AIR 1971 SC 2137 : (1971) MhLj 877 : (1971) 3 SCC 391 : (1972) 1 SCR 48 : (1971) 3 UJ 737

Supreme Court of India

Case No: Civil Appeal No. 5 of 1967

Raghunath Laxman Wani and Others		APPELLANT
	Vs	
The State of Maharashtra and Others		RESPONDENT

Date of Decision: Aug. 6, 1971

Acts Referred:
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 â€" Section 10, 12, 3, 6, 8

Citation: AIR 1971 SC 2137 : (1971) MhLj 877 : (1971) 3 SCC 391 : (1972) 1 SCR 48 : (1971) 3 UJ 737

Hon'ble Judges: J. M. Shelat, J; A. N. Ray, J

Bench: Division Bench

Advocate: V.M. Tarkundey, V.M. Limaye and S.S. Shukla, for the Appellant; V.S. Desai, S.B. Wad and S.P. Nayar, for the Respondent

Final Decision: Dismissed

Judgement

J.M. Shelat, J.
This appeal by special leave, is against the judgment and order passed by the Maharashtra Revenue Tribunal, dated September 2, 1966, in proceedings held by the Deputy Collector u/s 14 of the Maharashtra

Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Act) in respect of lands held by the appellants.

2. The following pedigree explains the relationship between the appellants:

Tukaram (dead) | | _____ | | | | Narayan, d. about 1920=Laxmibai Laxman, d. 5-6-Alka (minor): 1954=Warubai

Raghunath=Rukhminiba | | _____
Ramesh Suresh Shaila Mukano (minor) (minor) (minor) (minor)

3. It is not in dispute that, until at any rate 1956, appellant Raghunath and the other members of the family formed a joint and undivided Hindu family of which Raghunath, on the death of his father Laxman in June 1954, became the karta

and the manager. The family then held 523.03 acres of lands situate at Ranjangaon, Sangwi, Karajgaon, Shindi and Odhre villages. In 1956, appellant Raghunath gave a vardhi (intimation) to the talathi stating that he and the other

members of his family had entered into a partial partition where-under Laxmibai, the widow of Narayan, received 41.13 acres of land of Karajgaon, Kashinath, named Madhav Narayan after his adoption, 74.20 acres of land in Shindi

village and Warubai, his mother, 64.03 acres of land of Shindi and Odhre villages. The balance of 343.07 acres of the-said lands still stood in his name. But his case was that the members of the family had separated and ceased to

constitute a joint and undivided family and therefore, held the said balance in equal shares as tenants-in-common. The position thus was that on August 4, 1959 343-07 acres of land comprising of 180-20 acres of Rajangaon and 162-27

acres of Sangwi villages remained in his name. It was said that out of these 343 07 acres of land, 75-27 acres had come to his share thus leaving 267.20 acres of land held by them all as tenants-in-common.

4. On April, 1, 1960, Raghunath sent another vardhi (intimation) to the talathi of Ranjangaon stating that the partition by metes and bounds, which had remained partial in 1956, had been completed on that. day. He also intimated that

under this partition 75-27 acres of land of Rajangaon village went to Rukhminibai and Ramesh, his wife and son respectively, 53-29 acres of Ranjangaon village to Madhav and his wife, Maltibai and 8-36 acres of Ranjangaon village to

Warubai, his mother, i.e., the widow of Laxman.

5. According to the appellants, all the lands, which were partitioned and allotted in 1956 to Laxmibai, Madhav and Warubai had been sold away most of them before August 4, 1959 and the rest in 1960 and 1961. Likewise between

October, 17, 1960 and May 30, 1962 Raghunath had sold 150-13 acres out of the remaining lands. The result of the alleged partition and the sales was that Raghunath held only 54-22 acres of lands at Rajangaon and Sangvvi and that

therefore, there was no surplus land for him to declare, the ceiling for this area under the Act being 96 acres for an individual or a family consisting of five members.

