Chilakala Ayyanna and others Vs Special Tahsildar for Land Reforms East Division, Hyderabad Dt. Hyderabad

Court: Andhra Pradesh High Court

Date of Decision: Nov. 23, 1976

Acts Referred: Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 â€" Section 21, 8(1)

Hon'ble Judges: Ramachandra Rao, J

Bench: Single Bench

Advocate: C.R. Pratap Reddy, for the Appellant;

Final Decision: Dismissed

Judgement

Honourable Mr. Justice Ramachandra Rao

1. This revision-petition is filed under Sec. 21 of the A. P. Land Reforms (Ceiling on Agricultural Holdings) Act 1973 (hereinafter called the Act)

against the order of the Land Reforms Appellate Tribunal, Hyderabad in L.R.A. No. 24 of 1975 confirming the order of the Land Reforms

Tribunal, Hyderabad East Division in C.C. No. 26/1/75 dated 10-11-1975. The declarant Chilakala Ayyanna, filed a declaration u/s 8 (1) of the

Act, declaring that his family unit consisted of himself, his wife one minor son and one minor daughter and that it was holding Ac. 14-42 cents of

dry land constituting parts of survey Nos. 249/5, 249/7, 250, 251, 398, 400, 401 and 402 of Kongarakalan village in Ibrahimpatnam taluk. In

annexure 1 to the declaration, he showed that his family unit had purchased Ac. 49-58 cents of dry land in survey Nos. 355, 357, 358, 219, 354,

359 and 409 of the same village. The declarant"s major sons Jangaith Yadaiah and Mallaiah, filed separate declarations each claiming Ac. 7-18

cents in survey Nos. 249/5, 249/7, 250, 251, 398, 400, 401 and 402 on the ground that the properties covered by the aforesaid survey numbers,

were joint family properties in which the declarant and his three major sons and one minor son were entitled to equal shares.

2. The declarations ware sent for verification and the verification officer reported that the properties shown in the declarations were the self-

acquired properties of the declarant the first petitioner herein that he purchased the said lands in his name, that the total area purchased was Ac.

87-03 cents, that the said properties were not the ancestral or joint family properties of the petitioners herein, and that the first petitioner was

holding 0.3581 standard holding in excess of the ceiling limit.

3. Before the Land Reforms Tribunal, the first petitioner stated in his sworn statement, that he was the pattadar of survey No. 249/5, 249/7, 250

and 251 measuring Ac. 21.51 cents and survey Nos. 389, 400, 401 and 402 measuring Ac. 9-95 cents, that he purchased the said lands, that

survey Nos. 249/5 and 259/7 belonged to Harijan Pentaiah and others that he returned the said lands to them two years back, that he purchased

an area of Ac, 24-00 in surney No. 355, 357 and 358 from Goda Sattaiah under a registered sale deed in the year 1965, that a case u/s 50B of

the Hyd. Tenancy and Agricultural Lands Act, 1950, that was pending before the Tahsildar in respect of the said; land that he purchased Ac. 1-89

cents in survey No. 219 in the year 1968 from Harijans but no sale-deed was executing in respect of the said land, that he was in possession of the

same, and that he purchased Ac. 23-68 cents in survey Nos. 354, 359 and 409 from Kaki Jangaiah, eight years ago but no registered sale-deed

was executed for the same.

4. The Land Reforms Tribunal enquired whether the first petitioner required any further time to file any documents or to lead any evidence but he

stated that he did not have any documents. Thereafter the Tribunal on a consideration of the material on record held that survey Nos. 249/5,

249/7, 250, 251, 398, 400, 401 and 402 were not the joint family properties and that the first petitioner did not return the lands in survey Nos.

249/5, and 249/7 to Harijans, two years back.

5. The first petitioner preferred an appeal to the Land Reforms Appellate Tribunal, Hyderabad District. In the appeal it was contended that (1)

Survey Nos. 249/5, 249/7, 250, 251, 398, 400, 401, and 402 were actually purchased by the first appellant''s father-in-law Chilakala Maliaiah

and his mother-in-law Mallamma with their monies in the name of the first petitioner for benefiting the first petitioner and his sons, that the said

properties were treated and enjoyed by the first petitioner and his sons as joint family properties and therefore the first petitioner''s sons were also

entitled to equal shares in the said lands; (2) that about ten years ago, the Zilla Parished public road was laid over an extent of Ac. 2.00 in survey

Nos. 409 and 359 belonging to the first petitioner, (3) that Survey Nos. 249/5 and 249/7 were returned to Harijans more than 15 years ago, and

(4) that an area of Ac. 1.00 issued for the purpose of passage to the farmhouses constructed by the petitioners on their lands.

