
(2013) 12 AP CK 0028

Andhra Pradesh High Court

Case No: C.R.P. No. 196 of 2004

State of Andhra Pradesh

APPELLANT

Vs

Nalamati Dorayya and Others

RESPONDENT

Date of Decision: Dec. 31, 2013

Citation: (2014) 3 ALD 720

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: G. Krishna Murthy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao, J.

This Civil Revision Petition is filed u/s 21 of the AP Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for brevity, "the Act") challenging the order dt. 29-07-2003 in L.R.A. No. 13 of 2001 on the file of the Land Reforms Appellate Tribunal-cum-IV Additional District Judge, East Godavari District at Kakinada.

1. The 1st respondent herein Rimmalapudi Lakshmidevi is the daughter of the declarant Nalamati Dorayya. The proceedings were initiated under the Act to compute the holdings of the declarant and it was held that he was holding 0.0630 SH in excess. This determination had become final vide order dt. 11-02-1993 in C.R.P. Nos. 228 and 1549 of 1990 of this Court. Subsequently orders u/s 10(4) of the Act were passed on 22-11-1993 which were challenged by the declarant in L.R.A. No. 26 of 1994 and by the 1st respondent i.e. his daughter in L.R.A. No. 131 of 1993.

2. In both the appeals, they contended that 1st respondent, the daughter of the declarant was a major as on 01-01-1975, the notified date, that she remained unmarried till 1987 and therefore by virtue of Section 29A of the Act 13 of 1986 amending the Hindu Succession Act, 1956, she is entitled for a share. They

contended that her share is to be deleted from the holding of the declarant. The appellate Tribunal accepted this contention but held that at the stage of proceedings for surrender u/s 10 of the Act, such a plea cannot be entertained and therefore rejected the appeals.

3. Aggrieved by the order of the appellate Tribunal, the declarant and his daughter filed C.R.P. Nos. 1408 and 1409 of 1994 before this Court. This Court found that the daughter was a major as on 01-01-1975 and marriage took place on 06-06-1987 and she is entitled for the benefit of Section 29A of the Act and remitted the matter back to the lower Tribunal.

4. The lower Tribunal after receipt of the orders of the High Court dismissed the claim of the declarant and his daughter on the ground that they did not appear before it and did not place any material. It was also held that the daughter can only be considered as an individual and as an unmarried daughter, she cannot be considered as a sharer in view of Section 3(f) of the Act.

5. This was challenged in L.R.A. No. 13 of 2001 by the declarant. Pending L.R.A., the daughter of the declarant died, and her son and daughter were impleaded as parties.

6. By order dt. 29-07-2003, the Land Reforms Appellate Tribunal-cum-IV Additional District Judge, East Godavari District at Kakinada allowed the appeal. He held that the daughter of the declarant would be entitled to the benefit of Section 29A of the Hindu Succession Act, 1956 as she was unmarried as on 05-09-1985, the date on which the A.P. Amendment Act No. 13 of 1986 to the Hindu Succession Act, 1956 came into effect as her marriage was performed on 06-06-1987. It therefore held that the daughter of the declarant became a coparcener and is entitled to a share like a major son. It also held that the daughter of the declarant was aged about 19 years as on 01-01-1975, that this is clear from the declaration filed by the declarant and even if the parties did not appear, the lower Tribunal cannot escape from applying the law on that ground and reject the claim of the declarant and his daughter. It therefore allowed the appeal and remitted the matter back to the lower Tribunal to consider the share of the daughter of the declarant and to exclude the said share from the holding of the declarant and thereafter compute the holding of the declarant afresh.

7. Aggrieved thereby this Revision petition is filed by the State.

8. Heard the learned Government Pleader for Ceiling, appearing for the State and Sri G. Krishna Murthy, learned counsel for the respondents.

9. It is pertinent to note that the Hindu Succession Act, 1956 has been further amended by the Central Act 39 of 2005 with effect from 09-09-2005 and Section 6 of the Hindu Succession Act, 1956 has been amended giving equal rights to daughters in coparcenary property.

10. This Court in [Damalanka Gangaraju and Others Vs. Nandipati Vijaya Lakshmi and Others](#), has held that by virtue of the amendment made by the Central Act 39 of 2005 to the Hindu Succession Act, 1956, Section 29A (inserted by the AP State Amendment Act No. 13 of 1986) is deemed to have been repealed. This legal position is not disputed by either side.

