Dommeti Lakshmi Vasundhara (died) and others Vs State of A.P.

Court: Andhra Pradesh High Court

Date of Decision: July 29, 1998

Acts Referred: Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 â€" Section 3(1), 8(1)
Constitution of India, 1950 â€" Article 13
Hindu Succession Act, 1956 â€" Section 14(1), 14(2), 30

Citation: (1998) 5 ALD 243 : (1998) 5 ALT 675 : (1998) 3 APLJ 36

Hon'ble Judges: G. Bikshapathy, J

Bench: Single Bench

Advocate: Mr. K. Padmanabha Goud, for the Appellant; Government Pleader for the Land Acquisition, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. All the three Revisions can be disposed of by a common order as identical questions of law arise in all these revisions.

2. All the Revisions are filed aggrieved by the orders of the learned Land Reforms Appellate Tribunal, East Godavari in LRA Nos.249/90,

11/1991 and 16/1992 dated 23-6-1994. Since the original Declarant died their LRs are prosecuting the cases and it is necessary to trace certain

facts in nutshell.

3. One D. Gopala Krishna filed declaration LCC No.797/APM/75 u/s 8(1) of the Land Reforms Act on behalf of his family unit. After enquiry,

the Tribunal by orders dated 27-12-1977 declared that the family unit of the declarant was holding an excess of the ceiling area., Aggrieved by the

said order, he preferred LRA No.756/1978 which was allowed on 13-2-1980 and the matter was remanded for fresh disposal on the point of

tenancy. The appellate authority also ordered exclusion of certain lands from the computation of the declarant. To the extent of this direction, the

State filed a Revision CRP No. 4116/1980 and the same was allowed on 1-6-1987 directing inclusion of certain lands in the holding of the

declarant. Thereafter, the Tribunal computed the holdings and passed the orders on 15-5-1990 holding that the family unit held excess land.

Against the said orders, Appeals were filed by the aggrieved parties. The Land Reforms Appellate Tribunal uphold certain contentions of the

Appellants and rejected some of the contentions by orders dated 23-6-1994 to the extent of the orders which went against the interest of the

Appellants, the present Revision Petitions have been filed.

4. The Revision Petitioner in CRP No.3612/1994 is one Mr. D. Venkataswamy, son of late Gopala Krishna. He filed declaration in LCC No.

796/APM/75 u/s 8(1) of the Land Ceiling Act. The Tribunal by orders dated 27-12-1997 determined the excess over the ceiling area. Against

that, an appeal was filed and the same was remanded on 20-2-1998 for fresh enquiry. After remand, the lower Tribunal again found excess by

orders dated 13-12-1990, against which LRA No.11/1991 was filed. The said appeal was dismissed on 23-6-1994 against which present

Revision has been filed.

5. The Revision Petition No.3613/1994 was filed by one Mr. D.Nagabhushanam, son of late Gopala Krishna. In LCC No.795/APM/ 75 and by

an order dated 27-12-1977 it held excess land holding. Against which LRA No.757/78 was filed and the matter was remanded for fresh disposal.

The declarant also filed CRP and the same was allowed and the matter was remanded for fresh enquiry. Thereupon, the lower Tribunal passed an

order on 16-1-1991 declaring that the declarant is having excess land against which LRA No. 16/ 92 was filed and the same was dismissed on

23-6-1994. The present revision is filed against the said order.

6. The Tribunal upheld the order of the Tribunal in computing (a) certain lands held by Smt. B.Meenakshamma in the holding of the petitioners, (b)

lands which was the subject matter of the land acquisition proceedings, (c) the lands held by the tenants. The learned Counsel for the petitioners

submit that the findings on these three issues are wholly erroneous and contrary to law.

7. The first issue that arises for consideration is whether the land held by Smt B.Meenakshamma are excludable from the computation of the

holdings of the petitioners?

8. Common ancestor was one D. Venkataswamy, He had five sons namely Venkat Reddy, Veeram Chetti, Peda Sahelu, Pynappa Chetti and

Nagabhushanam. Venkat Reddy died intestate. Pynappa Chetti had two sons namely Nagabhushanam and Veera Raghavulu. Nagabhushanam

died issueless. Veera Raghavulu left behind him his widow Nagamma, Nagabhushanam had one son by name Gopala Krishna. He filed a suit OS

No.22/1944 in the Court of the Subordinate Judge, Amalapuram for partition and separate possession of plaint schedule properties. Smt.

