

Vengdasalam Pillai vs Union Territory Of Pondicherry on 18 February, 1985

Equivalent citations: 1985 AIR 571, 1985 SCR (2) 925, AIR 1985 SUPREME COURT 571, 1985 UJ (SC) 703, (1985) 98 MAD LW 752, 1985 (2) SCC 91

Author: V. Balakrishna Eradi

Bench: V. Balakrishna Eradi, Y.V. Chandrachud

PETITIONER:
VENGDASALAM PILLAI

Vs.

RESPONDENT:
UNION TERRITORY OF PONDICHERRY

DATE OF JUDGMENT 18/02/1985

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
CHANDRACHUD, Y.V. ((CJ))

CITATION:
1985 AIR 571 1985 SCR (2) 925
1985 SCC (2) 91 1985 SCALE (1) 277

ACT:

The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act 1973 Sections 2(10) 4 and 7. Explanation IV.

"Family"-What is-Whether to conform to conform of 'joint family' as known to Hindu Law-Property held by minor sons after partition-Property purchased by wife from Sridhanam income Whether to be included in 'holding' for determination of ceiling limit.

The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act 1973 was passed by the Legislative Assembly on October 5, 1973, received the assent of the President on September 22, 1974 and was published I in the Gazette on October 14, 1974.

HEADNOTE:

The appellant's family consisted of himself, his wife,

and five children-three daughters and two sons. On March 17, 1970, the appellant affected a partition of all his properties by a registered document between himself and his two minor sons. The appellant retained 1.85.63 hectares of land for himself. The first son was allotted 7.10.24 hectares and the younger son was allotted 3.54.82 hectares. The appellant's wife purchased in 1958, 5.74.87 hectares of land by utilising her Sridbanam money.

On the failure of the appellant to file a return under s. 7 (1) of the Act voluntarily, the Authorised Officer issued a notice Form-4 under s. 8(1) of the Act. The appellant thereupon filed a return on December 12, 1975 stating that he and his wife were holding only 7.67.91 hectares. Thereafter the Authorised Officer issued separate notices to the appellant and his wife to file further representations, if any, and to appear before him for enquiry. Separate representations were filed reiterating the original stand that the lands allotted to the minor sons under the partition as also the lands acquired by the appellant's wife with the Sridhanam amounts could not be taken into account while computing the extent of the appellant's holding. The Authorised Officer rejected these contentions and held that the appellant was holding an extent of 18.26.28 ordinary hectares equivalent to 11.48.55 standard hectares of land and he was eligible to retain only 8.40.00 standard hectares.

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Aggrieved by the said order, the appellant preferred an appeal before the Land Tribunal, which allowed the appeal taking the view that since the sons of the appellant had become divided from him by the deed of partition executed in 1970, long prior to the appointed day specified in the Act, and the lands standing in the name of the appellant's wife belonged to her independently in her own separate right, there was no justification for clubbing together the lands of the appellant with those of his wife and sons, and that the definition of 'family' under s. (10) of the Act was not attracted to this case, and the appellant was well within the ceiling limit.

The State-respondent challenged the decision of the Land Tribunal before the High Court in a Civil Revision Petition under s. 50, which set aside the decision and restored the Order passed by the Authorised Officer. The High Court held: (1) that a combined reading of the definition of 'family' contained in s. 2(10) and the provision contained in s. 4 (2), makes clear that notwithstanding any transaction of partition entered into prior to the appointed day, the minor sons of a person will for the purposes of the Act, be treated as members of the family of such person together with his wife and unmarried daughters. and (2) that in computing the extent of the holding of the family as defined in the Act (the separate property of the wife had to be included by reason of the

express provision contained in s. 4 (2).