11. But the question for consideration is-when the computation of holding of the declarant had attained finality even by 11-02-1993 (vide orders in C.R.P. No. 228 and 1549 of 1990 passed by this Court) and his holding was found to excess by 0.0630 S.H., is it permissible to reopen the computation proceedings at the instance of the declarant or his daughter.

12. It is not disputed that neither the declarant nor his daughter raised this issue in proceedings u/s 9 of the Act relating to the computation of holding of the declarant, even though Section 29A of the Act inserted by AP State Amendment Act No. 13 of 1986 with effect from 05-09-1985 and was on statute book.

13. A Division Bench of this Court in [Gadda Balaiah and Others Vs. The Joint Collector, Ranga Reddy District and Others](#),) (to which I am a party), has considered the legal position as to whether it is permissible in proceedings for surrender u/s 10 of the Act to reopen the computation of the holding of a declarant on any ground and had held that it is not permissible. It held:

37. From the catena of unvarying binding authority referred to, it is clear that when once final determination of the holding has been completed and surplus land held by the family of a declarant finally determined, at the stage of surrender proceedings, which are in the nature of execution proceedings, neither the declarant nor any other person can be permitted to reverse the clock by raising fresh points. Of course, these decisions were rendered before Section 9A was introduced in 2012. We are of the view that (except to the extent and in the manner provided in Section 9A, discussed above), no express power is conferred by the Ceiling Act to review and reopen proceedings that have become final and no such power inheres in the LRT nor could be inferred by implication. In the absence of a power to re-open proceedings (which have attained finality after dismissal of CRP Sr. 24698 of 1976 by the High Court), de hors Section 9A of the Ceiling Act, they cannot be reopened under any circumstances including on the ground that claims of alleged protected tenants u/s 38E of the Tenancy Act were not considered by the LRT (before it declared Kastopa to be a surplus holder, by its order dated 9.12.1975).

14. Therefore, I am of the opinion that even if the daughter of the declarant was a major on the notified date i.e. 01-01-1975, on that ground, her share cannot be excluded from the holding of the declarant.

15. The learned counsel for the respondents, on the other hand, while not disputing this proposition, relied upon the decision in [Makineni Venkata Sujatha Vs. Land Reforms Tribunal and Another](#), In that case, the petitioner before the Supreme

Court claimed that she was a minor daughter on 01-01-1975, that the excess of her father's unit had been computed under the Act; that Section 29A of the Hindu Succession Act 1956 (as amended) conferred a right on the unmarried daughter as on 05-09-1985 in Hindu Joint Family property for a share by birth therein, her share was liable to be excluded. The Supreme Court rejected the contention and held that the excess land of the father as on 01-01-1975 would remain the same and would not suffer any diminution on account of subsequent event, i.e. the right acquired by the daughter u/s 29A and that Section 29A did not alter the factual position as the petitioner was a minor as on 01-01-1975. The Supreme Court also held that Section 4A of the Act, (as introduced in 1977) applies only to major sons as on 01-01-1975 and not to major daughters and the petitioner, being minor daughter on 01-01-1975, her father's unit did not get enlarged. It declined to decide whether the principle that "male" includes a "female" under the General Clauses Act would apply to Section 4A which mentions only major sons and not major daughters, as it was unnecessary to do so on the facts of the case.

16. In my opinion, this decision does not help the respondents for the reason that the Supreme Court held that only term "major son" was mentioned in Section 4A, therefore Section 4A would not apply to major daughters, and the fact that there was major daughter as on 01-01-1975, would not benefit her father.

17. In fact, a learned Single Judge of this Court in K. Ram Reddy Vs. The State of A.P. rep. by the Special Tahsildar (Land Reforms), Sangareddy 1978 (1) A.L.T. 43 (NRC), held that in the light of the definition of the term "son" u/s 3(3) of the AP General Clauses Act, it would not be permissible to interpret the words "major son" in Section 4A of the Act as meaning a "major daughter" also.

18. It is also pertinent to note that the AP Land Reforms (Ceiling on Agricultural Holdings) Amendment Act, 1977 (for short, "Act 10 of 1977") (which also introduced Section 4A) received the assent of the President on 29-04-1977 and the said assent was published on 13-04-1977 in the AP Gazette. Section 7(1) of Act 10 of 1977, provides that notwithstanding anything in the principal Act, if in any case to which provisions of the Principal Act as amended by the Amendment Act were applicable, and the Tribunal had determined u/s 9 of the Principal Act, the extent of the land in excess of the ceiling area before the date on which the assent of the President to the Amendment Act was first published in the AP Gazette, but a proceeding in respect thereof u/s 10 of the Principal Act was pending before the Tribunal on the said date, the tribunal may suo motu or shall, on application of declarant, re-determine holding of the declarant.