B.Meenakshamma was the 19th defendant in the suit. During the suit proceedings, a compromise was effected between the parties and

accordingly a decree in terms of the compromise was passed on 4-12-1994. In terms of the said decree, the said Smt. B. Meenakshamma was

entitled to hold certain lands, which are the subject-matter in the revisions. In the compromise, it appears that Smt B.Meenakshamma was entitled

to enjoy the property in lieu of her maintenance till her death. But, however, she died in 1972. After her death, her daughter Seetha Lakshmi

claimed the title in respect of the property held by her mother which was the absolute property by virtue of Section 14(1) of the Hindu Succession

Act. The suit in OS No.50/1979 was filed in Sub-Court, Amalapuram and the same was contested by the defendants and ultimately it was

decreed on merits on 15-12-1983. Against the same appeal in AS No.930/1984 was filed and the same was also dismissed. Consequently, she

took possession of the property on 14-4-1998.

9. The learned Government Pleader submits that the possession of the declarant as on the relevant date i.e. 1-1-1975 when the Land Ceiling Act

came into force has to be taken into consideration, while computing the holdings. Admittedly, the declarant was in possession of the land in

question as Smt. B.Meenakshamma died in 1972 and it reverted back to family. The land was again handed over to the daughter Smt. Seetha

Lakshmi only on 14-4-1988. Since the land was held by the declarant as on the date 1-1-1975, the Tribunal was justified in holding that the land

was liable to be included in the holdings of family unit. On the other hand, the learned Counsel for the petitioners submit that Smt.

B.Meenakshamma held the property as absolute owner in terms of Section 14(1) of the Hindu Succession Act and Section 14(2) cannot be

invoked to deny the property devolving on her absolutely and hence he submits that the appellate Tribunal has misconstrued the provisions of

Section 14 of Hindu Succession Act (hereinafter called "the Act") and rendered an erroneous finding.

10. There is no dispute that the suit was filed for partition and separate possession and during the proceedings a compromise took place between

the members of the joint family and Smt. B.Meenakshamma was given certain lands towards her maintenance with life interest, in lieu of her share

which could have fallen to her late husband had he been alive. It also appears that in the compromise decree, it was mentioned that she will enjoy

the property for life time. Therefore, in 1972 when she died, it appears that the land was again assumed by the family and being enjoyed. On

account of this the daughter filed a suit in OS No.50/1979 on the file of Sub-Judge, Amalapuram for declaration and ultimately it was decreed and

the same was also confirmed in appeal by this Court in AS No.930/1984, dated 14-4-1988. While, the learned Counsel for the petitioners takes

the assistance of Section 14(1), the learned Government Pleader takes assistance of Section 14(2). For proper appreciation of the case, let us

consider the Section 14 of the Hindu Succession Act, which reads as follows:

14. Property of a female Hindu to her absolute property :--(1) Any property possessed by a female Hindu, whether acquired before or after the

commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, ""property"" includes both movable and immovable property acquired by a female Hindu by inheritance or devise,

or at a partition or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her

marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held

by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a

decree or order of Civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a

restricted estate in such property.

The effect of decree which states that Smt. B.Meenakshamma will have a life interest in the property with reference to the Section 14 has to be

considered. u/s 14(1) any property possessed by a female Hindu, whether acquired before or after enactment shall be held by her as full owner

and not as a limited owner. This Act came into force with effect from 18-6-1956. Whether it fells u/s 14(1) or 14(2) of the Act has to be

considered.

11. A plain reading of a decree would only show that a limited right was given to the widow, but at the same time it has to be noted that the

property was given to her, in lieu of her maintenance consequent on the death of her husband, who was one of the co-sharers in the property in the

Hindu joint family. This issue is no more res integra, and it has been considered by the Apex Court in number of decisions. In Tulasamma v. Sesha

Reddi, AIR 1977 SC 1944, the Supreme Court held thus:

Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of

Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property

under the old Sastric law, to abridge the stringent provisions against propriety rights which were often regarded as evidence of her perpetual

tutelage and to recognize her status as an independent and absolute owner of property.

In Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, , it was held that Section 14(1) engulfs an instrument

under its sweep and it extinguishes preexisting limits or restrictive conditions and confers absolute and full ownership of the property possessed by

Hindu female as on the date of the Act came into force namely 17-6-1956. The Courts have to consider the question whether the legatee has pre-

existing vestige of title under law and the nature of possession of the property held by her. In Mangat Mal (Dead) and Another Vs. Smt. Punni

Devi (Dead) and Others, , while rejecting the view taken by the High Court, the Supreme Court held that:

Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner,

more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and

take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property

in lieu thereof. It may also be made by providing, for the course of the lady''s life, a residence and money for other necessary expenditure. Where

provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing

right to maintenance and the Hindu lady acquires far more than the vestige of title which is '' deemed sufficient to attract Section 14(1).

Under the awarde provision was made, in lieu of Sukh Devi''s preexisting right to maintenance, of money and interest of life in the Bidasar

property. Sukh Devi, therefore, acquired limited ownership rights in the Bidasar property in recognition of her pre-existing right to maintenance.

