

(2010) 11 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 15846 of 1998 and W.M.P. No. 23926 of 1998

Suseela Devi Ammal, Rajaji Vijayaraghavan and Sunder
Kumar

APPELLANT

Vs

The Authorised Officer (Land Reforms), The Land Tribunal
Thanjavur and Tamil Nadu Land Reforms Special Appellate
Tribunal

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 10(5),
21(A), 22, 23, 3

Citation : (2011) 4 MLJ 250 : (2011) 6 RCR(Civil) 2681

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : S.V. Jayaraman for N. Maninarayanan, for the Appellant; Malarvizhi
Udayakumar, Special Government Pleader for RR 1, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioners have filed the present Writ Petition praying for an issuance of Writ of Certiorari to call for the records

from the 3rd Respondent/Tamil Nadu Land Reforms Special Appellate Tribunal, Chennai relating to M.P. No. 145 of 1995 and Spl.R.P. No. 27

of 1995 dated 28.08.1998 and to quash the order passed therein.

2. The 3rd Respondent/Special Appellate Tribunal, Chennai, while passing orders in M.P. No. 145 of 1995 and Spl.R.P. No. 27 of 1995 dated

28.08.1998, has, among other things, observed that "... Long after the Land Reforms proceedings started against the first Petitioner's holdings

these three Petitioners sought to transfer a portion of their property to the fourth party. Such a transfer is void u/s 22 unless it is protected by

Section 21-A. The Later Section giving an exemption to the normal rule has to be interpreted strictly. It is very clear from the facts of the case (as given in detail by the Land Tribunal in its judgment) this transfer is not covered by the provisions of Section 21-A since it is a matter of fact to be decided on evidence and resultantly, confirmed the order of the 2nd Respondent/ Land Tribunal, Thanjavur in L.T.C.M.A. No. 3 of 1993 dated 28.11.1994.

3. The case of the Petitioners is that the 1st Respondent/ Authorised Office (Land Reforms), Mayiladuthurai commenced proceedings under Tamil

Nadu Land Reforms Act, 58 of 1961 on the basis that she and her sons (Petitioners) on 06.04.1960 held the extent of lands as follows:

Std. Acres Ord. Acres

1. Suseela 87.00 22.010

2. Rajaji Vijayaraghavan 24.56 20.487

3. Sundera Kumar 23.61 19.675

(Minor son) -----

76.07 62.152

4. According to the Petitioners, the 1st Respondent/Authorised Officer (Land Reforms) has issued a notice as per Section 9(2)(b) of the Tamil

Nadu Land Reforms (Fixation of Ceiling on Land) Act, 58 of 1961 to the 1st Petitioner directing her to furnish the particulars of lands to be

specified as surplus in the draft statement and on contest, the 1st Respondent passed an order dated 08.02.1963 directing the 1st Petitioner to

furnish particulars of surplus lands to be mentioned as surplus in the draft statement on 21.2.1968 etc.

5. The 1st Petitioner as against the order of the 1st Respondent/ Authorised Officer (Land Reforms) dated 08.02.1963 has filed C.M.A.61 of

1968 before the 2nd Respondent/Land Tribunal, Thanjavur and the same has been dismissed on 19.02.1970. The 2nd Respondent/ Land Tribunal

granted liberty to the 1st Petitioner to raise a point that the settlement might be construed as a trust and application of Section 6 must be

considered at the time of conduct of an enquiry as per Section 10(5) of the Act.

As against the order of the 2nd Respondent the Petitioners

projected Civil Revision Petition 536 of 1970 before this Court and also filed C.M.P. No. 1051 of 1971 to raise additional grounds. This Court

has allowed the C.R.P. No. 536 of 70 in part by holding that it is necessary in the interest of justice that the Authorised Officer should consider the

recitals in the document and apply the provisions of Section 6 separating the interest of the family and to proceed to the ceiling area after the

separation of such interest.

6. The 1st Respondent/Authorised Officer by means of his order dated 22.2.1972 in NRI 114 (S)-NNL-A3 dated 22.2.1972 has held that the

proceedings under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 58 of 1961 have been initiated as early as in the year 1960 and

as such, as per Section 3 of Act 17 of 70 the proceedings will be continued under the Act 58 of 1961. Moreover, he has held that the Partition

Deed in bearing Document No. 1709 of 70 will be ignored as per Section 23 of the Act and also has come to the conclusion that the 1st Petitioner

is holding 7.48 standard acres surplus and her sons holding 2.57 standard acres as surplus.