19. In the present case, the computation of holding of the Tribunal u/s 9 of the Act attained finality only in the year 1993 and not by 30-04-1977, the date on which the assent of the President was published in the AP Gazette to the Amendment Act 6 of 1977. Therefore, the respondents are not entitled to seek reopening of the issue of computation of the holding of the declarant under sub Section (1) of Section 7 of the

Amendment Act 10 of 1977.

20. In Nagubandi Pullamma and Others Vs. The State of A.P. through Authorised Officer, L.R.T. No. 1 Khammam 1980 (1) A.P.L.J. 324, cited by the respondents, the Court considered what issues could be raised in a proceeding u/s 7(1) of the Amendment Act 10 of 1977 and held that all contentions that could be raised under Sections 8 and 9 of the Principal Act could be raised and they ought to be determined afresh. This judgment has no application to the present case since the respondents are not entitled to invoke sub Section (1) of Section 7 of the Amendment Act 10 of 1977 at all.

21. Learned counsel for the respondents also relied upon the decisions in [Utukuri Sarat Kumar and Others Vs. Authorised Officer, Land Reforms, Ongole](#), [Nimmagadda Sambasiva Rao Vs. State of A.P., Land Reforms, Guntur](#), and [B. Chandrasekhar Reddy \(D\) by Lrs. Vs. State of Andhra Pradesh](#),

22. The Supreme Court in B. Chandrasekhar Reddy (D) by Legal Representatives 2003 (4) ALT 9 (SC) (supra) held that benefit of Section 29A could be invoked by major daughters if they were not married prior to the commencement of Section 29A. But in this case, the Supreme Court did not say that at the stage of surrender i.e. a proceeding u/s 10 of the Act, the holding of a declarant which had attained finality, could be altered by giving benefit of the provisions of Section 29A. This decision therefore would apply only if benefit of S. 29A was sought in proceedings u/s 9 of the act and not at stage of Section 10 proceedings. In my opinion, the same holds good even after amendment by Central Act No. 39 of 2005 to the Hindu Succession Act, 1956 amending Section 6 thereof giving rights to daughters in coparcenary property. The following decision fortifies my view.

23. A Division Bench of this Court in [Utukuri Sarat Kumar and Others Vs. Authorised Officer, Land Reforms, Ongole](#), (supra) held that as on 01-01-1975, the notified date, a major daughter was not a coparcener in a Hindu Joint Family and she was made so only by virtue of AP Amendment Act No. 13 of 1996 with effect from 05-09-1985 and that by 05-09-1985, the ceiling law had already operated. Consequently, an unmarried major daughter cannot claim a separate standard holding under the Act notwithstanding the provisions of Section 29A. It overruled the judgment in A. Alivelamma Vs. The Special Tahsildar, Ongole and Another 1987 (2) APLJ 92 (AP).

24. But without noticing this Division Bench Judgment, a learned Single Judge of this Court in [Nimmagadda Sambasiva Rao Vs. State of A.P., Land Reforms, Guntur](#), followed the decision in A. Alivelamma 1987 (2) APLJ 92 (AP) (supra) and took a view contrary to the judgment of the Division Bench in [Utukuri Sarat Kumar and Others Vs. Authorised Officer, Land Reforms, Ongole](#),

25. No case has been cited by the respondents showing that the holding of the declarant could be reopened on any ground after its computation had attained finality and proceedings at surrender stage were pending.

26. Therefore, following the judgment in [Gadda Balaiah and Others Vs. The Joint Collector, Ranga Reddy District and Others](#), I allow the Revision Petition. The Order dt. 29-07-2003 in L.R.A. No. 13 of 2001 of the Land Reforms Appellate Tribunal-cum-IV Additional District Judge, East Godavari, Kakinada is set aside. It is declared that the computation of holding of the declarant, which had already become final, cannot be altered on account of Section 29A of A.P. Act 13 of 1986 or after it's repeal, by Section 6 of the Hindu Succession Act, 1956 (as amended by Central Act No. 39 of 2005), conferring equal rights to daughters in coparcenary property. No costs. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.