Upon the coming into force of the Act, the limited rights acquired by Sukh Devi in 1934 blossomed into full ownership of the Bidasar property,

and she became entitled to sell its ''nohra''. In our view, therefore, the High Court was in error in the view that it took.

Accordingly, the Supreme Court held that the right acquired by the widow under Award was in recognition of pre-existing right to maintenance

and that therefore, it had blossomed into an absolute right u/s 14(1) of the Act. In Seth Badri Prasad Vs. Srimati Kanso Devi, , consideration of

sub-section (1) of Section 14 came up before the three Judges Bench of the Supreme Court, the Supreme Court held thus:

that the words ""acquired and ""possessed"" have been used in their widest connotation. Possession must be constructive or actual or in any form

recognised by law. In the language of Explanation the word ""acquired"" must also be given the widest possible meaning. Sub-section (2) of Section

14 would come into operation only if acquisition in any of the matters indicated therein does not come u/s 14(1) and was made for the first time,

without there being any pre-existing right in the Hindu female who is in possession of the property. It was held that since she was in possession of

the property as a widow''s estate, her limited right was enlarged into an absolute right u/s 14(1).

In Mangal Singh v. Shrimati Rattno, AIR 1967 SC 1786, another three Bench was to consider the question whether a Hindu female who was

dispossesed from the property in her possession before the Act had come into force became an absolute owner u/s 14(1). This Court held that the

words ""possessed by"" instead of the expression "" in possession of"" in Section 14(1) was intended to enlarge the meaning of the expression

possession by"" to cover case of ""possession in law"". Even though the Hindu female was not in actual, physical or constructive possession of the

property Section 14(1) stands attracted. Similar issue came up for consideration before the Supreme Court in C. Masilamani Mudaliar and Others

Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, and held thus:

It is seen that if after the Constitution came into force, the right to equality and dignity of person enshrined in the Preamble of the Constitution.

Fundamental Rights and Directive Principles which are a trinity intended to remove the discrimination or disability on grounds only of social status

or gender, removed the pre-existing impediments that stood in the way of female or weaker segments of the Society. In S.R. Bommai v. Union of

India, (1995) 1 SCC (sic) this Court held that the Preamble is part of the basic structure of the Constitution. Handicaps should be removed only

under rule of law to enliven the trinity of justice, equality and liberty with dignity of person. The basic structure permeates equality of status and

opportunity. The personal laws confering inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but

from the religious scriptures. The law thus derived must be consistent with the Constitution lest they became void under Article 13 if they violated

fundamental rights. Right to equality is a fundamental right. Parliament, therefore, has enacted Section 14 to remove pre-existing disabilities

fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section

14(1) enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it.

After referring to various international covenants and the deliberations in the constituent assembly and also the United Nations Report of 1990,

Vienna Declaration of Elimination of all forms and discrimination against Women (Cedaw) and the provisions of Human Rights Act, 1993, the

Apex Court held that:

Explanation I to Section 14(1) gives wide amplitude to the acquisition of property in the widest terms. It is merely illustrative and not exhaustive.

The only condition precedent in whether Hindu female has a pre-existing right under the personal law or any other law to hold the property or the

right to property. Any instrument, document, device etc. under which Hindu female came to possess the property-movable or immovable-in

recognition of her pre-existing right, though such instrument, document or device is worded with a restrictive estate, which received the colour of

preexisting restrictive estate possession by a Hindu female, the operation of sub-section (1) of Section 14 read with Explanation I, remove the

fetters and the limited right blossoms into an absolute right.

It further held as follows:

As held by this Court, if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the

acquisition is for the first time, without any vestige of preexisting right under the instrument, document or device etc. then sub-section (2) of Section

14 gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of sub-section (1). Sub-section

(2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu u/s 30 is required to be understood in

this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or

device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to

construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time

under the instrument without any vestige of preexisting right. If the answer is in the positive, sub-section (1) of Section 14 gets attracted. Thus

construed, both sub-sections (1) and (2) of Section 14 will be given their full play without rendering either as otiose or aids as means of

avoidance.

Thus, it is clear that if widow Smt. B.Meenakshamma held the properties in lieu of her pre-existing right towards maintenance, it cannot be treated

as of right to property arising under the instrument only namely the decree, but, it is a reflection of pre-existing right under the Shastric law, which

had blossomed into an absolute ownership after 1956 u/s 14(1) of the Act. The preexisting right to maintenance under Shastric law has to be

construed as having been transformed into absolute right u/s 14(1) wiping out the restrictive right given u/s 14(2). The entire estate given to the

widow in lieu of her pre-existing right for maintenance should be treated as an estate transformed into an absolute estate by operation of Section

14(1). Therefore, by virtue of these pronouncements, it has to be held that the decree even though contained the restrictive right, but in view of the

fact that the widow had a pre-existing right of maintenance and the property was given to her in lieu of her maintenance, she was entitled to hold

such property as an absolute owner and it cannot be treated as a right accrued for the first time under the compromise.

