paid.

8. Now, this classification of maintenance-holders seems to be with reference to the estate as well as with reference to the principal landholder. The terms of S. 42 are not very clear and it is difficult to say whether the phrase ''members of his family refers only, to the principal or to both ''the principal or any other land-holder''. But S. 45 (2; (b) seems to be clearer and relates the maintenance-holders either to the estate and its income or to the principal land-holder. It seems to. us, therefore, that the terms ''creditors'' mentioned in S. 42 (1) must also be related similarly either to the estate or to the principal land-holder. They must be creditors either lawfully entitled to have their debts paid from and out of the assets of the impartible estate as laid down in Clause 3 of S. 45 or other creditors referred to rn S. 46, who have a claim personally against the principal land-holder (or land-holders) only.

The Act makes no provision for persons entitled to maintenance against darmila inamdars or sharers other than those coming within the description of ''the principal land-holder''. Similarly it does not deal with the creditors of such landholders or maintenance-holders from among members of the families of such land-holders. This conclusion seems also to be supported by the use of the word ''share'' in S. 46. It may be objected that the clause ''person or persons out of whose shares of the compensation such amount should be paid'' will be rendered nugatory if the creditors of the principal land-holder are considered to be the only creditors contemplated by the Act. It seems to us that there is no substance in such an objection, for the clause covers cases where there are several principal land-holders with reference to a given estate e.g., an estate owned by a Hindu joint family. Where there are creditors of each of such principal land-holders, provision is made for the payment to the creditor of every land-holder out of his individual share.

We cannot think that the Legislature intended that the creditors of any one of the numerous persons who may be entitled to an apportionment of the compensation money under a claim by way of a share, or by way of maintenance are intended to be covered bv the expression ''creditors'' in S. 4!!. We cannot also conceive any special grounds of policy which would justify the adjudication of all these various claims by a special tribunal. Obligations which are not related either to an estate or to a principal land-holder do not seem to us to be so intimately related with the abolition of the estates as to require to be dealt with under the Act. There could be no reason why the Estates Abolition Tribunal should be specially empowered to deal with them. We are, therefore, of the opinion that a creditor of a maintenance-holder is not one el'' the creditors mentioned in Section 42 which could apply to the Tribunal for an apportionment to him of the amount of compensation in deposit. In our view, therefore, the appeal succeeds and the Appellant''s share of the compensation cannot be affected by1 the claim of the first Respondent. The Appellant is entitled to his costs here and before the Tribunal.