7. As against the orders of the 1st Respondent/Authorised Officer (Land Reforms), the Petitioners filed C.M.A. No. 23/72 before the 2nd

Respondent/Land Tribunal and the same has been dismissed on 03.07.1974. Thereafter, the Petitioners filed C.R.P. No. 2684 of 1974 and the

same has been allowed holding that the authorities should have given an opportunity to the Petitioners to refer to the Sale Deed dated 16.6.1962

and satisfy whether they could consider it as a genuine one etc. and also held that as the last stands any partition effected after the Act coming into

force shall be void and shall be ignored by the Authorised Officer and in this regard, negated the relief of the Petitioners but remit the matter to

the 2nd Respondent/ Land Tribunal for fresh consideration.

8. The 2nd Respondent/Land Tribunal by its judgment in L.T.C.M.A. No. 23 of 1972 dated 31.07.1978 has held that the Sale Deed dated

16.6.1962 is a bona fide and genuine transaction supported by valid consideration with an intention to convey title to third parties by the 1st

Appellant in respect of the property in question and therefore, Section 22 of the Act has no application.

9. The Petitioners filed Civil Appeal Nos. 184-185 of 1979 before the Honourable Supreme Court as against the Civil Revision Petition and the

Supreme Court on 10.09.1991 has held thus:

...However, as is evident the High Court totally overlooked Section 21-A. If the case of the Appellants falls squarely within Section 21-A it would

reign supreme over any other provisions of the Act, inclusive of Section 23, of Course this would be subject to the partition deed being registered

and having been effects within the two crucial dates. For this purpose some Court has to examine it and give a finding thereon. Thus in the facts

and circumstances of the case it would serve no purpose to ask the High Court to pronounce whereon and instead, like its other part, while

allowing these appeals and setting aside the judgment and order of the High Court in the other part we remit the balance case as well to the Land

Tribunal (Subordinate Judge) Mayuram for a fresh consideration in the light of law with the observation made above. So there is a remand on both

questions and the Land Tribunal is required to enter upon judgment on both aspects of the case....

10. The plea of the Petitioners is that after remand, the 2nd Respondent/Land Tribunal has gone beyond the remand order and has held that "the

document viz., the date of partition dated 29.04.1970 cannot be termed as a lawful Partition Deed as not between the individuals, who are having

pre-existing right but it is only an arrangement by which three persons having properties in their individual names giving away a portion of their land

to the old lady Kesala Devi for reasons best known to themselves and though it is being styled as a partition it is not a lawful partition but only a

family arrangement to get over the situation and opine that the said document does not fall u/s 21-A of the Act.

11. As against the order of the 2nd Respondent/Land Tribunal in L.T.C.M.A. No. 3 of 1993 dated 28.11.1994, the Petitioners filed Spl.R.P. No.

27 of 1995 before the 3rd Respondent/Special Appellate Tribunal and the same has been dismissed.

12. According to the Learned Senior Counsel appearing for the Petitioners, the order of the 3rd Respondent/Appellate Tribunal dated 28.08.1998

in confirming the order of the 2nd Respondent in L.T.C.M.A. No. 3 of 1993 dated 28.11.1994 is contrary to law and that the 3rd

Respondent/Appellate Tribunal has wrongfully held that the transfer is not covered by Section 21-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 58 of 1961 since it is a matter of fact to be decided by an evidence and further, the 3rd Respondent/ Appellate Tribunal has gone behind the order of remand by Honourable Supreme Court in coming to the conclusion that the present case does not fall u/s 21-A of the Act.

13. Expatiating his arguments, the Learned Senior Counsel for the Petitioners contends that the 3rd Respondent/Appellate Tribunal erred in holding that a Hindu widow's right to maintenance will not indicate a right to a share in the family property as a coparcener and therefore, it is not correct in viewing that such a transfer is void as per Section 22 of the Act and further, it is not covered by Section 21-A of the Act.

14. The Learned Senior Counsel appearing for the Petitioners strenuously contends that the view that the main criteria for persons to enter into a Partition Deed is that there should be a pre-existing right in a common property is not a correct one in the eye of law and in any event, Kosala Devi has got a right to have a maintenance and as such has an existing right and indeed, nothing prevented a Hindu coparcener to throw the property in the common stock and partition the property and the earlier settlement is between Susila Devi, Rajaji Vijayaraghavan and Sunder Kumar will only enable them to enjoy the property as co-owner and therefore, it is open to in the interest of parties to effect a partition and such a Partition Deed cannot be termed as an unlawful one.

