

N Padmamma And Ors vs S.Ramakrishna Reddy & Ors on 16 May, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2834, 2008 (15) SCC 517, 2008 AIR SCW 4689, 2008 (8) SCALE 394, (2008) 8 SCALE 394, (2009) 1 WLC(SC)CVL 427

Author: S.B. Sinha

Bench: Lokeshwar Singh Panta, S.B. Sinha

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _3632__ OF 2008
(Arising out of SLP) No. 19445 of 2006)

N. Padmamma and others

.... Appellants

Versus

S. Ramakrishna Reddy and others

.... Respondents

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Whether the civil court has jurisdiction to entertain a suit for partition for division of respective shares amongst the members of a joint family, when in respect of some of the lands, occupancy right has been granted in favour of one of them in terms of the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short 'the Act') is the question involved herein.

3. The basic fact of the matter is not in dispute

4. One S. Ramakrishna Reddy was the owner of the properties. He had two sons, S. Ramachandra Reddy and S. Anantharam Reddy. S. Ramachandra Reddy died in the year 1968. He had two wives. Plaintiffs- Appellants are the first wife and the daughter of S. Ramachandra Reddy. The Defendants-Respondents are the son, second wife and the daughter of said S. Ramachandra Reddy.

5. The Legislature of the State of Andhra Pradesh enacted the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 which came into force on 20th July, 1955. In the year 1973, Section 8 was enacted in terms whereof a person in possession could be registered as an occupant of the land from the date of vesting thereof. The first respondent was granted occupancy right by the R.D.O., Hyderabad in terms of Section 8 read with Section 10 of the Act. A suit for partition was filed on 3rd September, 1981. Some other persons claiming right as 'Inamdars' filed an application before the District Collector under Section 24 of the Act. However, the right of respondent No.1 thereover was found by the District Collector in terms of an order dated 5th August, 1985. A preliminary issue was raised as regards the jurisdiction of the court which has been upheld by the impugned judgment.

6. Mr. T.L. Viswanatha Iyer, learned senior counsel appearing for the appellants, would submit that the decisions of the courts below is based upon the decision of this Court in Lokraj and others vs. Kishan Lal and others, [(1995) 3 SCC 291], which cannot be said to have been correctly decided. Learned counsel pointed out that this Court in Bhubaneshwar Prasad Narain Singh v. Sidheswar Mukherjee, [(1971) 1 SCC 556] upheld the right of a co-sharer and recognized such right in the entire body of the co-sharers.

7. Dr. Rajiv Dhawan, learned senior counsel appearing on behalf of the respondents on the other hand, would submit that the said Act is a complete Code itself. The contention of the appellants that the registration of the land should not be granted in favour of respondent No. 1 is not correct in view of the terminologies used in Section 8 of the Act. It was contended that having regard to the provisions of Section 24 as also 29 of the Act, the civil court has no jurisdiction to grant a decree of partition.

8. We, at the outset, may notice the relevant provisions of the Act.

Sections 3, 8, 10, 24 and 29 of the Act are as under:-

"Sec. 3: Abolition and vesting of imams and the consequences thereof:- (1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant sanad order or instrument, Act regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil or Revenue or Atiyat Court, and with effect from the date of vesting, all imams shall be deemed to have been abolished and shall vest in the State.

(2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting the following consequences shall ensure, namely:

(a) xxxx

(b) all rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interests expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State free from all encumbrances:

(c) to (f) xxxxxxxx

(g) the inamdar and any other person whose rights have vested in the State under clause (b) shall be entitled only to compensation from the Government as provided for in this Act;

(h) the relationship with regard to inam land as between the inamdar and kabiz-e-

kadim, permanent tenant, protected tenant or non-protected tenant shall be extinguished'

(i) xxxx (3) xxxxxxxx Sec. 8: Registration of non-protected tenant as occupant:- (1) Every non-protected tenant shall, with effect from the date of vesting subject to Section 37 of the A.P. (Telangana Area) Tenancy and Agricultural lands Act, 1950 be entitled to be registered as an occupant of such inam lands in his possession as may be left over after the allotment under Section 4 which, immediately before the date of vesting, were under his personal cultivation and which, together with any lands he separately owns and cultivates personally, are equal to four and a half times the family holding. (2) The non-protected tenant shall be entitled to compensation from the Government, as provided under this Act in respect of inam lands in his possession in excess of the limit prescribed in sub- section (1) whether cultivated or not.

(3) No non-protected tenant shall be registered as an occupant of any land under sub-section (1) unless he pays to the Government as premium an amount equal to sixty-times the land revenue for dry and twenty times for wet land. The amount of premium shall be payable in not more than ten annual instalments along with the annual land revenue and in default of such payment, shall be recoverable as an arrears of land revenue due on the land in respect of which it is payable.

