

Supreme Court of India

Shri Lokraj And Ors vs Kishan Lal And Ors on 11 January, 1995

Equivalent citations: 1995 SCC (3) 291, JT 1995 (2) 500

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

SHRI LOKRAJ AND ORS.

Vs.

RESPONDENT:

KISHAN LAL AND ORS.

DATE OF JUDGMENT 11/01/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

MANOHAR SUJATA V. (J)

CITATION:

1995 SCC (3) 291                      JT 1995 (2)      500

1995 SCALE (1) 295

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. This appeal by special leave arises from the division bench judgment dated January 22, 1986 made in CRP No. 1215/ 77 of the High Court of Andhra Pradesh. The respondent- plaintiff laid the suit-O.S. No.59 of 1968 in the Court of the Chief Judge, City Civil Court, Hyderabad for partition of the plaint schedule properties and for 1/6th share therein. We are concerned in this appeal with the properties mentioned in 'D' schedule of the plaint. It consists of 8 items, of which item 5 relates to lands- bearing Survey Nos. 174, 175, 179, 192, 193 and 205 admeasuring 20 acres 21 gunthas situated in Attapur village. The said land was acquired by the government to establish Zoo. The compensation was determined in O.P.No.35/ 63 by the First Addl. Judge, City Civil Court, Hyderabad. The rest of the properties are now found to be Inam lands as per the finding of the High Court:-

"Thus, there does not appear to be any controversy between the parties on the question whether the plaint 'B' schedule properties are Inam lands or not. Therefore, it becomes an admitted fact that the plaint B schedule lands are Inam lands".

2. On those admitted facts, the Division Bench proceeded to consider whether the suit for partition is maintainable. Section 3 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, as amended in 1967, (for short 'the Act') deals with the abolition and vesting of the Inam lands. Section 3(1) is relevant, which reads thus:

"Abolition and vesting of inams and the consequences thereof. (1) Notwithstanding to the contrary contained in any usage settlement, contract, grant, sanad order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of vesting, all inams to which this Act is made applicable under sub- s.(2) of s. 1 of this Act shall be deemed to have been abolished and shall vest in the State".

3. Therefore, notwithstanding any contra usage, settlements etc. enumerates s.3(1), on and from the date of the Act the inams were abolished and inam lands stood vested in the State. Section. 3 expressly saves certain properties from the vesting as enumerated in clauses (a) to (i) of the sub-s.(2) thereof, with which we are not presently concerned. Section 4 gives right to registration by the Inamdar as occupant. As per this Section, every inamdar shall, with effect from the date of vesting, be entitled to be registered as an occupant of all inam lands other than the lands enumerated in clauses (a) to (c) therein. Sections 6 to 8 deal with registration of permanent tenants as occupants, either protected tenants or non-protected tenants etc. Section 5 deals with registration of Kabize-kadim tenants as occupant. Section 9 deals with vesting of certain buildings and inam lands used for non-agricultural purposes. Section 10 creates forum for determination of the entitlements in ss.4 to 9. Section 11 saves certain rights created under the Act before the date of vesting as Inamdars. Section 23 deals with constitution of Special Tribunals and their power to deal with the questions arose therein. Section 24 gives right of appeal against the order passed by the authorities constituted under s. 10 to determine the questions enumerated in ss.4 to 9. Thus the Act is a complete Code, abolished the Inam, vested the land in the government and conferred rights on the persons in occupation enumerated, subject to the right of appeal and the decision thereon. The Act abolished existing rights and created new rights. Created forum to determine the rights and liabilities arising therefrom. The question, therefore, is whether the civil suit for partition is maintainable, after the estate was abolished.

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 vest the same in the State until regrant 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 regrant is made. We are not concerned with the consequences that would ensue after regrant of this appeal. Therefore, it is not necessary for us to go into the question that may arise after the regrant.

5. In *B.P. Narain Singh v. S. Mukherjee*, 1971 (3) SCR 639, this Court held that after the estate was abolished under Bihar Land Reforms Act 1950, the decree for partition stood abated as the lands stood vested with all assets in the State of Bihar. This Court pointed out that the object of the Act was to cause transference to the State of the interest of the proprietors and tenure-holders in land as also of the mortgagees and lessees of such interests including interest in the lands etc. etc. Though the plaintiffs therein had a share in the lands as a ryat after the regrant, but they had- lost the right as a tenure- holder or proprietor. In *S.P. Shah v. B.N. Singh*, (1969)3 SCR 908, this Court held that after the estate is abolished, the rights created under s.6 of the Bihar Land Re- forms Act has to be worked out in accordance with the provisions of the Act. In *Chayanna v. K. Nannayana*, -(1979) 3 SCC 42, and *Chenchulakshmamma v. Subramanya Reddy*, (1980) 1 SCR 1006, this Court held that after the abolition of the estate 'and vesting of the land in the State, while the new rights were created under the Act, the civil court has no jurisdiction to adjudicate the pre-existing rights. The parties have to work out the rights under the Act before the forums created thereunder.

6. In *Sheethal Singh v. Mahmood Shariff*, 1984 (1) Andhra Weekly Reporter, 406, a Single Judge of the High Court con- sidered the effect of the abolition and following the judgments of this Court held that the suit is not maintainable. The Division Bench overruled the judgment on the sole ground that the ratio in *Govind Reddy v. Lakshminarayan Reddy*, 1959(1) Andhra Weekly Reporter, was not considered, therefore, it was not good law. The Division Bench obviously overlooked the fact that under Aliyat Act the ultimate jurisdiction for deciding the question has been vested only in the civil court. There- fore, the division bench in *Govind Reddy's* case had held that suit for partition was maintainable. But that ration bears no relevance to the consequence that would ensue under the Act. The division bench, therefore, was not right in holding that the suit for partition is maintainable, even though Inam has been abolished under the Act and the, lands stood vested in the State.

7. Madhav Reddy, the learned senior counsel, placing reliance on *K. Babgonda Patil v. B.K. Patil*, (1989) Supp (1) scc 246, and *S.T. Karaban v. P.H. Karaban*, (1994)4 SCALE 750, contended that the right to claim partition has. not been lost, though Inam has been abolished. We find no force in the contention. Therein, after abolition of the Watan regrants were made in favour of Watandars. In view of the pre-existing watans burdened with service of watandar as per pre-existing law, excluded the junior members of the family to claim partition, was abolished and regrant was made to the watandar, after the regrant the property became the joint family property. So the coparceners of the Hindu joint family were held entitled to lay the suit for partition and civil court has jurisdiction to grant decree of partition by metes and bounds pro-rata. 'Mat ratio has no application to the facts of this case. When regrant is made and in what capacity the regrant would be made is a matter to be considered and decided in terms of the regrant.

8. The appeal is accordingly allowed in respect of all the items except item 5 of the 'B' schedule. The suit stands dismissed. With respect to item 5, the civil court would proceed for deciding the controversy relating to the compensation awarded by the civil court between the parties in terms of shares to which parties are entitled to. In the facts and circumstances of the case, parties are directed to bear their own costs.