15. Proceeding further, the Learned Senior Counsel for the Petitioners submits that the Partition Deed dated 29.04.1970 is only an arrangement and not a partition is an incorrect one because of the fact that a Family Arrangement is also a kind of partition and once the said document is registered within the crucial date, then, it comes into provisions of Section 21-A of the Act.

16. In response, the Learned Special Government Pleader appearing for the 1st Respondent submits that the 1st Petitioner and her two minor sons held ordinary acres 76.07 equivalent to 62.152 standard acres more than the ceiling area as on 06.04.1960 and an order as per Section 9(2)(b) of the Tamil Nadu Land Reforms Act 1961 has been passed on 08.02.1960 holding

that the family of the land owner has been in possession of

76.07 ordinary acres equivalent to 62.152 standard acres of lands as on 06.04.1960 and declared 31.152 standard acres as a surplus lands.

17. It is the stand of the 1st Respondent that the land owner and her two sons filed an appeal before the Land Tribunal (Sub Judge),

Mayiladuthurai contending that minor son do not form part of the family and that a reservation of 25% of the net income of the family properties

has to be made for charities and the Land Tribunal, Mayiladuthurai in its judgment in C.M.A. No. 61 of 1968 disagreed with the first contention

and abstained from giving a finding in regard to the second contention that the Appellants can agitate the matter before the Authorised Officer,

Mayiladuthurai as per Section 10(5) of the Act.

18. The Learned Special Government Pleader for the 1st Respondent submits that the Petitioners filed C.R.P. No. 536 of 1970 raising a

contention that the 1st Petitioner is entitled to sridhana of 10.00 standard acres and this Court in the order on 05.02.1971 held that recitals in the

document creating the reservation of 25% of the net income from the estate for the charities should be considered etc. But the objections to treat

the minor sons as separate unit has been negated.

19. Added further, it is the contention of the Learned Special Government Pleader for the 1st Respondent that pursuant to the order dated

05.02.1971 in C.R.P. No. 536 of 1970, a revised order as per Section 9(2)(b) of the Act has been issued on 22.02.1972 determining the surplus

of 10.05 standard acres and as against the said order, the Writ Petitioner and her sons files an Appeal C.M.A. No. 23 of 1972 before the Land

Tribunal [Subordinate Judge], Mayiladuthurai and the same has been dismissed on 03.07.1974 with costs.

20. The Learned Special Government Pleader for the 1st Respondent contends that this Court in C.R.P. No. 2864 of 1974 by its order dated

06.04.1978 has held that merely because the Sale Deed dated 16.06.1962 has not been produced before the Authorised Officer, the Appellate

Authority ought to have given an opportunity to the Petitioners to refer the Sale Deed etc. and that there is a material irregularity in the order which

has to be corrected and in regard to the Partition Deed dated 29.04.1970 it upheld the decision of the Authorised Officer in treating the said

document as void and allowed the matter in part and remit the subject matter to the Land Tribunal [Subordinate Judge], Mayiladuthurai for a fresh consideration.

21. The further plea of the 1st Respondent is that the Land Tribunal in L.T.C.M.A. No. 23 of 1972 by its order dated 31.07.1978 has allowed the

Appeal and set aside the order of the Authorised Officer treating the Sale Deed dated 10.06.1962 as void and remitted back to the Authorised

Officer for fresh disposal and the Petitioners filed a Review Petition C.M.P. No. 9111 to 9112 of 1978 before this Court as against the order

passed in C.R.P. No. 2684 of 1974 dated 06.04.1978 contending that the Partition Deed dated 29.04.1970 has to be treated as valid but the

Review Petitions have been dismissed on 01.12.1978.

22. Continuing further, the State of Tamil Nadu filed SLP No. 89 of 1979 before the Honourable Supreme Court of India feeling aggrieved against

the order of this Court in C.R.P. No. 2684 of 1974 dated 06.04.1978 and that the Honourable Supreme Court in C.A. No. 184-185 of 1979

dated 10.09.1991 has allowed the Appeal on 06.10.1980 by setting aside the orders of High Court, Chennai and remanding the matter to the

Land Tribunal, Thanjavur with a direction for fresh consideration in the light of observations made.