6. The petitioners filed an application I.A. No. 13/76 before the Appellate Tribunal to receive as additional evidence, an affidavit of one Ratna Rao

Patwari of Kakaguda village, and the affidavits of the first petitioner and his wife and two others K. Jangaiah and K. Chinnayya. Along with I. A

13/1976 they also filed a certified copy of the Faisal Patta for the year 1967-68 to show that in survey Nos. 469, 360, 352 and 351, there is a

Zilla Parished Public road over an extent of Ac. 5-08 cents and also a registered sate deed dated 28-2-1950 in respect of old survey Nos. 52 of

Kakagunda village corresponding to new S. Nos. 398, 400, 401 and 402, to show that the same stands in the name of the first petitioner. In the

affidavit filed by Kaki Jangaiah, it is stated that he attested the registered sale deed dated 28-2-1950, that the consideration for the said sale was

provided by the parents-in-law of the first petitioner, and that survey Nos. 250 and 251 were purchased by the parents-in-law of the first

petitioner from K. Venkataiah and others The averments in the affidavit of Kaki Chinnaiah are to the same effect.

7. The Appellate Tribunal held that the claim of the petitioners that survey Nos. 398, 400, 401 and 402 were purchased by the parents-in-law of

the first petitioner with their funds, could not be believed, that the sale deed dt. 28-2-1950 in respect of survey Nos. 250 and 251 did not recite

that the consideration was paid by the Parents-in-law of the first, petitioner, that the registered sale-deed was not produced into Court, that even

assuming that the consideration for the sales was paid by the parents-in-law of the first petitioner, it did not follow that the properties purchased in

the name of the first petitioner by his parents-in-law are joint family properties or ancestral properties, that neither his declaration nor in his sworn

statement, did the first petitioner say that the consideration for the sale was paid by his parents-in-law with the object of acquiring the property for

the benefit of himself and his sons and that the contention that they were joint family properties, was an after-thought; and accordingly rejected it.

8. With regard to survey Nos. 249/5 and 249/7, the Tribunal observed that in the sworn statement, the first petitioner stated that the said lands

were returned by him to Harijans two years ago, but in the grounds of appeal in ground No. 16 it is stated that the lands were returned to Harijans

15 years ago. The Tribunal therefore held that the plea that the said lands were returned to Harijans, appeared to be purely fictitious.

9. With regard to survey Nos. 359 and 409, the appellate Tribunal observed that the certified copy of the Faisal Patti does not show that there is a

public road running through survey Nos. 359 and that it shows that about Ac. 1.20 cents in survey No. 409 appears to be under a public road.

The total extent of survey No. 409 as given in the Faisal Patti is Ac. 13.31 cents. In the enclosure II to the declaration, the first petitioner claimed

that only Ac. 4.00 in survey No. 409 was held by him. Further in the declaration, the petitioner did not mention that a Zilla Parishad road passes

through the four acres belonging to the first petitioner in survey No. 409, and that it might be that the road is passing through the portion of survey

No. 409 which is not held by the first petitioner. In view of the aforesaid circumstances, the appellate Tribunal held that a reasonable inference

could be drawn, that no part of Ac. 4.00 in survey No. 409, is covered by the Zilla Parishad road. The appellate Tribunal also disbelieved the plea

that Ac. 1.90 of land was being used as a passage for the petitioner"s farm houses as such a plea was not mentioned in the declaration in the sworn

statement.

10. The Tribunal also rejected the application for admitting additional evidence as no grounds were made out for admitting the same at the

appellate stage. However the Tribunal referred to the said documents, and rejected both the appeal and the petition I.A. No. 13/1976.

11. In this appeal, it is contended by Sri C.R. Pratap Reddy learned Counsel for the petitioners, that both Tribunals erred in holding that the

property was not the joint-family property.

12. The facts disclose that the joint-family of the petitioners, did not possess any ancestral or joint-family property at its inception. Therefore none

of the lands held by the first petitioner is ancestral property. It is not the case of the petitioners that the properties were acquired by all the

members of the joint-family by joint exertion.

13. On the other hand it is admitted that the lands were purchased by the parents-in-law of the first petitioner with their funds in the name of the

first petitioner. Thus the properties held by the first petitioner are his self-acquired properties.

14. It is contended by Sri Pratap Reddy, that the first petitioner was taken as illatom son-in-law, that the 1st petitioner and his sons constitute

members of a Hindu joint family, and that the properties purchased with the funds provided by the parents-in-law of the first petitioner for the

benefit of the 1st petitioner and his sons, constitute joint family properties.

15. The plea that the 1st petitioner was taken as illatom son-in-law and that the properties were purchased by his parents in law in his name for the

benefit of himself and his sons, was not mentioned in the declaration or in the sworn statement. Moreover there is absolutely no material on record

to show that the first petitioner was taken as illatom son-in-law. It is also not established whether custom of illations is recognised in the area to

which the petitioners belong. There is no evidence to show that the first petitioner was taken as illatom son-in-law. The two essential conditions of

illatom are, that the adoptee must marry the daughter of the adopter, and there should be an agreement to give him a share. The illatom son in-law

does not become an adopted son in the strict or realisense of adoption. In Mulla''s Hindu Law, it stated as follows:--

The son-in-law does not become an adopted son in the strict or real sense of adoption. He does not losee his right of inheritance in his natural

family. Neither he nor his descendants become coparceners in family of adoption though on the death of the adopter he is entitled to the same right

and the same share as against any subsequently born natural son or a son subsequently adopted in accordance with the ordinary law. He cannot

claim a partition with the father-in-law, and the incidents of a joint family, such for instance as right to take by survivorship, do not apply. In respect

of the property or share that he may get he takes it as if were his separate and self-acquired property.

