

Rajammal And Anr vs Mookan @ Peria Perumal Theval & Ors on 6 August, 1981

Equivalent citations: 1981 AIR 1664, 1982 SCR (1) 174, AIR 1981 SUPREME COURT 1664, 1981 (3) SCC 518, (1982) 95 MAD LW 22, 1981 UJ(SC) 576, (1982) 1 MAD LJ 10

Author: Baharul Islam

Bench: Baharul Islam, O. Chinnappa Reddy, A.P. Sen

PETITIONER:

RAJAMMAL AND ANR.

Vs.

RESPONDENT:

MOOKAN @ PERIA PERUMAL THEVAL & ORS.

DATE OF JUDGMENT 06/08/1981

BENCH:

ISLAM, BAHARUL (J)

BENCH:

ISLAM, BAHARUL (J)

REDDY, O. CHINNAPPA (J)

SEN, A.P. (J)

CITATION:

1981 AIR 1664

1982 SCR (1) 174

1981 SCC (3) 518

1981 SCALE (3) 1144

ACT:

Madras Bhoodan Yagna Act (15 of 1958) sections 11, 16, 17, 20 and 23- Donation of land to Bhoodan Board prior to commencement of Act-Not invalid for want of registration.

Madras Bhoodan (Amendment) Yagna Act 1964, section 11 and 24-Meaning and scope of.

HEADNOTE:

The suit land belonged to one Naidu who donated it to Bhoodan Yagna in 1953 through unregistered deeds. Later the Madras Bhoodan Yagna Act 1958 came into force and this Act of 1958 was further amended by Bhoodan (Amendment) Act 1964. The said land was allotted to the respondents under the Act who claimed to have been in possession of the land since

before the donation. Naidu sold the suit lands to the appellants by a registered sale deed. The appellants filed the suit for declaration of their title to, and possession of, the said land and pleaded that (i) as the donation of the land by Naidu was not by any registered deed, no title could be passed to the Bhoodan Board and subsequently to the respondents and (ii) Naidu validly transferred title of the lands to them. The respondents pleaded that (i) the land vested in the Bhoodan Board under the Bhoodan Act and (ii) Naidu had no saleable interest thereto which he could transfer to the appellants by the deed of sale. The trial court decreed the appellant's suit which was upheld by the first appellate court. The respondents preferred second appeal before the High Court which reversed the decree of the courts below and dismissed the plaintiff's suit. On appeal, it was argued by the appellants that the donation was invalid for want of registered deed and the provisions of the Bhoodan (Amendment) Act do not have retrospective effect.

Dismissing the appeal,

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HELD: 1. The object of the Bhoodan Yagna Act is "to facilitate the donation of lands for the Bhoodan Yagna initiated by Shri Acharya Vinoba Bhave and the transfer and settlement of such land for the benefit of poor landless persons or for community purposes and to provide in Gramdan villages for the vesting of lands in, and the management of those lands by the Sarvodaya Panchayat in the State of Madras." [176 H, 177 A-B]

2. Section 11 clearly shows that intention of the Legislature was to bring in to the purview of the Bhoodan Act lands donated by any person before the commencement of the Bhoodan Act. The law ingrained in section 11 is merely declaratory in express terms of the already existing law under the Bhoodan Act of 1958. [177 E-F, 182 B]

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3. Clause (b) of section 11 of the Bhoodan (Amendment) Act puts a bar on the maintenance of a suit or other proceedings in any Court for the declaration of title to, or recovery of possession of, any land donated for the Bhoodan Yagna on the ground that the transfer (donation) was not in accordance with the provisions of the Transfer of Property Act or Indian Registration Act. Clause (c) to section 11 goes one step further and lays down that even if a decree has already been passed in such a suit, no court shall execute a decree in a suit referred to in clause (b). [181 G-H, 182 A-B]

4. Section 24 of the Act leaves no doubt that the provisions of the Bhoodan Act had retrospective effect and intended to include donations of land by any person to the Bhoodan Yagna made before the commencement of the Bhoodan Act, and such donations were also exempted from the relevant provisions of the Transfer of Property Act and the Indian

Registration Act with retrospective effective. [180 B-C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1932 of 1970.