6. In support of their case of partition in 1956 and 1960 and the sales of lands which had come to the shares through it of the different members of the family, the appellants relied on their own affidavits, the statements of the various

transferees, the said vardhis by Raghunath, certain market receipts showing sales of agricultural produce by the members of the family, extracts from village forms 7, 7A and 12 showing the different crops grown in the lands and the

names of the different members of the family set out therein as occupants and lastly, a consent deed dated April 11, 1960 executed by Madhav, Laxmibai and Warubai which recited the said partial partition in 1956, the fact of their being

tenants-in-common in respect of the rest of the lands and the authority given by them to Raghunath to sell the lands for himself and on their behalf and on such sales having been effected each of them having become entitled to 1/4th share

in the sale proceeds.

7. The Deputy Collector, however, rejected the appellants case of partition, firstly in 1956 and then in 1960 and held that the family at the material time held 343 07 acres of lands. He also held that out of the 14 members of the family as

three of them had been born after January 26, 1962, that being the appointed day under the Act and as appellant Madhav had purchased 11 20 acres of land separately on March 11, 1960, they could not be treated as members of the

family u/s 6 for the purpose of additional 1/6th of the basic ceiling area. Thus on the basis that the family consisted of 10 members only he allowed 96 acres plus 5/6th thereof, in all 176 acres and declared the remaining 167-07 acres as

surplus.

8. On an appeal u/s 33 of the Act, the Revenue Tribunal accepted the findings of the Deputy Collector rejecting the appellants'' case of partition and held that the said sales effected by the members of the family were made to defeat the

objects of the Act. The Tribunal, however, made one modification in the order of the Deputy Collector, in that, it held that though Survey No. 81 was acquired in the name of Madhav on March 11, 1960, there was nothing to show that

that acquisition was from his separate funds or was to be held by him separately and therefore, he could not be excluded from the family for the purposes of Section 6. In this view the Tribunal held that the family held 343 07 acres plus

11-20 acres purchased in the name of Madhav, i.e., 354 27 acres, that the family members being 11 in number, each of them in excess of five members was entitled to an additional 1/6th of the ceiling area and that consequently, the

ceiling area for the family would be 192 acres. The surplus area thus would be 162.27 acres and not 167.07 acres as declared by the Deputy Collector. The present appeal challenges the correctness of these conclusions of the Tribunal.

9. The Act was brought into operation as from January 26, 1962, which is the appointed day u/s 2(4). Section 3 provides:

In order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra on the commencement of this Act, there shall be imposed to the extent and in the manner hereinafter provided, a

maximum limit (or ceiling) on the holding of agricultural land throughout the State.

10. Section 4(1) lays down that subject to the provisions of the Act no person shall hold any excess over the ceiling area, as determined ""in the manner hereinafter provided"". u/s 4(2), all land held by a person (which expression includes a

family) in excess of the ceiling area, shall be deemed to be surplus land. Section 5 provides for the ceiling area, in the several local areas and for each class of land, fixed having regard to the soil classification, climate, rainfall and other

factors enumerated therein. u/s 6, if a family consists of members exceeding five in number, such family is entitled to hold land exceeding the ceiling area to the extent of one-sixth of the ceiling area for each member in excess of five, so

however that the total holding is not to exceed twice the ceiling area and in such a case, in relation to the ceiling of that family, such area shall be deemed to be in the ceiling area. The proviso to Section 6 runs as follows.

Provided that for the purpose of increasing the holding of a family in excess of the ceiling area as aforesaid, if any member thereof holds any land separately he shall not be regarded as a member of that family for such purpose.

