

(2010) 08 MAD CK 0273

In the Madras High Court

Case No : Second Appeal No. 288 of 2002

Subramaniya Gounder, Karunanidhi and Malini

APPELLANT

Vs

Easwara Gounder, Subbaih Gounder, Marisami and
Chinnasami

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 245, 246

Hindu Succession Act, 1956 — Section 22, 3(1), 3(4), 4

Citation : (2010) 5 LW 941 : (2011) 2 MLJ 467

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : D. Aruna, for the Appellant; Srinath Sridevan, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—This appeal is filed as against the decree and judgment dated 17.08.2001 made in A.S. No. 31 of 1996 on the file of the learned Sub Judge, Thiruppur reversing the judgment and decree dated 22.03.1996 made in O.S. No. 26 of 1995 on the file of the District Munsif's Court, Palladam.

2. The Appellants were the Plaintiffs and the Respondents were the Defendants before the trial Court.

3. The Appellants/Plaintiffs filed the suit for declaration declaring that the suit "A" schedule property is the property of the second Plaintiff(2nd Appellant), by way of pre-emptive right and by paying a sum of Rs. 7,800/- or any other amount to the Defendants/Respondents and also restraining the Defendants by way of a permanent injunction not to disturb the Plaintiffs peaceful possession and enjoyment of the suit schedule's property. The said suit was decreed by the Trial Court by declaring the right of the second Plaintiff by way of pre-emptive right in the suit property. Aggrieved over the same, the Respondents/defendants have preferred an Appeal in A.S. No. 31 of 1996 before the lower appellate Court. The lower appellate Court has set aside the decree and judgment of the

trial Court and allowed the appeal. Aggrieved over the said judgment and decree of the lower appellate Court, the present second appeal is filed by the Plaintiffs

4. The brief facts which are necessary to decide the issue involved in this second appeal are as follows:

It is the case of the Appellants/Plaintiffs that the suit property was originally owned by one Chinnia Gounder. The said Chinnia Gounder had a son and daughter viz., Ramasamy and Rangammal. The suit property was given to Rangammal by Chinnia Gounder as Sridhana Property. The said Rangammal's brother Ramasamy married one Chellathal. The said Ramasamy and Chellathal had two daughters viz., 1) Kuppathal @ Marathal and 2) Kalliammal. The husband of the Kuppathal @ Marathal is the first Appellant/first Plaintiff. The Plaintiffs 2 and 3 are the son and daughters of the first Plaintiff and Kuppathal @ Marathal. Since the said Rangammal, daughter of Chinnia Gounder had no issue, she had settled the suit schedule property by way of a settlement deed dated 11.06.1989, which she got as a sridhana property, in favour of the second Plaintiff. As per the Settlement Deed, 3.07-1/2 acres of land in Survey No. 323/3-A was settled in favour of the second Plaintiff. The balance 0.93-1/2 cents of land in Survey No. 323/3-A was in possession and enjoyment of the said Rangammal and Ramasamy's wife Chellathal. After the demise of Rangammal and Chellathal, the balance 0.93-1/2 cents of land devolved upon the daughters of Chellathal viz., 1)Kuppathal @ Marathal and 2) Kalliammal. Subsequently, the said Kuppathal @ Marathal also died. Hence, as the share of Kuppathal @ Marathal in survey No. 323/3-A devolved upon the Plaintiffs as her legal heirs, the entire extent of survey No. 323/3-A was in possession and enjoyment of the first Plaintiff. In the said situation, the Plaintiffs came to know that the first Defendant Kalliammal had sold the 1/4th of her share in the suit schedule property to the second Defendant, for a sale consideration of Rs. 7,800/-. The said sale is contrary to the oral understanding between the Plaintiff and the first Defendant that in the event of the first Defendant intending to sell her share, the Plaintiff will have a pre-emptive right to buy the said share. The second Defendant had also attempted to interfere with the peaceful possession and enjoyment of the Plaintiffs, claiming that he had purchased the property from the first Defendant. Hence, the present suit is filed for the prayer as stated supra.

5. The case of the Plaintiffs was resisted by the Defendants stating that the first Defendant had sold only her share to the second Defendant. The sale executed by the first Defendant in favour of the second Defendant is true and the Plaintiffs have no right to question the same. Absolutely there was no need to execute a sham and nominal sale deed in favour of the second Defendant. Moreover, there was no oral agreement or any understanding between the Plaintiffs and the first Defendant relating to the sale of the share of Kalliammal in the properties to them. Such an allegation as to the oral agreement is false. Therefore, the sale deed dated 09.12.1985 cannot be questioned by the plaintiff. Only with a view to grab the property, the alleged oral agreement was invented for the purpose of

the case. Thus, they pray for dismissal of the suit.