Appeal by special leave from the judgment and decree dated the 31st December, 1969, of the Madras High Court in Second Appeal No. 348 of 1966, M. Natesan, Mrs. Janaki Ramachandran and K. Kumar for the Appellants.

Vepa P. Sarathy, Gopal Subramanian and Mrs. S. Gopalakrishnan, for the Respondents.

The Judgment of the Court was delivered by BAHARUL ISLAM, J. This appeal by special leave is by the plaintiffs. The material facts of the case are that the suit land belonged to one Venkataramabhadra Naidu, a Zamindar (hereinafter 'Naidu'), who donated it to Bhoodan Yagna on August 18, 1953 by executing documents, Exs. B-1 and B-2, which were unregistered deeds. Later in 1958, in Madras Bhoodan Yagna Act, 1958 (hereinafter 'The Bhoodan Act') came into force. The Madras Bhoodan Yagna Board constituted under section 3 of the Bhoodan Act and functioning under the Act allotted the suit land to the defendants who claimed to have been in possession of the land since before the donation. On August 3, 1960, Naidu sold the suit land to the plaintiff by a registered sale- deed for a sum of Rs. 2000. The plaintiffs alleged that they were in possession of the suit land but as the defendants were interfering in their possession, they filed the suit for declaration of their title to, and possession of, the suit land.

The plaintiffs' case was that as the donation of the land by Naidu was not by any registered deed, no title passed to the Bhoodan Board and subsequently to its allottees, namely, the defendants and that Naidu validly transferred title to them.

2. The defendants' case, inter alia, was that the land vested in the Bhoodan Board under the provisions of the Bhoodan Act, and Naidu had no saleable interest thereto which he could transfer to the plaintiffs by the sale deed.

3. The Trial Court decreed the plaintiffs' suit. The decree was upheld by the First Appellate Court on appeal by the defendants. Both the courts held that the donation of the suit and by Naidu was not in conformity with Section 17 of the Registration Act and Section 12 of the Transfer of Property Act and as such title to the suit land did not pass from Naidu to the Bhoodan Board. The defendants preferred a second appeal before the High Court. The High Court reversed the decree of the courts below and dismissed the plaintiffs' suit.

4. It has to be mentioned that the First Appellate Court passed its decree on October 1, 1962 while the High Court passed its impugned decree on 31st December, 1969; while in the meantime, in 1964, the Madras Bhoodan Yagna Act of 1958 was amended by the Madras Bhoodan Yagna (Amendment) Act, 1964 (hereinafter 'the Bhoodan (Amendment) Act').

5. Learned counsel for the appellants submits that the donation of the suit land by Naidu to the Bhoodan Board was before the passing of the Bhoodan Act of 1958 and the Bhoodan (Amendment) Act of 1964; as such the provisions of these two Acts could not save the donation of the suit land by Naidu to Bhoodan Board from the operation of the relevant provisions of the Transfer of Property Act and the Indian Registration Act. In other words, the submission is that the donation was invalid for want of a registered deed.

6. It may be mentioned that counsel of the appellants has not challenged the validity or vires of the provisions of the Bhoodan Act or Bhoodan (Amendment) Act. His submission is that the above provisions do not have retrospective effect.

7. The object of the Bhoodan Act is, as it appears from the preamble, "to facilitate the donation of lands for the Bhoodan Yagna initiated by Shri Acharya Vinobha Bhave and the transfer and settlement of such lands for the benefit of landless poor persons or for community purposes and to provide in Gramdan Villages for the vesting of lands in, and the management of those lands by the Sarvodaya Panchayat in the State of Madras."

'Bhoodan Yagna' has been defined under clause (a) of section 2 as meaning "the movement initiated by Shri Acharya Vinobha Bhave for the acquisition of lands through voluntary gifts for distribution to landless poor persons, cooperative societies or Sarvodaya Panchayats or for community purposes." It is why, therefore; it appears, the donations of land to Bhoodan Yagna were exempted from the operation of the Indian Registration Act and the Transfer of Property Act, as it will, presently appear.

8. I shall first refer to the relevant provisions of the original Bhoodan Act (of 1958) and examine the position of the law that was before the amendment of 1964. Section 3 of the Bhoodan Act provided for the establishment and incorporation of a Board-to be called "The Madras State Bhoodan Yagna Board" (herein-after the 'Bhoodan Board'). Section 11 of the Bhoodan Act provided, "All lands donated for the purposes of the Bhoodan Yagna whether before (emphasis added) or after the commencement of this Act shall, subject to the provisions of section 16, 17 and 20, vest in the State Board".