23. The Learned Special Government Pleader for the 1st Respondent submits that in L.T.C.M.A. No. 3 of 1993 on completion of remand

enquiry, the Land Tribunal/District Revenue Officer, Thanjavur passed orders inter alia held that the document itself does not filed u/s 21-A of the

Act and therefore, the Appellants (Petitioners) are not entitled to the benefit of Section 21-A of the Act insofar as it relates to the Partition Deed

dated 29.04.1970.

24. The Learned Special Government Pleader appearing for the 1st Respondent brings it to the notice of this Court that the Petitioners filed

Spl.R.P. No. 27 of 1995 before the 3rd Respondent/Appellate Tribunal and the same has been dismissed on 28.08.1998 and the Petitioners have

filed the present Writ Petition.

25. The contention of the 1st Respondent is that any partition which has taken place or registered within the period from 15.02.1970 and

02.10.1970 alone has to be considered under the Amended Act 17 of 1970 but

this has no application to the Principal Act and the grounds raised

before this Court related to the Amended Act 17 of 1970 and as such, the order of the 3rd Respondent/Appellate Tribunal in Spl.R.P. No. 27 of

1995 dated 28.08.1998 is in conformity with the law and therefore, prays for dismissal of the Writ Petition.

26. The Learned Senior Counsel appearing for the Petitioners contends that any Hindu Widow is entitled for maintenance and that the Petitioners

have executed the Partition Deed dated 29.04.1970 are liable to provide maintenance for step mother/step grandmother and as per Section 14(1)

of the Hindu Succession Act, the right of a Hindu Widow for maintenance is an anterior right and as such the Partition Deed is legally valid.

27. Countering the submission of the Learned Senior Counsel for the Petitioners, the Learned Special Government for the 1st Respondent submits

that the right to maintenance in respect to a mother or wife is not to be equated with a right to claim partition as a equal coparcener and in any

event, the proceedings in the present case have been initiated under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 58 of 1961

and continued as per Amendment Act 17 of 1970 and as such, Section 21-A of the Act will not come into operative play.

28. At this stage, this Court recalls the decision of the Honourable Supreme Court in M. Ramakrishnan v State of Madras 1980 1 MLJ 42

wherein it is held as follows:

The expression "stridhana land" used in Section 5(4)(a) has been given a restricted meaning by Section 3(42) of the Act which defines it as any

land held on the date of the commencement of the Act by any female member of a family in her own name. From a reading of the definition of

"stridhana land" in Section 3(42) and the provisions of Section 5(4) it is clear that the State Legislature intended to extend the concession available

u/s 5(4) only to the stridhana property held by a female on the date of the commencement of the Act and not to property acquired by her

thereafter.

29. Also, this Court aptly points out the decision of this Court in Deivasigamani Gounder v The Authorised Officer (Land Reforms), Erode 1978 2

MLJ 450 wherein it is held hereunder:

Once it is found that proceedings for the purpose of fixing the ceiling area for the

first time, have commenced under the provisions of the Tamil

Nadu Act LVIII of 1961 as it stands amended by the Tamil Nadu Act XVII of 1970, "the date of commencement of the Act" and the "notified

date" must have reference only to those dates as introduced by the Tamil Nadu Act XVII of 1970. As per the amendments introduced by the said

Act, "the date of commencement of this Act", means the 15th day of February, 1970 and "the notified date" means the date specified by the

Government in a notification which shall be a date after the date of the publication of this Act and such a notified date is stated to be 2nd October,

1970.

30. Further, in the decision V.S. Vallippa Chettiar (deceased) and Others Vs. The State of Tamil Nadu, , this Court has held as follows:

A duty is cast on the Authorised Officer u/s 22 to find out whether the concerned transfers were such as would defeat any of the provisions of the

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act. It is a mandatory provision and the Authorised Officer has to follow the procedure

laid down in Section 22, strictly. An enquiry has to be held by the Authorised Officer Under the section to find out whether the transfers were

entered only with a view to defeat the provisions of the Act without bona fide intention to transfer title under the documents of transfer. That

procedure has not been followed in this case. There is nothing on record to show that he has even dropped the proceedings u/s 22. Nothing is

mentioned about the enquiry u/s 22. The Authorised Officer had not come to the conclusion that the transfers had the effect of defeating the

provisions of the Act. On that view, the order of the Authorised Officer is not sustainable. The proper course to be adopted under such

circumstances is to remit the matter to the Authorised Officer for an enquiry afresh.