11. Section 8 provides that no person, who, on or after the appointed day, holds land in excess of the ceiling area, shall on or after that day transfer or partition any land until the land in excess of the ceiling is determined. Section 9

prohibits any person at any time, on or after the appointed day, from acquiring by transfer or partition any land if he already has land in excess of the ceiling area or land which together with any other land already held by him will exceed

in the total the ceiling area. Section 10 provides that if a person after August 4, 1959 but before the appointed day, transfers or partitions any land in anticipation of, or in order to avoid or defeat the objects of this Act, or if any land is

transferred or partitioned in contravention of Section 8, then, in calculating the ceiling area of such a person the land so transferred or partitioned shall be taken into consideration and the land exceeding the ceiling area so calculated shall

be deemed to be in excess of the ceiling area for that holding notwithstanding that the land remaining with him is not in fact in excess of the ceiling area. If by reason of such transfer or partition the holding of that person is less than the area

so calculated to be in excess of the ceiling area, then all his land shall be deemed to be surplus land and out of the land so transferred or partitioned and in possession of the transferee land to the extent of such deficiency shall be deemed

to be surplus. Section 12 then provides that if any person (i) has at any time between August 4, 1959 and January 26, 1962 held, or (ii) on or after January 26, 1962 acquires, holds or comes into possession any land in excess of the

ceiling area, or (iii) whose land is converted into any other class of land as a result of the expiry of the period or the date set out in Section 2(5), or (iv) whose land is converted into any other class of land in the circumstances described in

Section 11, e.g., as a result of irrigation from a source constructed by Government, thereby causing his holding to exceed the ceiling area, then, he shall furnish within the respective periods prescribed therein to the relevant Collector a

report containing particulars of all lands held by him. In such cases, the Collector has to hold an enquiry u/s 18 in respect of the matters set out in that section, namely, the area of land held by such a person on August 4, 1959, whether

any acquisition by him between August 4, 1959 and January 26, 1962 should be considered in calculating the ceiling area, the total area held by him on January 26, 1962, whether any transfer or partition is made by him contrary to

Section 8, whether any land has been acquired or possessed on or after January 26, 1962 by transfer or partition, whether there has been any acquisition on or after January 26, 1962 by testamentary disposition, devolution on death or

operation of law, the total area held by him on the date of enquiry and the area he is entitled to hold etc. At the end of such enquiry, the Collector has to make the declaration in terms of Section 21.

12. The first question which emerges for determination is whether there was severance of the joint family and a partition in respect of some of the lands in 1956 and a completion of that partition in 1960 as alleged by the appellants. It is

true that in support of their case of partition partly in 1956 and then in 1960, the appellants relied on the two mutation vardhis by Raghunath to the talathis, (2) sales of lands which came to the shares of and which were allotted to certain

members of the family, (3) market receipts showing sales by such members of the agricultural produce of lands and (4) the affidavits by the members of the family and their transferees. It is also true that in the vardhi (intimation) to the

talathi of Rajangaon on April 1, 1960, appellant Raghunath recited the fact of the partial partition having been made on May 1, 1956 and the said affidavits also mentioned the fact of the severance of status and the fact of the members of

the family holding thereafter the family properties as tenants-in-common. Both the Deputy Collector and the Tribunal, however, arrived at a concurrent finding for reasons given by both of them after an examination of the materials placed

before them that the appellants'' case of the severance of status and partition of the family lands partially in 1956 and then in 1960 was not acceptable. The question is whether we would be justified in an appeal under Article 136 in

interfering with such a concurrent finding of fact.

13. As noted by both the authorities, no partition deed was admittedly executed by the parties either in 1956 or in 1960. The only documentary proof adduced in support of the alleged partition consisted of the vardhis, sales of lands, the

market receipts for sales of agricultural produce said to be the produce of the lands allotted to some of the members of the family unaccompanied, however, with any proof that the sale proceeds thereof were appropriated by or

accounted to those members. The vardhis merely intimated the talathis of a partition having been made and asked for the consequential mutations. By themselves they were not regarded by the authorities as conclusive proof of the

severance of status or a partition by metes and bounds.