Section 11 clearly shows that the intention of the Legislature was to bring in to the purview of the Bhoodan Act lands donated by any person before the commencement of the Bhoodan Act.

Clause (a) of sub-section (1) of Section 16 which is material is in the following terms:-

"16(1)-Notwithstanding anything to the contrary contained in any other law for the time being in force,

(a) any owner may, by declaration made in the prescribed manner, donate his land for the Bhoodan Yagna.

Provided that

Provided further that

Sub-section (3) to Section 16 reads:

"Every declaration made under sub-section (1) shall be filed with the Tahsildar or the Deputy Tahsildar in independent charge having jurisdiction in the taluk or sub-taluk where the land is situate."

Sub-section (1) of Section 17 provided "Every declaration filed under sub-section (3) of section 16 shall, as soon as may be, be published in the Fort St. George Gazette and in such other manner as may be prescribed."

Any person whose interest were affected by the declaration of the donation might file objections before the Tahsildar or Deputy Tahsildar under sub-section (2). Under sub-section (3), the Tahsildar or the Deputy Tahsildar had to register every such objection, fix a date of hearing and give notice of the date of hearing to the donor, and the objector, the Bhoodan Board and the Local Committee concerned, and then under sub-section (4), had to investigate and dispose of the objection, and by an order confirm the declaration or declare it null and void. Sub-sections (5) and (6) which are important were in the following terms:-

"Sub-section (5)-If the Tahsildar or the Deputy Tahsildar confirms the declaration, then, notwithstanding anything contained in any other law for the time being in force, all the right, title and interest of the donor in such land shall stand transferred to and vest in the State Board for the purchases of the Bhoodan Yagna (emphasis added). Sub-section (6)-Every order under sub-section (5) confirming a declaration shall be published in the Fort St. George Gazette and on such publication, the donation of land shall, subject to the provisions of section 23, be irrevocable."

Sub-section (5) in clear terms lays down that on the confirmation of the declaration of the donation, notwithstanding the provisions of 'any other law', (to wit the Transfer of Property Act and the Indian Registration Act in this case) right, title and interest in the land "shall stand transferred to and vest in" the Bhoodan Board. And after publication of the order of confirmation of the donation, it can be challenged only by a suit contemplated by Section 23.

Sub-section (1) of section 20 provided that "The State Board shall prepare a list of all lands donated for purposes of Bhoodan Yagna prior to (emphasis added) the commencement of this Act" showing the area, description and other particulars of the land, the name and address of the donor and allied matters. Sub-section (1) to section 20 also shows that the Bhoodan Act was intended to include the donations made prior to the commencement of this Act. Sub-section (2) provides for publication of the list prepared under sub-section (1) in the Fort St. George Gazette.

The proviso added after sub-section (3) of section 20, and sub-section (4) of section 20 are important and need be extracted. They are as follows:-

"Sub-section (3).....

Provided that where an order is made by the Inquiry Officer under sub-section (4) of section 17 confirming the donation, such donation shall be deemed to have been accepted with effect from the date on which the donation was made and for this purpose, this Act shall be deemed to have been in force on such date. Sub-section (4)-Where such land has been granted to any person it shall, with effect from the date of grant, be deemed further to have been granted to the grantee under and in accordance with the provisions of Section 19."

These two are deeming provisions and are a complete answer to the appellants' contention. The meaning of the proviso is that although the Bhoodan Act was not in existence at the time a donation was made its acceptance by the Tahsildar or Deputy Tahsildar later on after the commencement of the Act, (as in the case in hand), by virtue of the deeming provision, the Act shall be deemed to be in existence on the date of the donation. Sub-section (4) had made a similar deeming provision for the grant made in favour of a grantee before the coming into force of the Bhoodan Act.