Sec.10: Enquiry by Collector in certain cases:

The Collector shall examine the nature and history of all lands in respect of which an inamdar, Kabiz- e-kadim, permanent tenant, protected tenant or non-protected tenant, claims to be registered as an occupant under Sections 4, 5, 6, 7 and 8 as the case may be, and decide-

- (a) in whose favour, and in respect of which inam lands, the claims should be allowed;
- (b) the land revenue and the premium payable in respect of such lands.

Sec.24 : Appeals from orders under Section 10

to prescribed authority:- (1) Any person aggrieved by a decision of the Collector under Section 10 may, within 30 days from the date of decision, or such further time as the prescribed authority may for sufficient cause allow, appeal to the prescribed authority and its decision shall be final. (2) If any question arises whether any building or land falls within the scope of Section 9 the same shall be referred to the prescribed authority whose decision shall be final.

Sec. 29. Savings:- Save as otherwise provided in this Act, no order passed by the Collector or by Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid or be questioned in any Court of law."

9. In terms of Section 3 of the Act all inam lands vest in the State of Andhra Pradesh with effect from 20th July, 1955. Occupancy right as contemplated under Section 8 of the Act, however, was to be granted with effect from 1st November, 1973. No doubt, grant of such occupancy right is hedged with conditions as mentioned in Section 8 read with Section 10 of the Act; personal cultivation and possession inter alia being the relevant condition for grant of such right.

10. What would be the meaning of the 'personal cultivation' and 'possession' is the question. The properties were in possession of S. Ramachandra Reddy despite the vesting of the land. Upon his death the parties hereto inherited his right title and interest in the properties. Respondent No.1 being the only male member, assuming he had been cultivating the said land, must be held to have been doing so for and on behalf of the members of the joint family. There were 14 items of joint family properties. They were living in a house. There is no dispute in regard to item Nos. 7 to 14. Item Nos. 1 to 6 of the Schedule of the Plaint only were the subject matter of the said Act.

11. The said Act did not intend to deprive a co-sharer of his right to which he or she was otherwise entitled to. The word 'person' cannot be given a limited meaning. It may be a body of persons or association of person. When an occupancy right is granted in the name of the Manager of the joint family it would enure for the benefit of the entire family. The lands vested in the State. But as soon as the occupancy right is granted, in the event it is held that the same inured to the benefit of the entire family, it becomes partible. Occupancy right in favour of the first respondent has been granted on 24th October, 1978. In terms of Section 8 of the Act the same would be deemed to have been granted on or from 20th July, 1955. The provisions, therefore, are required to be assigned proper and effective meaning.

12. This aspect of the matter has been considered in Bhubaneswar Prasad Narain Singh v. Sidheswar Mukherjee, [(1971) 1 SCC 556] wherein it was held "9. In our view the above decision is no authority for this broad proposition. In that case the appellants who were mortgagees of an estate including Bakasht lands and other lands filed a suit on their mortgage and tried to follow up the preliminary decree which was obtained before the Act came into force by a petition for passing a final decree. One of the questions before this Court was whether the mortgage decree had become unexecutable in view of the provisions of the Act. It was held that the net effect of Sections 3, 4 and 6 was that although on the vesting of the lands in the State a settlement was deemed to be effected with the person in Khas possession in law, there were two different transactions and the deemed

settlement was in effect a separate transaction creating new rights. The Court came to the conclusion that the only remedy open to the decree-holders was that provided in Chapter IV of the Act i.e. a claim under Section 14 before the Claims Officer for determining the amount of debt legally and justly payable to each creditor in respect of his claim.

10. The Court was there dealing with the rights of the mortgage creditors after the Act had come into force. Chapter IV of the Act made special provisions for dealing with the rights of secured creditors and Section 4(1)(d) expressly provided for the abatement of all suits and proceedings for the recovery of any money through proceedings which might be pending on the date of vesting arising out of securities created by mortgage or a charge on an estate or tenure. Here, however, we are not dealing with the claims of mortgagees under Chapter IV. In this case we have to consider whether the appellants had laid a claim which a co-sharer could not put forward except by pleading ouster or any other independent ground. Even if they were in actual Khas possession within the meaning of Section 2(k) of the Act it must be held that the plaintiff who was a co-sharer was in constructive possession through the appellants as "under the law possession of one co-sharer is possession of all the co-sharers". We see no reason to hold that the observations of this Court to the above effect in *P.L. Reddy v. L.L. Reddy* are not applicable to the case before us. The appellants do not claim to be trespassers on the property: neither did they claim any title to the lands adversely to the plaintiff-respondent. The deeming provision of Section 6 must therefore ensure for the benefit of all who in the eye of law would be regarded as in actual possession. It follows that the plaintiff had not lost his share in the Bakasht lands and had a right to them though not as tenure-holder or proprietor but certainly as a Raiyat under the provisions of the Land Reforms Act. The appeal must therefore be dismissed with costs."