14. It is somewhat strange that though the family was said to have been disrupted and its severance brought about and the members thereof were said to hold the rest of the lands as tenants-in-common, (i) No proof was adduced of the

division of other properties, such as the houses which numbered ten, (ii) the shares allotted in 1956 to Laxmibai, the widow of Narayan, Kashinath alias Madhav and

Warubai, the widow of Laxman, were so unequal as to afford no

principle or basis for such distribution and (iii) even in 1960 when the partition by metes and bounds was said to have been completed, the inequality in shares was not sought to be removed, nor was any case of the division of the other

family properties set up. It is true that a consent document was produced which purported to give Raghunath the authority to sell the lands which were said to have come to the shares of the members of the family. But that document also

would be of no avail unless its premise, of the partition, was acceptable on its own merits. In considering that premise, it is important to bear in mind that under the alleged partial partition of 1956 Laxmibai was allotted 41 acres, Madhav,

adopted by her in or about 1954, was allotted 74 acres and Warubai, the widow of Laxman was allotted about 64 acres. The rest of the lands continued to stand in the name of Raghunath but in which all the members of the family were

alleged to have equal shares as tenants-in-common. Yet, when in 1960 the partition was said to have been completed, the remaining lands were divided between the wife of Raghunath, Madhav and his son and Warubai only and no

further lands were allotted to Laxmibai although in 1956 only 41 acres were given to her. It is thus difficult to comprehend the basis or the principle upon which the lands were said to have been divided amongst the various members of

the family. But, apart from this ciurcumstance, the question is would Raghunath, who admittedly was the karta of the family and as such held all the lands in his name, have agreed to give 41 acres of lands to Laxmibai in 1956 ? Narayan,

we were told, had died in or about 1920 leaving him surviving as his only heir his widow, Laxmibai. As the law then stood, Laxmibai would not have been entitled to any share in the joint family properties. Under the Hindu Women''s

Rights to Property Act, XVIII of 1937, a widow governed by the Mitakshra school became entitled in a joint family property, to the same interest as her husband, such interest being, however, only a Hindu women''s estate. But the Act,

by reason of Section 4 thereof, applied to the property of a Hindu dying intestate after the commencement of the Act. There is nothing on record to show and it appears no effort was ever made to establish that notwithstanding

Laxmibai''s legal disability there was any agreement between the parties whereunder she was given 41 acres absolutely in her own right over and above 74 acres given to Madhav, her adopted son.

15. The absence of any document regarding the alleged severance of the family and the partial partition in 1956, the inequality of shares allotted to some of the members of the family both in 1956 and in 1960, the absence of any principle

or basis for such alleged distribution, the sale of the whole of the lands said to have come to them as a result of the alleged partial partition, the emergence for the first time in 1960 through Raghunath''s said vardhis and the consent deed

that each of the four parties were to have an equal 1/4th share in the properties remaining after the alleged partial partition, the total absence of any reference to the other properties such as houses and moveables as subject matter of the

partition, the absence of evidence showing appropriation of the sale-proceeds by the members to whose shares the lands sold were said to have come, all these factors rendered the appellant''s case of partition first in 1956 and then in

1960 doubtful. If in consideration of these factors the two authorities concurrently declined to accept the case of partition, we on our part would be more than reluctant to interfere and upset such a finding. The appellants, in our view,

accordingly must fail on that count.

16. As already noticed, Section 3 provides that there shall be imposed to the extent and in the manner provided herein-after a ceiling on the holding of agricultural land on the commencement of the Act, i. e., on and from January 26,

1962. u/s 4, no person can hold land in excess of the ceiling area and all land held in excess of the ceiling area would be surplus land and would be dealt with in the manner provided for such surplus land. Section 5 provides for the ceiling

area in each of the local areas and for each class of land as set out in the Schedule. Since a family is included in the definition of ''person'', a family which consists of five persons would be entitled to the ceiling area as laid down in Section

5. In cases of families having more than five members, they would be entitled to hold land exceeding the ceiling area to the extent of 1/6th of such ceiling area for each member in excess of five. In such a case, the ceiling area for such a

family would be the area so calculated. But the proviso to Section 6 lays down that if any member of such a family holds any lands separately, he is not to be treated as a member of that family for the purpose of increasing the holding of

that family to the extent as aforesaid, i.e., 1/6th of the basic ceiling area.