Section 24 reads: "Notwithstanding anything contained in any other law, every declaration and every grant of land made or deemed to have been made under this Act shall be and be deemed always to have been exempt from the payment of stamp duty and of encumbrance certificate fee, registration fee or of the fee payable for the attestation of a power of attorney under section 33, sub-section (2), of the Indian Registration Act, 1908 (Central Act XVI of 1908)." (emphasis added). The provision of this section also shows that donations and grants under the Bhoodan Act were exempted from the provisions of the Transfer of Property Act and the Indian Registration Act with retrospective effect.

The above considerations leave no doubt at all that the provisions of the Bhoodan Act had retrospective effect and intended to include donations of land by any person to the Bhoodan Yagna made before the commencement of the Bhoodan Act, and such donations were also exempted from the relevant provisions of the Transfer of Property Act and the Indian Registration Act with retrospective effect.

8. Section 23 made the order of Tahsildar or Deputy Tahsildar under sub-section (4) of Section 17, final and not subject to appeal or revision. An aggrieved party however was not without remedy. Under the proviso of section 23, any person whose interest was affected as a result of the donation to the Bhoodan Yagna, whether before or after the commencement of the Act, might file a suit to set aside the order of the Tahsildar or the Deputy Tahsildar. The plaintiffs in the present suit (appellants before us) filed no such suit.

9. Let us now turn to the relevant provisions of the Bhoodan (Amendment) Act of 1964. There was no material amendment to section 16 of the original Act. Only "The State Board" was substituted for "Tahsildar or Deputy Tahsildar". There was also no material amendment to Section 17.

"Tahsildar or Deputy Tahsildar" was replaced by 'Inquiry Officer'. Only with the substitution of 'Inquiry Officer' for 'Tahsildar or Deputy Tahsildar', section 20 and section 23 have been retained. Section 24 as amended is as follows:-

"Notwithstanding anything contained in any other law, every declaration and every grant of land made or deemed to have been made under this Act shall be and be deemed always to have been exempt from registration and payment of stamp duty and of encumbrance certificate fee."

A comparison of the new section 24 with the old section 24 shows that there has been no change in the law so far as registration and stamp duty were concerned.

10. Section 11 of the Bhoodan (Amendment) Act of 1964 is new and very important. Clauses (b) and (c) which are material for our purpose need be extracted:

"Section 11-Notwithstanding anything contained in any judgment, decree or order of any Court, no donation of any land for the Bhoodan Yagna or for Gramdan and no grant of any such land made or deemed to have been made under the principal Act as in force immediately before the commencement of this Act, shall be deemed to be invalid on the ground only that the donation or the grant of land as aforesaid was not made in accordance with any law relating to transfer of property or registration, and any such donation or grant of land shall, for all purposes, be deemed to be and to have always been validly made and accordingly-

(a)

(b) no suit or other proceeding shall be maintained or continued in any Court for the declaration of title to, or the recovery of possession of, any land donated for the Bhoodan Yagna or for Gramdan on the ground that the donation was not made in accordance with the law relating to transfer of property or registration;

(c) no Court shall enforce any decree or order declaring any donation of land for the Bhoodan Yagna or for Gramdan to be invalid or directing the recovery of possession of any such land by the person who donated it or any other person claiming under him, on ground referred to in clause (b):

Provided that.....

Provided further that..... Provided also that.....
Explanation....." Clause (b) of section 11 of the Bhoodan (Amendment) Act puts a bar on the maintenance of a suit or other proceedings in any Court for the declaration of title to, or recovery of possession of, any land donated for the Bhoodan Yagna on the ground that the transfer (donation) was not in accordance with the provisions of the Transfer of Property Act or Indian Registration Act. Clause

(c) to section 11 goes one step further and lays down that even if a decree has already been passed in such a suit, no court shall execute a decree in a suit referred to in clause

(b).

11. It is thus seen that the law both under the old and the new Acts so far as the operation of the provisions of the Transfer of Property Act and the Registration Act is concerned, is the same. The law ingrained in section 11 is merely declaratory in express terms of the already existing law under the Bhoodan Act of 1958.

12. The second appeal that was pending before the High Court fell within the mischief of clause (b) of section 11. Even if there had been no appeal by the defendants, the execution of the decree passed by the First Appellate Court could have been successfully objected to by the defendant or any other person as void on the ground that the suit itself was barred under section 23 of the old Act itself.

13. This appeal has no merit and is dismissed with costs.

N.K.A.

Appeal dismissed.