

(1963) 03 MAD CK 0038

In the Madras High Court

Case No : S. T. Apps. No"s. 88 and 89 of 1959

S. Ramanatha Sethupathy

APPELLANT

Vs

R. Shanmuga Rajeswari Sethupathy and others

RESPONDENT

Date of Decision : 14-03-1963

Acts Referred:

Citation : (1963) 03 MAD CK 0038

Hon'ble Judges : Ramachandra Iyer, C.J;Venkataraman, J

Bench : Division Bench

Advocate : M. Natesan, for the Appellant; V. Somasundaram, for the Respondent

Final Decision : Allowed

Judgement

1. This is an appeal from an order of the Estates Abolition Tribunal, declining to partition the pannai lands in respect of which ryotwari patta has been granted by the Government between the members of a joint Hindu family, who owned an impartible estate which had been taken over by the Government. The Ramnad Zamindari was taken over by the Government under the provisions of S. 3 of Madras Act XXVI of 1948. There were certain pannai lands in the village. The appellants in the above appeals who were the members of the Ramnad Zamindari family filed an application before the Estates Abolition Tribunal, under S. 47 of the Act for partition of the pannai lands, in respect of which they would be entitled to ryotwari pattas. That application has been rejected by the Tribunal on the ground that there exists no power in it to grant the relief by partitioning the lands, in respect of which ryotwari pattas had been granted to the erstwhile landholder. The matter has got to be decided on the basis of three sections of the Act, viz., Ss. 45, 47 and 48. S. 45 relates to the distribution of the compensation amount amongst the members of the family of the owner of an impartible estate which is being taken over by the Government under the provisions of the Act. A perusal of the section would show that, besides the proprietor or the other members of the family, including the maintenance-holders, will be entitled to a share in the compensation amount. Under S. 45 (4), the correct compensation

amount payable to the maintenance-holders will have to be determined by the Tribunal but that amount is not to exceed one-fifth of the remaining amount after payment of the creditors under Sub-S. (3). After payment of the creditors and maintenance-holders in the manner indicated in Sub-Ss. 3 and 4, the balance of the compensation amount is to be divided amongst the sharers as if they owned the balance as members of a joint Hindu family and a partition effected amongst them. S. 47, which is the most relevant for the present case, provides for grant of ryotwari pattas to maintenance holders in respect of the lands specified in Ss. 12 and 14 of the Act in regard to which the land-holder would be entitled to ryotwari patta. Such of the maintenance-holders as would be entitled to compensation under S. 45 would be entitled to the grant of a ryotwari patta in respect of a portion of the lands to which the proprietor would be entitled under the provisions of S. 12 or 14, the maximum extent to which they would be so entitled not exceeding 1/5th of the total extent. There is also a provision for reducing the area of land under ryotwari patta to the maintenance-holders by taking other circumstances into consideration. After making provision for the maintenance-holders, Sub-S. 3 to S. 47 says :

The lands in respect of which a ryotwari patta may be granted under S. 12 or 14, after excluding any lands which may be granted to maintenance-holders under Sub-S. 2 shall be divided among the sharers as if they owned such lands as a joint Hindu family and a partition thereof had been effected among them on the notified date.

2. This provision makes it clear that the sharers would be entitled to a partition of the pannai or other lands in respect of which patta is granted to the erstwhile landholder under S. 12 or 14, Implicit in that section is a power in the Tribunal to effect a partition of the properties. This is made clear by S. 52, which expressly says that the jurisdiction of the Tribunal and the Special Tribunal shall be limited, in cases falling under S. 47, to the division of the lands in respect of which ryotwari patta may be granted under Ss. 12 or 14. The Tribunal, however, considered that there was a distinction between the distribution of the compensation amount paid under S. 45 and the partition of lands contemplated by S. 47. It held that, as the compensation amount was deposited with the Tribunal there would be no difficulty in distributing the same between the various claimants; but the lands, in respect of which the erstwhile landholder would be entitled to patta under S. 12 or 14, not being so vested in or entrusted to, the Tribunal, there would be no power to divide the same. This reason ignores the specific provisions of S. 47 (3), which enjoins the Tribunal to divide the pannai lands between the shareholders. Another reason suggested is that, as S. 47 merely says that the lands shall be divided, it should not be read as equivalent to saying that the lands shall be divided by the Tribunal, and that, therefore, the provision should be construed as merely conferring a right on the various sharers for a share of the pannai lands, and not to have that right implemented by the Tribunal itself dividing the property. We are unable to accept that construction of the provisions contained in S. 47 (3). This clearly enjoins the Tribunal to effect a

partition. S. 52, to which we have made reference, makes it plain that the Tribunal has the right and power to divide. This view is consistent with Sub-Cl. 5 of S. 47, which empowers the Tribunal to divide and deliver to the extent of one-fifth of the properties to the maintenance holders. The rule cannot be different in regard to the residue after a division of the properties in favour of the maintenance holders. We are therefore of opinion that the Tribunal was in error in declining to entertain the application for partition of the private lands, in respect of which the landholders were entitled to patta under S. 12 or 14.

3. It is then said that, as there is no mention in the application of the rights of the maintenance-holders, the application should not be granted. The applicant expressly stated in paragraph 7 that he should be granted the relief sought, after making the appropriate provision for the maintenance-holders. It will be the duty of the Tribunal to issue notice to the maintenance-holders, and, after giving them such a portion of the lands as might be in acceptance with the provisions referred to above, divide the rest of the properties among the sharers specified in S. 45. The appeals, therefore, succeed and are allowed. In the circumstances of the case, we make no order as to costs.