
(1986) 06 GUJ CK 0008
In the Gujarat High Court

Ramjibhai Barjulbhai

APPELLANT

Vs

Bhaglabhai Jeshlabhai and Others

RESPONDENT

Date of Decision : 26-06-1986

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 31, 7, 7, 8

Citation : (1987) 1 GLR 143

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—One Barjul Lala owned agricultural land bearing survey No. 303/2 admeasuring about 18 gunthas in village Barumal, taluka Dharampur, District Valsad. He died leaving behind him five sons, namely, (1) Mansur, (2) Jeram, (3) Jeshla, (4) Ramji (the petitioner) and (5) Patalia. The first two had separated from the joint family during their life time and have since expired. Their heirs do not claim any share in this property. The land, therefore, belonged to Jeshia, Ramji and Patalia as joint owners or co-owners. Jeshla parted with his undivided share in the land in favour of the petitioner, Ramji, for Rs. 468/-. It appears from the order of the Deputy Collector, Valsad, annexure-A, that no registered document has yet been executed in this behalf.

2. Respondent No. 1 is the son of Jeshla who transferred his undivided share in the land to the petitioner for Rs. 468/-. He made an application to the Mamlatdar, Dharampur, complaining that the transfer was in violation of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter called "the Act"). The Deputy Collector initiated proceedings and served the petitioner with a show-cause notice to which petitioner failed to respond. The Deputy Collector, Valsad, therefore, passed an order dated 27th March, 1978 to the effect that the transfer was in violation of Section 7 of the Act and he also fined the first respondent Rs. 50 u/s 9(2) and directed that the petitioner should be summarily evicted from the land. Against this order the petitioner approached the State Government u/s 35 of the Act. The

matter was heard by the Joint Secretary, Revenue Department, State of Gujarat, on 21st November, 1978. The joint Secretary, after examining the record, came to the conclusion that show-cause notices were served on the petitioner twice but he did not respond nor did he remain present before the Deputy Collector at the hearing of the application and, therefore, he cannot be heard to say that the order passed by the Deputy Collector was in violation of the principles of natural justice. He then came to the conclusion that the land had been sold to the petitioner Ramjibhai, and, therefore there was violation of the provisions of the Act. In this view that he took, he refused to interfere with the order passed by the Deputy Collector.

3. Mr. Shelat, the learned advocate for the petitioner, stated that the petitioner's brother Jeshla had released his undivided share in the land in favour of the petitioner and hence there was no transfer in the strict sense of the term to attract the provisions of the Act. In the alternative he submitted that even if the nature of the transaction is taken to be a conveyance by Jeshla of his undivided share or interest in the land in question in favour of the petitioner for Rs. 468/- such a transfer was not hit by the provisions of the Act. The document by which the alleged transfer came to be effected is not produced on the record of the case. The Deputy Collector has described it as a conveyance or sale and it would, therefore, be proper to proceed on that premise in the absence of the document itself. The Act was enacted to prevent fragmentation of agricultural holdings and to provide for the consolidation of agricultural holdings for the purpose of better cultivation. The term "fragmentation" is defined by Section 2(4) as a plot of land of less extent than the appropriate standard area determined under the Act. The area of Survey No. 303/2 which is approximately 18 gunthas may be taken as less than the appropriate standard area. To put it differently, we may proceed on the premise that survey No. 303/2 was a fragment within the meaning of Section 2(4) of the Act. Section 2(5) defines the expression "land" to mean agricultural land, whether alienated or unalienated. Section 7 prohibits transfer of any fragment. It reads as under:

7. (1) No person shall transfer any fragment in respect of which a notice has been given under Sub-section (2) of Section 6 except to the owner of a contiguous survey number or recognised sub-division of survey number.

On a plain reading of this section it becomes clear that the restriction is against transfer of any fragment except to the owner of a contiguous survey number or a recognised sub-division of a survey number. In other words a fragment can be transferred to the owner of a contiguous survey number or recognised sub-division of a survey number. The argument on behalf of the first respondent was that when his father sold the undivided interest in the land he sold a fragment within the meaning of Section 2(4) or the Act inasmuch as his share in the land being 1/3rd would also be a argument. This argument proceeds on the premise of notional partition for otherwise what was sold was the undivided interest of Jeshla in the land in question. Now even if one proceeds on the premise of a

notional partition and what was sold was 1/3rd area of Survey Number 303/2, it follows that it was sold to one of the other two co-owners, i.e. a co-owner of the remaining land of that very survey number. In that case the petitioner would be the owner of a contiguous survey number and, therefore, the transfer of the fragment, comprising approximately 6 gunthas in his favour would not be hit by Section 7 of the Act. This is not to say that the argument that what was sold was a fragment is well-founded, but this is merely to state that even if the argument is valid the transfer of the fragment constituted on notional partition would still be in favour of the owner of a contiguous survey number and would, therefore, not be hit by Section 7 of the Act.

4. We may approach the problem from a slightly different angle. It is not disputed that three brothers had an undivided share in Survey No. 303/2 admeasuring about 18 gunthas and one of them transferred his undivided interest in favour of another, the petitioner, for valuable consideration of Rs. 468/-. By the said transaction Jeshla's undivided interest in the said survey number got extinguished and the rights of the purchaser, Ramji, in that survey number got augmented. Even though strictly speaking it is not shown to be a document of release the effect is of feeding the title of the petitioner Ramjibhai in the land. The entire Survey No. 303/2 itself was a fragment and by the sale of Jeshla's interest therein to the petitioner no further fragment is created. There is, therefore, no transfer of the fragment in the strict sense of the term but the interest of one of the owners of the fragment has got enlarged, but has not passed on to any third party. The prohibition u/s 7(1) is that a fragment was not to be transferred except to a contiguous owner. The underlying idea is to see that small fragments do not remain fragments on transfer; but should get amalgamated with the lands owned by contiguous owners thereby achieving the objective of consolidation. When one brother transfers his undivided interest in the land to another, the effect is to augment the bundle of rights of the transferee in the land and not to create any further fragment so as to offend Section 8 of the Act. Section 8 stipulates that no land in any local area shall be transferred or partitioned so as to create a fragment. In the instant case by the transfer of Jeshla's interest in the land no fragment is created, on the contrary the move is in the direction of consolidation. It is, therefore, obvious on a conjoint reading of Sections 7 and 8 of the Act that the underlying idea is to see that fragments are not created and as far as possible existing fragments get merged in the lands owned by contiguous owners so that the objective of consolidation is met with. That being so, I am of the opinion that neither Section 7 nor Section 8 was violated by the transfer of Jeshla's undivided interest in the land to the petitioner.

5. Section 9 of the Act provides that the transfer or partition of any land contrary to the provisions of the Act shall be void. Transfer or partition becomes void if it is contrary to the provisions of the Act and not otherwise. As stated above the transfer in question is not in violation of Sections 7 or 8 of the Act; nor is it in violation of Section 31 because it is not shown that the holding was allotted to

Jeshla and his brothers under the provisions of the Act. That is also not the case urged before the authorities below nor have the authorities so stated. In order to bring the case within Section 31 of the Act it must be shown that the holding was allotted under Sections 15, 21 and 24 read together. I am, therefore, of the view that the transaction in question is not rendered void u/s 9(1) of the Act.

In view of the above discussion the order passed by the Deputy Collector and approved by the State Government u/s 35 of the Act cannot be allowed to stand. Both the orders are quashed and set aside. The rule is made absolute accordingly with no orders as to costs.