Susila Devi Ammal And Others vs State Of Madras on 10 September, 1991

Equivalent citations: AIR1992SC495, 1993SUPP(1)SCC462, AIR 1992 SUPREME COURT 495, 1992 AIR SCW 108, 1993 (1) SCC(SUPP) 462, 1993 SCC (SUPP) 1 462

Bench: M.M. Punchhi, K. Ramaswamy

JUDGMENT

1. The first appellant is the mother and the remaining two appellants are her sons. By themselves they constituted a 'family', the family is known as in Section 3(14) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, hereinafter referred to as 'the Act'. The holding of the family had to be determined, under the provisions of the Act, as on 6-4-1960. The authorised officer (Land Reforms) Mayuram computed the holding of the family ignoring claim of the appellants for deduction on account of a genuine sale. Their appeal to the Land Tribunal was futile exercise. On Civil Revision before the High Court of Madras under Section 83 of the Act, a learned single Judge took the view that 3 acres and 66 cents of land sold by the family on 16-6-1962 was perhaps a genuine sale and perhaps excludible for the purpose of determining the ceiling limit. Finding that the appellants had not been given the opportunity to satisfy the concerned authorities about the genuineness of the sale dated 16-6-1962, the High Court found that there was a material irregularity in the order which needed to be corrected. For the purpose the Civil Revision Petition was partly allowed and the subject matter was remitted to the file of the Land Tribunal (Subordinate Judge) Mayuram for fresh consideration in the light of the observations made by the learned single Judge of the High Court.

2. There was another limb of the case which went against the appellants and which is the subject matter of the present appeal. While determining the family holding as on 6-4-1960 appellants 2 and 3 were minors and as such members of the family as known to Section 3(14) of the Act. They are stated to have acquired majority in 1966 and 1968 respectively. In any case it is asserted that they acquired majority before the 15th day of February, 1970 when the Act was substantially amended by Tamil Nadu Act 17 of 1970, further amended by Tamil Nadu Act 37 of 1972 and still further by Tamil Nadu Act 7 of 1974. Section 21A and other relevant provisions of the Act had thus been amended reducing the ceiling of a person from the pre-15th February, 1970 era of 30 standard acres to 15 standard acres thenceforth. However, the said provision gave, what we may call, a transfer holiday, for a small period from February 15, 1970 to October 2, 1970. A providing that notwithstanding anything contained in Section 22 or in any other provision of this Act (underling ours) and in any other law for the time being in force, where any person has effected by means of a registered instrument a partition of his holding or part thereof such partition shall be valid. Now here the family which is a person under Section 3(47) of the Act by means a registered partition deed effected a partition on April 29, 1970 within those crucial dates. It is significant to notice that this provision with its non obstante clause has asserted supremacy over all other provisions of the Act. When the

appellants claimed relief on that count before the learned single Judge for the High Court they were confronted with Section 23 of the Act, which provides that subject to the provisions of Section 20, for the purpose of fixing for the first time after the date of the commencement of this Act, the ceiling area of any person holding land on the date of the commencement of this Act in excess of 15 standard acres any transfer or sub-division of the kind mentioned therein effected, on or after the notified date and before the publication of a notification under Sub-section (1) of Section 18 shall be, and shall be deemed always to have been void and accordingly the authorised officer shall calculate the ceiling area of such person as if no such transfer or subdivision had taken place. The explanation added thereto clarified that before the 15th day of February, 1970 the language of the Section was intended to apply as if the permissible holding was of 30 standard acres and after that date 15 standard acres. The High Court apparently overlooked Section 21-A and rested its decision on the language of Section 23(b) rendering otiose partition of the land affected as if it was no partition in the eye of law. Had the High Court put to combat Sections 21A and 23 by discussion and resultant ouster provision of one or the other we would have had the advantage of the reasoning of the High Court. However, as is evident the High Court totally overlooked Section 21A. If the case of the appellants falls squarely within Section 21A it would reign supreme over any other provisions of the Act, inclusive of Section 23. Of course this would be subject to the partition deed being registered and having been effected within the two crucial dates. For this purpose some Court has to examine it and give a finding thereon. Thus in the facts and circumstances of the case it would serve no purpose to ask the High Court to pronounce thereon and instead, like its other part, while allowing these appeals and setting aside the judgment and order of the High Court in the other part we remit the balance case as well to the Land Tribunal (Subordinate Judge) Mayuram for a fresh consideration in the light of law with the observation made above. So there is a remand on both questions and the Land Tribunal is required to enter upon judgment on both aspects of the case.

3. In the result these appeals are allowed, judgment and order of the High Court appealed herein in part is set aside and the matter is remanded to the Land Tribunal (Subordinate Judge) Mayuram accordingly Parties shall bear their own costs in this Court.