13. We will assume that the Act is a complete Code but its operation must be limited to the purpose for which it was enacted. It is a well settled principle of law that a provision in the statute ousting jurisdiction of the Court must receive strict construction.

14. The question, therefore, which arises for consideration is as to whether the civil court's jurisdiction is completely ousted.

15. In *Lokhraj* (supra) this Court referred to *Bhubaneshwar Prasad Narain Singh* (supra). The judgment of this Court in *Bhubaneshwar Prasad Narain Singh* (supra) was, with respect, not correctly read in *Lokhraj* (supra). Paragraph 4 of the said decision reads, thus:-

"4. Consequent to the abolition, the pre-existing right, title and interest of the inamdar or any person having occupation of the inam lands stood divested and vested the same in the State until re-grant is made. The inamdar, thereby lost the pre-existing right, title and interest in the land. The right to partition itself also has been lost by the statutory operation unless re-grant is made. We are not concerned with the consequences that would ensue after re-grant of this appeal. Therefore, it is not necessary for us to go into the question that may arise after the re-grant."

16. The said decision, therefore, is not an authority for the proposition that only the person in whose name occupancy right is granted became the sole beneficiary thereof. Furthermore Bhubaneswar Prasad Narain Singh (supra) was, in our opinion, again with respect, had not been correctly applied. The Act contemplates resolution of dispute between the Inamdar on the one hand and his lessees and assignees on the other. It does not take into consideration the dispute, if any, inter se amongst the members of the joint family, particularly when as on the date of grant of occupancy right there did not exist any such dispute. The Act contemplates grant of decree for partition. It does not contemplate a case where occupancy right is taken in the name of a person as representing the entire joint family property. Application of doctrine of trust is not contemplated in the said provision. Section 8 of the Act must, therefore, be considered having regard to the provisions contained therein. The Act contemplates registration of permanent tenants, protected tenants and non-protected tenants. There are, thus, different types of tenants. Section 10 merely creates a forum for determination of the entitlement under Sections 4 to 8 of the Act. It does not create a forum for determination of the rights inter se between the parties claiming under the same title.

Useful reference in this connection may be made to Shaik Sharfuddin alias Bukka Sharfuddin vs. Joint Collector, R.R. District & ors 2003 (5) A. L.T. 108.

Right of inheritance and succession is a statutory right. A right in a property which is vested in terms of the provisions of the Hindu Succession Act cannot be taken away, except in terms of provisions of another statute, which would have an overriding effect.

Such special statute should be a complete code. It shall ordinarily be a later statute. Ordinarily again it must contain a non-obstante clause.

Law of Primogeniture is no longer applicable in India. Such a provision may be held to be unconstitutional being hit by Article 14 of the Constitution.

See Bhe and others v. Magistrate, Khayelista and others [18 BHRC 52]

17. Where the civil court's jurisdiction is barred expressly it must mean that the same would be confined to the matters covered thereby or connected therewith. The right or the claim must be necessarily required to be dealt with by the authorities under the Act. The grievance/adjudicatory forum provided therein must be competent to resolve the dispute. The right of property is a human right. The Act contemplates divesting of right of an Inamdar. It does not contemplate cessation of a right of a co-sharer or recognition of a right in favour of other co-sharer. The right has to be determined having regard to the possession by way of personal cultivation. The word 'possession' in such cases should be given a broader connotation. Possession of one sharer would be deemed to be the possession of others. It is a legal concept. This legal concept cannot be held to have been done away with under the Act. If a right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300 A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300 A of the Constitution of India, must be strictly construed. (See - Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, [(2005) 7 SCC 627].

18. The principle laid down in the said decision, having regard to concept of Article 300 A of the Constitution of India may be held to have some application in a case of this nature. In terms of Hindu Succession Act, 1956 the right of succession is determined by reason of the provisions thereof. It came into force with effect from 17th June, 1956. By reason of a legal fiction created under the Act, the occupancy right is granted with effect from 20th July, 1955. S. Ramachandra Reddy was alive then. What would be his status on that date would be relevant. The legal fiction as is well known must be given its full effect.

19. We are, therefore, of the opinion that the decision of this Court in Lokhraj (supra) had not been correctly rendered. The matter, therefore, requires consideration by a larger Bench. It is directed accordingly. Let the records of the case be placed before the Hon'ble the Chief Justice of India,J. [S.B. Sinha]J. [Lokeshwar Singh Panta] New Delhi;

May 16, 2008