Dismissing the appellant's appeal,

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HELD: 1. The High Court was right in holding that the lands standing in the names of the wife and the two minor sons of the appellant as their separate properties were also liable to be included in the holding of the appellant for the purpose of fixation of ceiling under s. 4 of the Act. [93 6F]

2. (i) The provisions of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act 1973 are applicable to all holders of Land in the Union Territory of Pondicherry irrespective of their religion, community etc. It is therefore, fallacious to assume that the 'family' referred to in the Act must conform to the concept of the joint family as known to Hindu Law. The concept OF a joint family is totally foreign to personal laws of some of the communities. [934F-G]

2. (ii) It is manifestly wrong to approach the interpretation of the sections of the Act with the preconceived notion that in using the expression "family", the Legislature had intended to connote an undivided family as known to the Hindu Law and that after a partition had taken place in a Hindu joint family there cannot be a family' consisting of the father and his divided minor sons for the purpose of fixation of ceiling under the Act. [934G] 927

2. (iii) The fact that the definition of "family" contained in s. 2 (10) A does not treat the major sons of a person as members of his family is a clearly pointer that an undivided Hindu family was in the contemplation of the Legislature when it enacted the definition section [934H; 936A]

3. Sub section (3) (a) of section 4 which provides that in calculating the extent of land held by a member of a family or by an individual person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family shall be taken into account, furnishes a conclusive indication that the "family" mentioned in the Act is wholly distinct and different from an 'undivided Hindu family.' [935B]

In the instant case, the circumstance that a partition had taken place disrupting the joint family consisting of the appellant and his minor sons is of no relevance in determining the total extent of the holding of the appellant in accordance with the provisions of s. 2 (10) read with s 4 of the Act. A special statutory unit consisting of the persons satisfying the description contained in clause (10) of s. 2 as constituting a "family" for the purpose of fixation of ceiling has been created. The stress is only on the existence of the relationship, and unity of title or jauntiness of holding in relation to properly are not essential elements. Under the definition contained in s. 2

(10), a person, the wife or husband of such person and his or her minor sons and unmarried daughters together constitute a "family". [935C-D]

4. The position emerging from the provisions of s. 2 (10) and s. 4(1) (2), is that the properties held by the minor sons of the appellant individually as well as the lands separately owned by his wife, purchased by her with her Sridhanam amounts, are all liable to be taken into account while computing the total extent of holding of the family of the appellant. [935F]

5. Explanation IV to s. 7 proceeds on the footing that for purposes of computing the ceiling and determining the area of surplus land to be surrendered. the lands held separately by the husband and wife are to be pooled together. The liability to surrender excess land is to be fixed in proportion to the extent of land held separately by the two spouses, [936B]

6. The purpose of s. 4(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 for the said purpose that the sub-section provides that in calculating the extent of land held by and 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. [936D-E]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 21 38 Of 1980 From the Judgment and Order dated the 16th November, 1979 of Madras High Court in Civil Revision Petition No. 544 of 1978.

A.T.M. Sampath for the Appellant.

A.S. Nambiar for the Respondent.

The Judgment of the Court was delivered by BALKRISHNA ERADI, J, With the obvious intent of falling in line with the rest of the country in the matter of achieving the social goal of equitable distribution of cultivable lands by the imposition of ceiling on agricultural land holdings and distribution of surplus lands among landless persons, the Legislature of the Union Territory of Pondicherry enacted-'The Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973' (hereinafter called 'the Act'), The questions arising for determination of some of the provisions of the

1) Act Before we proceed to refer to the relevant sections of the Act, we shall set out in brief the material facts, which have given rise to the controversy before us.

The appellant-Vengdasalam Pillai is married to Smt. Senbagevalli Ammal. Five children-three daughters and two sons-were born to this couple. On March 17, 1970, the appellant effected a partition of all his properties as between himself and his two sons both of whom were minors at that time. This partition was evidenced by a registered document. Under that document the appellant retained in his name an extent of 1.85.63. hectares of land. The first son, Shanmugasundaram (minor) was allotted 7.10.24. hectares and the younger son Trinivasan was allotted an extent of 3.54.82. hectares of land. An area of 5.74.87 hectares stood registered in the name of the appellant's wife Senbagevalli, the said land having been purchased by her in 1958 by utilising her Sridhanam money.

The Act was passed by the legislative assembly on October 5, 1974 and after it received the assent of the President on September 22, 1974, it was published in the Gazette of Pondicherry on October 14, 1974.