16. The very fact that the properties were purchased by the parents-in-law in the name of the first petitioner, shows, that he was not taken in

illatom, because in the case of an illatom adoption, it is only by virtue of an agreement that he acquired a right to a share in the property of his

father-in-law. Even assuming that the first petitioner got the properties by way of illatom adoption still the same would be his self-acquired or

separate property and not joint family property as between himself and his sons.

17. It is contended by Pratap Reddy, that the first petitioner has blended the said properties and has thrown them into the hotchpot and has treated

the same as joint family property, no formality is necessary, and no transfer is involved nor mixing of the property with joint family property is

necessary, that it is not necessary that the joint family should possess joint family property and a mere declaration of intention to convert the

property into joint family property will suffice are inasmuch as the first petitioner has declared and treated property, as joint family property, the

property purchased by the parents in law in the name of the first petitioner should be treated as Joint family property. In support of this contention,

he relied upon the rulings in G. Narayana Raju Vs. G. Chamaraju and Others, and Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh,

18. In the first case, their Lordships of the Supreme Court, held as follows:--

It is a well established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily

thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upon it. But the question whether the coparcener

has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a

clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been

done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate

property and acquires the characteristics of his joint family or ancestral property"", not by mere act of physical mixing with his joint family or

ancestral property, but by his own violation and Intention by his waiving or surrendering his special right in it as separate property. Such intention

can be discovered only from his words or from his acts and conduct.

19. In the second case i.e. Goli Eswaraiah vs. Gift Tax Commissioner, AP AIR 1170 S. C 1722 it is held as follows :--

The Separate property of a Hindu coparcener ceases to be so and acquires the characteristic of a joint family or ancestral property not by any

physical mixing with his joint family or ancestral property but by his own violation and intention by his waiving and surrendering his separate rights

in it as separate property. The act is a unilateral act. No longer he declares his intention the property assumes the character of joint family property.

The doctrine is peculiar to Mitakshara School of Hindu Law. When a coparcener throws his separate property into the common stock he makes

no gift under T.P. Act. There is no donor or donee and no question of acceptance of property thrown into the common stock arises.

20. As observed in the first of the cases, the question whether the coparcener had voluntarily thrown his separate property into the joint stock with

the intention of abandoning all his separate claims to it is a question of fact to be decided in the light of the circumstances of the case. It must be

established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred

merely from acts of kindness or affection. Further such an intention can be discovered only from his words or acts and conduct.

21. In the instant case, it is only established that the first petitioner and his sons were living and messing together and the family members were

being maintained out of the income derived from the properties which the first petitioner had acquired by purchase with the funds provided by his

parents-in-law. There are no words or acts or conduct on the part of the first petitioner from which it could be inferred that he evinced any

intention to waive his separate rights and voluntarily threw the said property into the hotchpots. Therefore I find it difficult to accept the contention

of the learned counsel for the petitioner that the properties purchased by the first petitioner with the funds provided by the parents-in-law, acquired

the character of joint family property.

22. The next contention urged by the learned counsel for the petitioners it that the appellate Tribunal should have excluded Ac. 2-03 in survey No.

409 and Ac. 1100 of land used as passage for the petitioners farm-houses from the first petitioner''s holding.

23. As rightly pointed out by the appellate Tribunal, Survey No. 409 is of the extent of Ac. 13.31 cents that the first petitioner is only entitled to

Ac. 4-00 in the said survey number and it is not established that a Zilla parishad road pastes through Ac. 4-00 belonging to the first petitioner. The

Tribunal also held that neither in the declaration nor in the sworn statement, the first petitioner set up a plea that Ac. 100 of land was being used as

passage for the petitioner''s farm houses. It is contended by the learned counsel for the petitioners that they should have an opportunity to adduce

additional evidence to establish the said pleas.

24. There is no merit in this submission because the petitioners were fully aware of the verification report and they could have adduced necessary

evidence before the first Tribunal. No reasons have been given as to why no steps were taken to adduce evidence to support the said pleas.

Moreover the plea that one acre of land was being used for passage to the farm-houses was not mentioned either in the declaration or in the sworn

statement. Therefore the question of giving an opportunity to adduce evidence in respect of a plea not raised, does not arise. Further the certified

copy of the Faisal Patti produced by the petitioners did not establish the plea that a Zilla Parishad road passes through Ac. 4-00 in survey No. 409

belonging to the petitioners. I do not find any ground for giving an opportunity to adduce additional evidence. In the result, the revision petition fail

and is dismissed with costs. Advocates fee Rs. 100/--.