17. Having provided thus for the fixation of a ceiling area for every person and having provided that there shall be imposed on every person a ceiling on and from the appointed

day, the Act, by Sections 8 and 9 lays down that (i) no

person who ""'on or after the appointed day"" holds excess lands shall, on or after that day, transfer or partition any land until the excess land held by him is determined and (ii) that no person at any time on and after the appointed day shall

acquire by transfer or partition any land if he has land in excess of the ceiling area or land which together with any other land already held by him would exceed in the total the ceiling area.

18. The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State

should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding

five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the

subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Sections 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the

number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean an almost perpetual fixation and re-fixation in the

ceiling area by the Revenue authorities, a state of affairs hardly to have been contemplated by the legislature. The argument would also mean that where a surplus area is already determined and allotted to the landless persons such area

would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births.

19. It is true that Section 12 does lay down an obligation on a person to furnish to the Collector a report containing particulars of all lands held by him if he has held at any time after August 4, 1959 but before the appointed day or has on

or after the appointed day acquired or held or has come into possession of any land in excess of the ceiling area as envisaged by Section 10 (2) or whose lands are converted into any other class of land as a result of the expiry of the

period or date specified in Section 2 (5) or whose land is converted into any other class for the reasons given in Section 11 and the Collector then has to hold an enquiry and declare his excess land u/s 21. But these are the only cases

contemplated where there would have to be a re-appraisal of the ceiling area, otherwise the Act, as aforesaid, visualises the ceiling area of every person with reference to the conditions prevailing on and the land held by him as on the

appointed day. Such a construction appears to be borne out by the provisions of Sections 3 and 4 as also of Sections 8 and 9 of the Act. This is also the view taken by the High Court of Bombay on more than one occasion. (See State v.

Dinkanao Narayanraa Deshmukh (1969) 72 Bom. L.R. 237, also Maruti Rao S. Gube Patil v. State Spl. C.A. 767 of 1968, dec. on April 18, 1968, (Patil and Nain, JJ. (Unrep.) and also Special C.A. No. 229 of 1968, dec. on July 11,

1969). A view contrary to that taken in the above mentioned cases was adopted in Civil Application No. 1578 of 1969 decided on July 16, 1969 by another Division Bench of that High Court. But that does not appear to be a correct

view as the learned Judges there failed to appreciate that Section 12 contemplates a limited number of cases where a ceiling area has to be refixed by reason of the intervening events. Except for those cases, the scheme of the statute is

that a ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day. In this view, the Revenue Tribunal was right in not taking into consideration the three children born in the family after the appointed

day while determining the ceiling area to which the appellants" family was entitled to.

20. As regards the land purchased in March 1960 in the name of Madhav, the proviso to Section 6 is clear. For the purpose of increasing the holding of a family in excess of the ceiling area, if a member thereof holds any land separately

he cannot be regarded as a member of that family for such purpose. There would be in such a case two alternatives only. Either that land is held to be the separate property of Madhav, in which case he cannot be regarded as a member

of the family for the purpose of Section 6. or it is treated as a family property although it might have been purchased for some reason or the other in Madhav"s name. In the latter event, though it would be added to the total holding of the

family, Madhav would be regarded as a member of the family and the family being one having more than five members, it would be entitled to an additional 1/6th of the ceiling area so far as Madhav is concerned. The Tribunal rightly took

this view and included the additional 1/6th area, as there was no evidence that Madhav or the family had treated the said land as a separate property of Madhav.

21. For the reasons hereinabove contained the appeal fails. It is, therefore, dismissed with costs.