Since the appellant did not voluntarily file a return under A section 7(1) of the Act, a notice in Form-4 was issued to him by the Authorised Officer (Land Reforms), Karaikal under section 8(1) of the Act. In compliance therewith the appellant filed a return on December 12, 1975 stating that he and his wife were holding only 7,67.91 hectares of land. Thereafter separate notices were issued by the Authorised Officer to the appellant and his wife to file further representations, if any, and to appear before him for enquiry on the dates specified therein. In response to these notices, the appellant and his wife filed separate representations reiterating their original stand that the lands allotted to the minor sons under the partition as also the lands acquired by the appellant's wife with the Sridhanam amounts could not be taken into account while computing the extent of the appellant's holding. The Authorised Officer rejected these contentions and held that the appellant was holding an extent of 18.26.28 ordinary hectares equivalent to 11.48.55 standard hectares of land and since the appellant's family consisted of himself, his wife two minor sons and three unmarried daughters, he was eligible to retain only 8.40.00 standard hectares- D Aggrieved by the aforesaid order passed by the Authorised Officer, the appellant preferred an appeal in the Court of the Land Tribunal, Karaikal. That appeal was allowed by the Land Tribunal which took the view that since the sons of the appellant had become divided from him by THE deed of partition executed in 1970, long prior to the appointed day specified in the Act, and since the Lands standing in the name of the appellant's wife belonged to her independently in her own separate right, there was no justification for clubbing together the lands of the appellant and those belonging to his wife and the two minor sons. The Land Tribunal held that since the two minor sons of the appellant and the wife of the appellant were holding their lands as independent owners, the definition of "family" under section 2(1()) of the Act was not attracted in this case and that the Authorised Officer ought to have excluded the lands belonging to the sons and the wife of the appellant while computing the extent of the holding of the appellant and fixed his ceiling on the said basis. It was further held that on such computation the total area of land held by the appellant was well within the ceiling limit and hence there was no liability on his part to surrender any surplus land.

The correctness of the said decision of the Land Tribunal was called in question before the High Court of Madras by the Govern-

ment of the Union Territory of Pondicherry by filing a Civil Revision Petition under section 50 of the Act. By the judgment now impugned before us, the High Court allowed that revision petition, set aside the decision of the Land Tribunal and restored the Order passed by the Authorised Officer. The High Court held that on a combined reading of the definition of "family" contained in section 2(10) of the Act with the further provision contained in section 4(2), it was clear that notwithstanding any transaction of partition entered into prior to the appointed day, the minor sons of a person will, for the purposes of the Act, be treated as members of the family of such person together with his wife and unmarried daughters. It was further held that in computing the extent of the holding of the "family" as defined in the Act, the separate properties of the minor sons as well as the separate property of the wife had all to be included by reason of the express provision contained in section 4(2) of the Act. In this view, the High Court held that the Authorised Officer had acted fully in accordance with law in clubbing together the properties of the appellant, his wife and the two sons, who were minors on the appointed day.

Aggrieved by the said decision of the High Court, the appellant has filed this appeal in this Court by Special leave. We may now proceed to examine the relevant provisions of the Act. Section 2 is the definition section. Clause (4) thereof states that the expression "appointed day" means the 24th day of January, 1971. The definition of "family" which is very important for the purposes of this case is contained in clause (10) and it is in the following terms:-

(10) "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.

"The only other definition to which we need refer is that contained in clause (24), which states that " 'notified date' means the date specified in the notification issued by the Government under sub-section (1) of section 7." It is common ground before us that the date so specified under section 7(1) is 3.1.1974.

It is under section 4 that the ceiling limits of land holdings have been specified and it is necessary to reproduce the section in it full. It reads;

"4(1)(a) Subject to the provisions of Chapter VI, the ceiling area in the case of every person and in the case of every family consisting of not more than five members, shall be 6 standard hectares.

(b) The ceiling area in the case of every family consisting of more than five members shall, subject to the provision of Chapter VI, be 6 standard hectares together with an additional 1.2 standard hectares for every member of the family in excess of five:

Provided that the total extent of land held by any family shall in no case exceed twice the ceiling area referred to in clause (a) (2) For the purpose of this section, all the lands held Individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the family. (3)(a) In calculating the extent of land held by a member of a family or by an individual

person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family shall be taken into account.