31. In the decision of the Honourable Supreme Court in B.K.V. Radhamani Ammal Vs. Authorised Officer, Land Reforms, Coimbatore, it is laid

down as follows:

According to Act No. 17 of 1970 the date of commencement of the Principal Act was to be deemed to be February 15, 1970 and the notified

date was to be October 2, 1970. After the passing of that Act, the question as to whether the holding of the family was in excess of the ceiling area

had to be decided in reference to the state of affairs as they existed on that notified date, that is to say, on October 2, 1970. B's daughter was married in May 1963, and therefore, the family of which she was at one time a member consisted solely of the widow on the notified date. On this consideration, the land which was settled upon the daughter could not possibly be clubbed with the land which was settled upon the widow. AIR 1978 NOC 20 (Mad) Reversed.

32. In the decision *N. Rajammal (Died) and Anr. v. P. Maragathammal & 28 others* 1998 1 MLJ 184, this Court has held that "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."

33. In the decision of the Honourable Supreme Court in *A.G. Varadarajulu and Anr. v. State of Tamil Nadu and Ors.* (1998 2 MLJ 133) it is held as follows:

The word "held" in Section 3(42) is used in the sense that the female must be in possession of the land as owner or with some element of title on

15.2.1970 the date of commencement of the Act. In the Court's opinion, it is not sufficient that as on 15.2.1970, the second Appellant had a right

to maintenance under the customary Hindu Law against this property in satisfaction of which this extent of land was allotted to her on 24.9.1970.

A right to claim maintenance against certain property of the joint family cannot be equated with "holding" the land as on 15.2.1970. Section 5(3) of

the Act provides for notional computation of the share of persons who basically hold a share in joint family property under Hindu Law. But such a

provision dealing with mode of computation is attracted only to persons who, at the date of commencement of the Madras Act "hold" an undivided

share in the property of the Hindu joint family. It must, therefore, be held that Section 5(3) read with the Explanation permits notional computation

only in respect of those who "hold" an undivided interest in the joint family property at the date of commencement of the Act. The second

Appellant had no basic right to a share in the joint family property inhering in her on 15.2.1970 and she cannot, therefore, be said to be "holding

stridhana land" as on the date of commencement of the Act i.e. 15.2.1970 within Section 3(42) of the Act. Therefore, the fact that she had, as on

15.2.1970, a right to maintenance against this property which later crystallised into the allotment of this property in her favour on 24.9.1970 is not

sufficient. Neither under the customary Hindu Law nor under the Hindu Marriage Act, 1955 nor under the Hindu Succession Act, 1956 nor under

the Hindu Adoptions and Maintenance Act, 1956 is there any provision which gives a share to a wife in the joint family property held by her

husband nor to a mother in the joint family property allotted to her son in a partition.

34. In the decision of the Honourable Supreme Court in Arul Nadar Vs. Authorised Officer, Land Reforms, the Honourable Supreme Court has

observed as follows:

...Section 21-A was made applicable to a proceeding which had been initiated under the parent Act and was pending when the said Section 21-A

was brought on to the statute-Book. In view of the aforesaid two decisions and on examining the provisions of the Tamil Nadu Act 17 of 1970,

more particularly Section 21-A, we have no hesitation to come to the conclusion that the said provision does apply to a proceeding which was

pending on the date the aforesaid provision was inserted in the parent Act even though the proceeding might have been initiated under the parent

Act itself and the High Court committed error in holding that Section 21-A will have no application as the ceiling proceeding had been initiated

under the parent Act.

35. In the decision of the Honourable Supreme Court in Kandaswamy Goundar Vs. The Authorised Officer (Land Reforms), this Court has held

as follows:

On the death of the father of the Petitioner after the Hindu Women's Rights to Property Act came into force, the Petitioner as well as his mother

were entitled to a half share each and this position of law was erroneously not recognised by the Authorised Officer. The suit filed by the mother

and the decree that ensued only clarified the existing position of law and the rights of parties and did not effect any transfer or partition after the Act

came into force. The Authorised Officer, therefore, was in error in including the share of the mother. Since on the facts, the Petitioner will be

entitled to only about less than ten acres no question of declaration of surplus arises.

36. It is to be noted that the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (Act 58 of 1961) has been notified on 02.10.1962.

