
(1991) 11 AP CK 0040

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 549 of 1985

Y. Laxmi and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 17

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 6

Citation : (1992) 3 ALT 189 : (1991) 2 APLJ 457

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Advocate : P.V. Narayana Rao, for the Appellant; Govt. Pleader for Co-operation, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Rao, J.—One Papayya, the declarant, having executed a will on 15-5-1975 bequeathing properties in favour of his brothers, died pending the land ceiling proceedings. After the Appellate Tribunal by order dated 5-6-78 remanded the matter to the Primary Tribunal, the Primary Tribunal without issuing any notice to the legatees and in their absence decided the validity of the will by holding that it was not proved. The husband of the present petitioner, who also died, was the son of the said Papayya. When the petitioner challenged the order of the Primary Tribunal as regards the validity of the will, the Appellate Tribunal rendered a finding that the declaration has to be decided as on 1-1-75 and therefore the will dated 15-5-75 needs no consideration being of no consequence. Hence this revision.

2. The first contention of the learned counsel. Sri Narayana Rao, is that the will is not a transfer and therefore not hit by Section 17 of the Land Reforms Act. The learned Government Pleader, on the other hand, contended that the will was executed after filing of the declaration and therefore even though the declarant

died, his holding has to be decided as though he were alive. To resolve the controversy, it is necessary to have a look at Section 17 of the Act, which reads:

"17. Prohibition of alienation of holding: (1) No person- shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert an agricultural land into non-agricultural land..."

From a reading of this section, it cannot be said that "will" is either an alienation or a transfer and therefore "will" cannot be said to be hit by this section. Therefore if the will executed is proved, the same merits consideration for purposes of computation of the holding. This view is also fortified by two Judgments of this Court in Appalaswamy Naidu v. State of A.P., 1978 (2) APLJ 9 (SN) and G. Naga Lakshmi v. State of A.P., 1978 (1) APLJ 271.

3. The declaration filed by Papayya is not only on his behalf but also on behalf of the family, including his major son, the husband of the petitioner.

4. It is not disputed that the husband of the petitioner, being the son (major) of Late Papayya, is entitled to one holding apart from that of Papayya, who is also entitled to a separate holding as on the notified date. In case the "will" is proved, the properties covered by the "will", if exceed one holding to which alone the testator is entitled, the legatees under the will, whether or not individually hit by the Act, are bound to surrender the same.

5. It is next contended that the proceedings, which were held without issuing any notice to the legatees, are void. In case it is found that the declarant was holding excess land, he having died, the legatees alone are the affected parties inasmuch as it is they that have got to surrender the excess land, and therefore failure to issue notice to the legatees while adjudicating the ceiling proceedings is basically hit by the principles of natural justice. It is also pertinent to refer to Rule 6 of the A.P. Land Reforms Rules, 1974, which reads:

"6. Enquiry and determination of ceiling area:

(1) The Tribunal shall fix the date on which and the time and place at which an enquiry... will be held and intimate the same by a notice in form V, to the declarant or the Holder of the land in respect of which the information has been received, to the other persons interested...."

Constituting the scope and ambit of the term "other persons interested" in the light of Rule 6, this Court held that (i) the persons in possession to whom the land was sold by the declarant (ii) the mortgage decree-holder against the declarant, and (iii) the maintenance-holders pending decision before the Estates Abolition Tribunal, are "persons interested" in 1978 (2) APLJ (SN) Page 9, 1980(1) ALT 45 (NRC) and 1980 (I) ALT 19 (NRC) respectively. On a similar analogy the legatees under a will, the testator having died, are equally persons interested and therefore the proceedings that took place without issuing notice to

the legatees are illegal and invalid and in view of the above decisions referred to since, in the instant case, it is not disputed that no notice was issued to the legatees and the proceedings went on, the same are illegal and accordingly set aside. In so far as the holding of the husband of the petitioner, who is no other than the son of Papayya - the declarant, is concerned, there is no ambiguity that in the light of Section 4- A of the Act he is entitled to one holding whether or not the bequeath under the will is in his favour, apart from the separate holding to which the deceased Papayya is entitled for purposes of computation of the holding in order to arrive at the excess or otherwise of the holding.

6. For the foregoing reasons, the orders of the Primary and Appellate Tribunals are set aside and the matter is remanded to the Primary Tribunal with a direction to issue notices to the legatees under the will, Ex.A-17, and then decide the issue regarding the truth and validity of the same. It is only thereafter the holding shall be decided. If there is any excess land, as observed supra, the legatees irrespective of their individual liability are bound to surrender the same. The Primary Tribunal shall, as directed, proceed and decide the case afresh.

7. The learned counsel complains of non-consideration of issues relating to classification of the land. It is open to the Petitioner to raise all these objections and prove their claim before the Primary Tribunal according to law.

8. The revision is allowed subject to the above directions. No costs. Advocate's fee Rs. 250/-.