(b) In calculating the extent of land held by a family or by an individual person, the share of the family or of the individual person in the land held by a firm, society or association of individuals of individuals (whether incorporated or not) or by a company (other than a non-

agricultural company) shall be taken into account. Explanation-For the purposes of this section-

(a) the share of a member of a family or of an individual person in the land held by an undivided Hindu family, and

(b) the share of a family or of an individual person the land held by a firm, society or association of individuals (whether incorporated or not), or by a company (other than a non-agricultural Company, shall be deemed to be the extent of land-

(i) which, in case such share is held on the appointed day would have been allotted to such member, person or family had such land been partitioned, or divided in proportion to the share held by such member, person or family, as the case may be, no such day; or

(ii) which, in case such share is acquired in any manner whatsoever after the appointed day would be allotted to such member, person or family if a partition, or division, in proportion to the share held by such member, person or family, were to take place on the date of the preparation of the draft statement under sub-section (1) of section 9. (4) In calculating the extent of land held by any person, any land which was transferred by sale, gift or other wise or partitioned by that person after the appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred or Partitioned as the case may be.

(5)(a) The land held by the public trust referred to in the proviso to clause (30) of section 2 shall be deemed to be held by the founder of the trust or his heirs or the family of the founder of his heirs.

(b) In calculating the extent of land held by such founder or his heirs of such family, the extent of the land held by the public trust shall be taken into account.

(6) In calculating the extent of land held by any person, the extent of land which may revert to such person immediately after the death of any limited owner shall, during the lifetime of limited owner, be excluded."

Section 6 lays down that on from the appointed day, no person shall. except as otherwise provided in this Act, but subject to the provisions of Chapter VI, be entitled to hold land in excess of the exiling area. The proviso to the said section is not material for the purposes of this case, Sub-section (1) of Section 7 requires every person, who, on the A appointed day, held land in excess of the ceiling area to furnish to the Authorised Officer within whose jurisdiction the holding of such person or the

major part thereof is situated, a return containing the particulars specified in clauses (i) to (viii) thereof within thirty days from such date as may be specified in the Notification issued by the Government in that behalf. Clause

(ii) reads:

"(ii) particulars of the members of the family and of the land held by each member of the family."

(underlining ours) Explanation IV to sub-section (1) of section 7 is in the following terms:-

"Where in a family both husband and wife hold land separately and the aggregate of such land exceeds the ceiling area. the extent of land to be declared surplus by each of them shall bear the same proportion to the extent of land held by them.

(2) The notification referred to in sub-section (1) shall contain such particulars and shall be published in such manner as may be prescribed."

These are the only provisions of the Act which have a direct relevance for deciding the questions raised in this case. However, since the Counsel appearing on behalf of the appellant sought to derive some assistance from the provisions contained in section 22(1) of the Act, we may extract the said Sub-section also:-

Section 22(1): "Except where a person is permitted, in writing, by the authorised officer, a person, holding land in excess of the ceiling area applicable to him under section 4, shall not, after the commencement of this Act, transfer by sale, gift or otherwise or make any partition of any land held by him or any part thereof until the excess land, which is to be acquired by the Govt. under section 17, has been determined and taken possession of by or on behalf of the Government."

The main argument advanced before us on behalf of the appellant was that since the two minor sons of the appellant had become divided from their father as a result of the partition effected under the document of March 17, 1970, they could not be regarded as member of the family of the appellant as on the 'appointed day' namely, January 24, 1971. On this basis it WAS urged that the lands, the ownership in respect of which had become vested individually in the two minor sons by virtue of the allotments in their favour at the partition could not legally be included in the holding of the appellant for the purpose of fixation of his ceiling under the Act. Relying on the provisions contained in sub-section (4) of section 4 Counsel for the appellant contended that the framers of the Act did . not intend to nullify transactions by way of partition entered into before the 'appointed day' and it is only post appointed day partitions and transfers that are to be ignored under that sub-section. Support was also sought to be derived from the provisions contained in subsection (1) of section 22, which prohibits partition and transfers by sale, gift etc. Of any land held by a

person having land in excess of ceiling area prescribed under section 4 until the excess land to be acquired-by the Govt. under section 17 of the Act has been determined and taken possession of by or on behalf of the Government. Another point pressed on behalf of the appellant was that the properties separately owned by his wife in her own right by virtue of purchase effected by her by utilising her Sridhanam amounts ought not have been clubbed along with the lands belonging to the appellant in computing the appellant's holding.

