
(1996) 04 MAD CK 0093

In the Madras High Court

Case No : CiviI Revision Petition No. 491 of 1991

Union Of India

APPELLANT

Vs

Jayachandiran

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Pondicherry (extension Of Laws) Act, 1968 — Section 3, 4

Citation : (1996) 04 MAD CK 0093

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : The Government Pleader Pondicherry, for the Appellant; K. Mani, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Revision petitioners are, Union of India represented by the Secretary to Government, Revenue Department, Government of Pondicherry, and the Authorised Officer (Land Reforms), Karaikal, under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act. By the impugned order, the Appellate Authority under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 has held that the property belonging to respondent herein is not liable to be included in the family of Ramakrishna Naicker. The Authorised Officer issued notice to Ramakrishna Naicker since he was of the view that he was holding properties in excess of the ceiling limits provided under that Act. The Act came into force on 1-3-1975. For the purpose of fixing the ceiling limit, the Act fixed a date known as appointed date. The said date is 24-1-1971. The Authorised Officer was of the view that since the respondent herein was a minor on the appointed date, and also on the date when the Act came into force, the respondent herein was a minor, the property belonging to him or properties which stood in his name also will have to be taken into consideration for fixing the ceiling limits of the family. It is seen that Ramakrishna Naicker executed a gift in favour of his son, the respondent herein, on 27-2-1963, while he was a

minor. The second petitioner herein fixed the ceiling limit of the family taking into consideration the property covered by the gift also. According to him since the respondent herein is a member of the family, his property also will have to be included.

2. The respondent herein filed an appeal before the Appellate Authority. The Appellate Authority was of the view that when the Act came into force, the respondent was a major under the French Law and, therefore, the property is liable to be excluded. It is against the said decision, this Revision is filed.

3. The admitted facts are: Respondent was born on 22-10-1957 and the gift was executed in his favour on 27-2-1963. The appointed date under the Act is 24-1-1971 and the Act came into force on 1-3-1975. If the French Law is to be applied, respondent will become a major on 22-10-1973. If the Indian Majority Act is to be applied, he will become a major on 22-10-1975. If the French Law is to be applied, on the date when the Act came into force on 1-3-1975, he becomes a major.

4. So the first question to be considered is, which is the law that has to be applied. Pondicherry (Extension of Laws) Act, 1968 came into force on 24-5-1968. Section 4 of that Act reads thus:-

Any law in force in Pondicherry or any are a thereof corresponding to any Act referred to in sub-section (1) of section 3 or any part thereof (except in so far as such law continues to be applicable to "Renoncants" shall stand repealed as from the coming into force of such Act in Pondicherry.

So, when the Pondicherry Land Reforms (Fixation of Ceiling of Land) Act was passed, the Indian Majority Act became applicable.

5. "Family" has been defined under the Pondicherry Land Reforms (Fixation of Ceiling of Land) Act (Act 9 of 1973) thus:-

Family" in relation to a person, means the person, the wife or husband, as the case may be, of such person and his or her minor sons and unmarried daughters.

In view of the definition of "family" the property belonging to the respondent also will have to be taken into consideration. While fixing the ceiling provision u/s 4 of the Act, lands held individually by members of the family or jointly shall be deemed to have been held by the family, provided the individuals form part of the family.

6. While considering this question, the Supreme Court has upheld the validity of the Act, in Vengadasalam Pillai Vs. Union Territory of Pondicherry, Their Lordships said that while fixing the ceiling area, the appointed date is the date on which the property held by the family is to be considered. In paragraph 18 of the judgment, it was held thus:-

Counsel for the appellant also relied on the provision contained in sub-section (4) of Section 4 of the Act as furnishing an indication that transactions of partition

that have taken place before the "appointed day" are not to be ignored and that only post appointed day partitions are to be treated as ineffective. We find no force in this argument. The purpose of section 4 is to peg down the process of determination of ceiling area to the state of things that obtained on the "appointed day" and it is in that context and for the said purpose that the sub-section provides that in calculating the extent of land held by any person, any land which was transferred by sale, gift or otherwise or partitioned by that person after the appointed day but before the commencement of the Act, shall be taken into account, as if such land had not been transferred or partitioned.

7. In view of the binding decision of the Supreme Court and also for the reason that the respondent was a minor on the appointed date, the property held by him on the basis of the gift deed dated 27-2-1963 also will have to be taken into consideration in fixing the ceiling limit of the property held by the family.

8. An argument was taken by learned counsel for the respondent that if the respondent has become a major between the appointed date and the date on which the Act came into force, that also will have to be taken into consideration in view of the decision reported in 1972-II M.L.J. 507 = 85 L.W. 829 (Rajagopal Pillai v. State of Tamil Nadu by the Collector of South Arcot and another) and also my decision in C.M.S.A. No. 74 of 1985 (V. Ramaswamy Pillai v. The State of Pondicherry represented by the Authorised Officer, Land Reforms, Karaikkal) judgment dated 13-10-1995. Both these decisions will have no application to the facts of this case since the respondent will be a minor even on the date when the Act came into force on 1-3-1975. In the cases cited the person concerned became a major before the Act came into force. It must also be said that the decision of the Supreme Court was not brought to my notice when I decided the case in C.M.S.A. 74 of 1985.

9. In the result, I set aside the order of the Appellate Authority and restore the order passed by the second petitioner herein. I further hold that the property held by the respondent as per the gift deed dated 27-2-1963 also will have to be taken into consideration in fixing the ceiling limits of the family of Ramakrishna Naicker. In the result, the Civil Revision Petition is allowed as indicated above, but however with no order as to costs.