However, the date of its commencement has been fixed as 06.04.1960. Significantly, the Act has been amended by Act 17 of 1970 whereby the

ceiling area has been reduced from 30 standard acres for a family not exceeding five members to 15 standard acres and the date of

commencement of the Act has been shifted to 15.02.1970 and the notified date to 02.10.70. In short, after the passing of the Act 17 of 1970 the

family's holding has to be determined with reference to the notified date i.e. 02.10.1970.

37. As regards the expression "stridhana land" employed in Section 5(4)(a) has been given a restricted meaning by Section 3(42) of the Act which

defines it as any land held on the date of the commencement of the Act by any female member of a family in her own name. A reading of the

definition of the expression "stridhana land" in Section 3(42) of the Act and the provisions of Section 5(4) of the Act shows that the concession

available u/s 5(4) of the Act extends only to the stridhana property held by a female on the date of the commencement of the Act and not to

property acquired by her thereafter. To put it differently, the term "stridhana land" refers only to the land held by a female on the date of the

commencement of the Act and not to lands inherited by her or acquired by her as a bequest at any point of time.

38. Section 21-A of the Act starts with the words ""notwithstanding anything contained in Section 22"" clearly overrides Section 22 and as such, the

transactions referred to in Section 21-A cannot be the subject matter of enquiry as per Section 22. Section 21-A speaks of three types of transfers

viz., (a)transfer of holding by a registered partition deed; (b)transfer of land to specified individuals on account of natural love and affection; and

(c)transfer in favour of an educational institution or hospital of a public nature solely for the purposes of such institution or hospital provided the

transferred land vests absolutely in the institution or hospital and the entire income from such land is appropriated for the institution or hospital.

Although the transactions referred to in Section 21-A of the Act cannot be declared void as per Section 22 of the Act as defeating any of the

provisions of the Act, the Authorised Officer is entitled de hors Section 22 of the Act, to see if the instruments of partition or transfer though

answering the description of transactions as per Section 21-A, are in fact genuine transactions and not a sham, nominal or bogus ones. In other

words, when any party wants the benefit of Section 21-A, he must show, if a doubt arises that (a)the instrument on which he relies is a genuine one

and (b)it answers the description of the documents referred to by Section 21-A. If the document is not a genuine one, the Authorised Officer will

not act on it. However, if it is genuine, the Authorised Officer will determine if it is one referred to in Section 21-A and if not he will seek the aid of

Section 22 of the Act. As a matter of fact, the Authorised Officer is to consider if the instruments answer the description of the documents referred

to in Section 21-A of the Act even if they are genuine. If the Authorised Officer comes to the conclusion that the documents are not falling within

Section 21-A of the Act, he will be required to test their validity on the criterion of Section 22.

39. Section 22 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act refers to ""Any transfer, gift, surrender, settlement or other

alienation referred to in the section may be declared void by the Authorised Officer, ""if he finds that the transfer or the partition ... defeats any of

the provisions of the Act."" The transfer or other alienation ought to have taken place during the period mentioned in the Section. It should have the

effect of defeating any of the provisions of the Act. If these features are present, the Authorised Officer ought to void the transfer. The object of the

Section is to prevent any alienation or transfer which defeats any of the relevant provisions of the Act.

40. As per Section 23 of the Act [after its substitution by Tamil Nadu Act 32 of 1974], the Authorised Officer is to calculate the ceiling area of

such person as if no such transfer or sub-division has taken place. As a logical corollary, the concerned alienation is non-est in the eye of law and

the lands alienated will continue to be the holding of the land owner for the purpose of the statutes as per decision of this Court in Rukmani Amma

v Union of Territory of Pondicheery AIR 1985 NOC 108 (Mad).

41. A reading of the Partition Deed dated 29.04.1970 [bearing Document No. 1709/1970] shows that it has been executed by (1) Suseela Devi

Ammal, wife of Panchapakesan Pillai, (2) Rajaji Vijayaragavan Miras (2nd Petitioner), (3) Sundarkumar (3rd Petitioner) Petitioners 2 and 3 are the major sons of the 1st Writ Petitioner and (4) Kosala Devi Ammal, 1st Petitioner's step-mother and grandmother of Petitioners 2 and 3 and wife of M.A. Ramanujam Pillai. Also, the Partition Deed contains recitals to the effect that three Petitioners are dividing the immovable properties into 4 shares with a view to allot one share of the properties to the step-mother of the 1st Petitioner and step-grandmother of the Petitioners 2 and 3 viz., Kosala Devi Ammal (4th Petitioner).