We see no force in any of the contentions aforementioned.

The fallacy underlying the arguments advanced on behalf of the appellant is that they proceed on the erroneous assumption that the "family" referred to in the Act must conform to the concept of the joint family as known to Hindu Law. The provisions of the Act are applicable to all holders of land in the Union Territory of Pondicherry irrespective of religion, community etc. The lands may be held by Hindus, Christians, Muslims or by persons belonging to other religious faiths. All of them are equally governed by the provisions of the Act. The concept of a joint family is totally foreign to the personal laws of some of these communities. It is, therefore, manifestly wrong to approach the interpretation of the sections of the Act with the preconceived notion that in using the expression "family", the legislature had intended to connote an undivided family as known to the Hindu Law and that after a partition had taken place in a Hindu joint family there cannot be a 'family' consisting of the father and his divided minor sons for the purpose of fixation of ceiling under the Act. The fact that the definition of 'family' contained in section 2(10) does not treat the major sons of a person as members of his family is a clearly pointer that an undivided Hindu family was not in the contemplation of the Legislature when it enacted that said definition section. Similarly, the provision contained in sub-section (3)(a) of section 4 that in calculating the extent of land held by a member of a family or by an individual person, the share of the member of the family or of the individual person in the land held by an undivided Hindu family shall be taken into account furnishes a conclusive indication that the "family" mentioned in the Act is wholly distinct and different from an 'undivided Hindu family.' The circumstance that a partition had taken place disrupting the joint family consisting of the appellant and his minor sons is, therefore, of no relevance in determining the total extent of the holding of the appellant in accordance with the provisions of section 2(10) read with section 4 of the Act. That is because, the Act has created a special statutory unit consisting of the persons satisfying the description contained in clause (10) of section 2 as constituting a "family" for the purpose of fixation of ceiling. The stress is only on the existence of the relationship mentioned in the section and unity of title or jointness of holding in relation to property are not essential elements for attracting the applicability of the definition. Under the definition contained in section 2(10), a person, the wife or husband of such person and his or her minor sons and unmarried daughters together constitute a "family".

Section 4(2) expressly provides that for the purpose of fixation of ceiling on the lands held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be held by the "family". The result is that the separate properties of the members constituting the statutory family are all to be treated as forming part of the holding of the 'family' for the purpose of determination of the ceiling area. Such being the position emerging from the

provisions of section 2(10) and section 4(1)(2), the properties held by the minor sons of the appellant individually as well as the lands separately owned by Smt. Senbagevalli, wife of the the appellant by virtue of the purchase effected by her with her Sridhanam amounts were all liable to be taken into account while computing the total extent of holding of the family of the appellant.

Counsel for the appellant sought to rely on the provision contained in Explanation IV to section 7 for contending that there was no justification for including the separate properties of Smt. Senbagevalli in the holding of the appellant's 'family'. We see nothing in the said provision which lends support to the contention of the appellant. 'The Explanation itself clearly proceeds on the footing that for purposes of computing the ceiling and determining the area of surplus land to be surrendered, the lands held separately by the husband and wife are to be pooled together. All that the Explanation lays down is that when the aggregate of such lands exceeds the ceiling area, the extent of the land to be declared surplus by each of the spouses shall be fixed in proportion to the respective areas of land separately held by each of them. In other words, the liability to surrender excess land is to be fixed in proportion to the extent of land held separately by the two spouses.

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(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 pf the Act, shall be taken into account, as if such land had not been transferred or partitioned.

The conclusion that emerges from the foregoing discussion is that the High Court was perfectly right in holding that the lands standing in the names of the wife and the two minor sons of the appellant as their separate properties were also liable to be included in the holding of the appellant for the purpose of fixation of ceiling under Section 4 of the Act.

The appeal accordingly fails and is dismissed but in the circumstances without costs.

A.P.J. Appeal dismissed.