6. In order to prove the case, on the side of the Appellants/plaintiffs, the first plaintiff examined himself as P.W.1 besides examining two other witnesses as P. Ws.2 and 3 and 19 documents were marked as Exs.A1 to A19. On the side of the Respondents/defendants, the second Defendant examined himself as D.W.1 and no documents were marked on the side of the Respondents/defendants. The trial Court after analyzing the entire oral and documentary evidence, had decreed the suit in favour of the Plaintiffs by declaring the right of the second plaintiff by way of preemptive right in the suit property. Aggrieved over the same, the Respondents/defendants have preferred an Appeal in A.S. No. 31 of 1996 before the lower appellate Court. The lower appellate Court has set aside the decree and judgment of the trial Court and allowed the appeal. Aggrieved over the said judgment and decree of the lower appellate Court, the present second appeal is filed by the Plaintiffs by raising the following substantial questions of law:

(i) Whether the Court below is right in holding the lands in dispute is not coming within the purview of Hindu Succession Act?

(ii) Whether the Court below is right in holding by means of secondary evidence in absence of original evidence, namely, original sale deed?

7. The learned Counsel appearing for the Appellants submitted that the pre-emptive right to purchase the share of the first Defendant was existing to the Appellants as a co-sharer of the property and moreover the plaintiff and the Defendant had devolved their respective shares from Ranganayagi Ammal and the close relationship between the Plaintiffs and the Defendants. Under such circumstances, the Appellants are entitled to exercise the pre-emptive right on the share of the first defendant. Moreover, when the suit property was not partitioned and if the third party was allowed to occupy the portion of the suit schedule property, the easementary right of the Appellants would be affected. Without considering these aspects, the lower appellate Court has set aside the trial Court's judgment and decree. Thus, the learned Counsel appearing for the Appellants prays for allowing the second appeal.

8. Per contra, the learned Counsel appearing for the Respondents/defendants by drawing Article 245 and 246 of the Constitution of India to the attention of this Court and the relevant entries made in the List-I(Union List) List-II (State list), List-III (concurrent list) and submitted that Section 22 of the Hindu Succession Act will not be applicable to the agricultural lands. In this regard, the learned Counsel appearing for the Respondents/defendants submitted that Article 246 of the Constitution of India speaks about the legislative competence of the parliament and the state legislature within the range of their respective legislative power. Entry 6 in List III, which deals about concurrent list says that "the Transfer of property other than agricultural land; Registration of deeds and documents" will come under concurrent list. Entry 18 in List II, which deals about the state list says that the land, transfer and alienation of the agricultural lands

will come within the purview of the State list". Therefore, the State legislature has got exclusive competence with regard to the transfer of agricultural lands and not the Central Government. Hence, Section 22 of the Hindu Succession Act, which deals that the preferential right to acquire property in certain cases which devolves upon two or more heirs specified in Class-I of the schedule of the Succession Act cannot be made applicable to transfer of agricultural lands, since transfer of agricultural lands comes under the State list. In support of his contention the learned Counsel appearing for the Respondents relied upon the Judgments reported in AIR 1941 72 (Federal Court) and in Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, and reported in Jeewanram Vs. Lichmadevi and Another, . Thus the learned Counsel appearing for the Respondents contended that a combined reading of the provision of the Constitution of India and Section 22 of the Hindu Succession Act and the Dictum laid down in the above judgments would show that the pre-emptive right cannot be exercised in respect of Agricultural lands. Thus, the learned Counsel appearing for the Respondents prays for dismissal of the second appeal.

9. Heard the learned Counsel appearing on either side and perused the materials available on record.

10. In view of the submissions made by the learned Counsel appearing for the Appellant, there is no need to go into the factual aspects of this case, because the only question that has arisen in this case is whether the preemptive right could be exercised in respect of agricultural lands or not? In this regard, a reference could be placed on the judgments relied upon by the learned Counsel appearing for the Appellant. The relevant paragraph from the judgment relied on by the learned Counsel appearing for the Respondents reported in AIR 1941 72 (Federal Court) , is as follows:

It is convenient to consider the second and third contentions together, viz., that the Act was beyond the competence of the Indian Legislature, so far as its operation might affect agricultural land in the Governor's Provinces; and that, if it were held to be in part beyond the competence of the Legislature, its provisions were not severable, so that it could not even affect property other than agricultural land. No doubt, if the Act does affect agricultural land in the Governor's Provinces, it was beyond the competence of the Legislature to enact it; and whether or not it does so must depend upon the meaning which is to be given to the word "property" in the Act. If that word necessarily and inevitably comprises all forms of property, including agricultural land, then clearly the Act went beyond the powers of the Legislature, but when a legislature with limited and restricted powers makes use of the word of such wide and general import, the presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. The question is thus one of construction, and unless the act is to be regarded as wholly meaningless and ineffective, the Court is bound to construe the word "property" as referring only to those forms of property with respect to which the

Legislature which enacted the Act was competent to legislate, that is to say, property other than agricultural land. On this view of the matter, the so called question of severability, on which a number of Dominion decisions, as well as decision of the judicial committee, were cited in the course of the agreement does not arise. The Court does not seek to divide the Act into two parts, viz., the part which the Legislature was competent, and the part which it was incompetent to enact. It holds that, on the true construction of the Act and especially of the word "property" as used in it, no part of the Act was beyond the Legislature's powers. There is a general presumption that a legislature does not intend to exceed its jurisdiction; Maxwell on the Interpretation of Statutes (Edn.8)p. 126; and there is ample authority for the proposition that general words in a statute are to be construed with reference to the powers of the Legislature which enacts it. "It seems to me" said Lord Esher M.R. in *Colquhoun v. Heddon* (1890) 25 QBD 129 .

21. The Court is therefore of opinion that the answers to the questions comprised in the special reference are as follows: (1) The Hindu Women's Rights to Property Act, 1937, and the Hindu Women's Rights to Property (Amendment) Act, 1938, (a) do not operate to regulate succession to agricultural land in the Governor's Provinces; and (b) do operate to regulate devolution by survivorship of property other than agricultural land. (2) The subject of devolution by survivorship of property other than agricultural land is included in entry No. 7 of List 3, the Concurrent List. The Court will report to His Excellency accordingly.

The another Federal Court Judgment reported in *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, , the relevant paragraph are as follows:

24. The first and foremost contention is that the provisions contained in Sections 3(1) and 4 of "the Act which provide for annulment of transfer of lands by tribals to non-tribals effected during the period specified therein and for restoration of possession of such lands to them are beyond the legislative competence of the State Legislature under Entry 18 in List II of the Seventh schedule. It is urged that the State has no competence to make a law under Entry 18 in List II which had the effect to unsettle the titles which had vested validly in the non-tribal transferees either by transfer inter vivos or-by the decree or order of a Court. It is contended that there is no legislative competence of the State Legislature to enact a law of this kind which purports to direct "A" to transfer the lands to "B" for the only reason that he got the lands by transfer from B and B happens to be a tribal. It is urged that there is no provision any where in the Constitution under which such law could be enacted since the nexus of the impugned Act is not so much the land but the tribal. The submission is that without acquisition of the lands by the State from the non-tribal transferees the lands could not be restored to the tribals by mere annulment of transfers. We are unable to accept this line of argument.

25. The submission as regards lack of legislative competence of the State to enact the impugned Act which provides by Sections 3(1) and 4 annulment of

transfers by tribals to non-tribals effected during the period from April 1, 1957 to July 6, 1974 stems on a misconception of the nature and content of the legislative power of the State under Entry 18 in List II which reads.

19. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

The contention advanced fails to take note that the impugned Act strikes at transactions relating to agricultural lands effected between members of Scheduled Tribes who admittedly belong to the weaker section of the society and persons not belonging to Scheduled Tribes. Experience in the past showed that members of the Scheduled Tribes had been exploited due to their ignorance and poverty by members belonging to the affluent and powerful sections of the society to obtain transfer of their lands by way of sale, gift, mortgage, exchange etc. for a nominal consideration or for no consideration at all rendering them practically landless. It was also realized that due to their multifarious duties the Sub-Divisional Officers and the Collectors had accorded sanction to such transfers without application of mind to the prevalent circumstances. It was further felt that the members of scheduled Tribes had become victims of circumstances by reason of their lands being sold for realization of arrears of land revenue or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law for the time being in force. Many of the lands had been transferred by members of scheduled Tribes under I compulsion due to their indebtedness and their lands had passed into the hands of creditors lending money at an unusually high rate of interest and were thus in a position to dominate the will of the borrowers. The Committee appointed by the State Government pointed out in its Report that the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws had not been effective in giving protection to persons belonging to the Scheduled Tribes. It recommended inter alia that provision should be made for restoring possession to members of Scheduled Tribes of the lands which had been duly transferred by them to other persons. There is always a presumption when there is a transfer between the tribal and a non-tribal that it is an unequal bargain. As regards the weak and the helpless, the law guards them with a special protective care. The Legislature therefore stepped in and reopened such transactions by directing the lands to be restored to the tribal-transferors free from all encumbrances on payment by them to the non-tribal transferees the amount determined by the Collector under Sub-section (4) of Section 3. The restoration of possession by Sections 3(1) and 4 does not involve any deprivation of the property in the sense that there is unsettling of title without consideration. It makes detailed provisions setting out the conditions subject to which a transfer by a tribal of his agricultural lands to a non-tribal may be nullified and possession restored. It also provides for the legal consequences that must ensue upon restoration of such possession like repayment of the consideration that passed by such tribal-transferor to the non-tribal transferee together with his liability to pay for the costs of improvements, if

any, effected and the giving of an undertaking by the tribal-transferor that he needs the lands for his personal cultivation. It further prescribes the mode of payment of the amount so determined. The object of the legislation is restitution of the property to the persons to whom the lands originally belonged, subject to the adjustment of equities between the parties.

26. The impugned Act in its true nature and character is law relating to transfers and alienations of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. Such a law does not fall within Entries 6 and 7 in List III but is within Entry 18 in List II. We may here set out Entries 6 and 7 in List III:

6. Transfer of Property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency of carriage, and other special forms of contracts, but not including contracts relating to agricultural lands.

The words "other than agricultural land" in entry. 6 and the words but not including contracts relating to agricultural land in Entry 7 in List III have the effect of delimiting the legislative power of the Union to make a law what respect to transfers and alienations of agricultural lands or with respect to contracts in relation thereto. The power to legislate cannot be denied to the State on the ground that the provisions of Sections 3(1) and 4 which provide for annulment of transfers by tribals incidentally trench upon the existing law, namely, the Transfer of Property Act, 1882 or a law made by Parliament viz., the Specific Relief Act, 1963. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in List II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law was clearly within the legislative competence of the State Legislature being relatable to Entry 18 in List II of the Seventh Schedule.

and in AIR 1981 RAJASTHAN 16 (cited supra), the relevant paragraph reads as follows:

Section 22 of the Act came up for consideration in Jaswant's case (1970) C. L.J 833 (Punj), in which, Entry No. 18, List-II and Entries Nos. 5 and 6, List III were noticed and it was held that Section 22 of the Act does not embrace agricultural lands. I am in respectful agreement with this view and hold that the words "interest in any immovable property of an intestate" do not include the interest in the agricultural land of an intestate and as such, after devolution of an interest upon two or more heirs specified in Class I of the Schedule appended to the Act and on transfer of his or her interest in the agricultural land, other heirs have no preferential right to acquire the interest of the transferor. I have come to the conclusion that transfer of interest in agricultural land is not covered by Section 22 of the Act.

The position of law is made clear by various pronouncements of the Apex Court. Reference shall be had to the following judgments. (1) The State of Mysore and Another Vs. D. Achiah Chetty, etc., (2) Indu Bhushan Bose Vs. Rama Sundari Debi and Another, and (3) Anil Kumar Neotia and Others Vs. Union of India (UOI) and Others, . It is not necessary for this Court to make a detailed discussion as to the gamut of the provision of law.

11. In the instant case, the Appellants/plaintiffs have exercised their pre-emptive right from other legal heirs. But admittedly, the subject property was only an agricultural land. A careful reading of the provision of the Constitution of India and the dictum laid down in the above judgments would show that the agricultural lands will not cover u/s 22 of the Hindu Succession Act., because the transfer of agricultural land in the subject matter of state list. Under such circumstances, I am of the opinion that the prayer sought for by the Appellants/plaintiffs is not legally sustainable. Though a submission is made by the learned Counsel appearing for the Respondents that if the third parties are allowed to enter into the suit property, the easementary right would be affected, I am of the opinion that the Appellants are always at liberty to file a partition suit to divide the suit property with metes and bounds. Hence, I do not find any merit in the second appeal, much less any substantial question of law that arises for consideration in the second appeal.

12. In the result, the second appeal is dismissed. No costs. The Appellants/plaintiffs are at liberty to file a partition suit to divide the suit property with metes and bounds if they so desire.