42. At this stage, we deem it appropriate to point out that the Partition Deed dated 29.04.1970 between three Writ Petitioners and one Kosala

Devi Ammal reads thus:

Whereas aforesaid late M.A. Ramanujam Pillai, being the father of the individual No. 1 amongst us namely Suseela Devi and grand father of individual Nos. 2 and 3, and husband of individual No. 4, having settled the major portion of the properties situate at No. 209, Perumalagaram, Nannilam Taluk, in favour of individual Nos. 1, 2 & 3, under the Deed of Settlement and the same being in possession and enjoyment of the respective sharers individually with patta and Miras etc. and since out of the aforesaid properties individual No. 4 amongst us namely Kosala Devi, has no share and therefore with the intention that she too should live in a good manner and further since the aforesaid individual Nos. 1, 2 & 3, and running the family in a beneficial manner and therefore whole-heartedly and with unanimous consent one share of the properties is hereby allotted through this document and further since in future we will have to run our respective family in our individual capacity and further since the movable properties of the family had already been partitioned and obtained by the sharers and therefore the immovable properties are being divided into 4 shares as aforesaid etc.

43. As far as the present case is concerned, Section 14 of the Hindu Succession Act, 1956 cannot be pressed into service on behalf of the Writ

Petitioners because of the fact that the property has been transferred by means of a Partition Deed and Section 14 of the Hindu Succession Act

will apply only to a case where the property is possessed by a female Hindu. A Hindu widow's right to maintenance out of the income of her

husband's property will not go to a further extent of pointing out a right to a share in the family property as a co-parcener.

44. That apart, the three Writ Petitioners have obtained their share of family properties by means of 3 Settlement Deeds pertaining to the year

1952, 1954 and 1959, the 4th Petitioner/step-mother of the 1st Petitioner and wife of M.A. Ramanujam Pillai has not got any property by means of Settlement.

45. Only if the individuals have pre-existing rights in the common property which is likely to be divided, they can enter into a Partition Deed.

Admittedly, the Writ Petitioners have got the property by virtue of Settlement from Ramanujam Pillai and have been enjoying of the same by

transferring the patta in individual names. Thus, it is candidly clear that when the Writ Petitioners 1 to 3 have received the property from

Ramanujam Pillai by means of Settlement, then, it is their personal property. For some reason or other, the Settlement Deed executed by

Ramanujam Pillai has not been filed before the 2nd Respondent. In short, the Partition Deed is not a lawful one as it is not between individuals who

have pre-existing rights and it is only a family arrangement/family settlement between the three Writ Petitioners and the same falls outside the

purview of Section 21-A of the Act. Viewing differently, the Partition Deed will not attract even Section 21-A Clause (b) of the Act because of the

simple fact that a Settlement effected by the grandsons in favour of the grandmother (in the instant case the Petitioners 2 and 3 joining with 1st

Petitioner and executing the purported Partition Deed in the name of 4th Petitioner/grandmother) does not come within the ambit of Section 21-A

of the Act, in our considered view. Moreover, even assuming that the Partition Deed is to be construed as Settlement only such settlements

effected voluntarily by any parent or grandparent transferring any land on account of natural love and affection to any minor son, unmarried

daughter, minor grandson or unmarried granddaughter in the male line will come within the ambit of Section 21-A(b) of the Act.

46. Proceeding further, the order as per Section 9(2)(b) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act has been passed on

08.02.1960. Only on 29.04.1970 with an inordinate delay the Petitioners have executed a document No. 1709 of 1970 captioning as Partition

Deed and they seek to transfer the portion of their property to the 4th party in the document Kosala Devi [step-mother of the 1st Petitioner and grandmother of Petitioners 2 and 3] and such a transfer is clearly void as per Section 22 of the Act because the same is not covered. Furthermore, the transfer by means of the Partition Deed dated 29.04.1970 defeats the provisions of the Act by reducing the surplus land in excess of the ceiling available from any individual and as such, the transaction is not a void one and the same can be ignored for the purposes of Sections 22, 7 and other ceiling concerned provisions.

47. In the light of the aforesaid discussions and reasons and also on an appreciation of facts and circumstances of the case in a conspectus manner, we are of the considered view that the order of the 3rd Respondent/Special Appellate Tribunal does not suffer from any infirmity or illegality so as to warrant any interference in the hands of this Court and resultantly, the Writ Petition is dismissed without costs. Consequently, connected Miscellaneous Petition is closed.