12. It is also noticed that daughter of Smt. B.Meenakshamma, subsequently filed a suit for declaration that she is entitled to succeed the properties

of her late mother. After the decree was passed, matter was carried in appeal. It was contended before this Court by the learned Counsel for the

appellants/ defendants that when the mother of the 1st defendant obtained 10 acres under Ex.A-1 she acquired rights to the suit schedule property

only for the first time and thereunder she agreed for a limited interest which cannot be enlarged by operation of sub-section (1) of Section 14, but

sub-section (2) thereafter applied to the facts of the case. Rejecting the said contention, the learned Judge K. Ramaswamy, J. as he then was held

that under the Act any Hindu widow has a right to be in possession of the properties of her late husband. It is in recognition of her widows estate,

she was entitled to sell even the entire estate she obtained for legal necessity. Thus, she had a pre-existing right to possession. That right of the

mother was recognised under the law then existing as it was a pre-existing right. The possession of the land was delivered to her under the decree

to her. Her limited right becomes enlarged by operation of Section 14(1) of the Act into an absolute right. She becomes the owner of the

properties from the date the Act came into force. Admittedly, she was in possession and enjoyment of the same from December 4, 1944 till

December 28,1972 on which date she died. Under these circumstances, she became the absolute owner and the decree for declaration and

possession granted by the trial Court was perfectly legal. The order in the appeal became final. Thus, it is clear that the property which is sought to

be included in the holdings of the declarants are the absolute properties of Smt B.Meenakshamma, and they are now declared to be the properties

of her daughter Smt. Seetha Lakshmi. Therefore, it has to be held that they are liable to be deleted from the computation. The learned Government

Pleader submits that since the declarant was holding the land in question as on the date when the Land Reforms (Ceiling on Agriculture Holdings)

Act, 1973 (Act No.1 of 1973) came into force, it has to be included in the holding of the declarant. She takes the assistance of the definition of

''Holding'' in Section 3(i) which reads as follows:

(i) ''holding'' means the entire land held by a person:

(i) as an owner;

(ii) as a limited owner;

(iii) as an usufructuary mortgagee,

(iv) as a tenant;

(v) who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise or in

one or more of such capacities, and the expressions to hold land"" shall be construed accordingly.

Explanation: Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in

the holding of both such persons.

I am unable to subscribe to the contention. Even assuming that the land was taken possession consequent on the death of Smt. B.Meenakshamma

in 1972, yet the possession has to be corelated to the owner or limited owner or in other capacities as mentioned in sub-clauses (1) to (5) and

admittedly in the instant case, the holding does not fall in any of the sub-clauses. If a person is holding the land under misconception that he is the

owner, that cannot be construed as a valid holding. More over in the instant case in the suit filed by the daughter of Smt. Meenakshamma, it was

held that the land possessed by her mother was an absolute property u/s 14(1). Therefore, at the most it can be only said that the declarant was

only looking after the properties which validly belongs to Smt. Meenakshamma, In such an event, it cannot be included in the family holding.

13. Under these circumstances, the orders of the learned Land Reforms Appellate Tribunal in directing the inclusion of the lands held by Smt

Meenakshamma is illegal and not sustainable. Accordingly, the suit lands which fell to the share of Smt. Meenakshamma and which are sought to

be included in the family holdings are to be deleted, from the computation of land holdings in the three land ceiling cases covered by the three

revision petitions herein.

14. The next issue is whether the lands covered by the land acquisition proceedings are to be excluded?

15. It is the case of the petitioners that the original authority has not given sufficient time to adduce evidence and to file necessary documents. The

other issue also related to the lands in occupation of the tenants. Similar contention was raised by the learned Counsel for the petitioners that no

sufficient opportunity was given to adduce the evidence in support of the respective contentions. The original authority namely Land Reforms

Tribunal has included the lands which was covered by the land acquisition and also in possession of the tenants on the ground that there was no

sufficient evidence adduced to exclude the lands from the computation of ceiling limits. It was observed by the appellate Tribunal that the sufficient

opportunity was given to the petitioners and that they did not adduce any evidence or filed any documents and therefore the Tribunal could not find

fault with the order of the original Tribunal in this regard. But, the learned Counsel for the petitioners say that the petitioners are ready with

evidence and documents, but for the reasons best known to the original authority, it proceeded in a post haste manner and deprived the petitioners

of their valuable property. There is no dispute that the computation will definitely deprive the petitioners of their right to properly and any

deprivation should be after giving sufficient opportunity to the persons who will be effected by such deprivation. I am convinced that the petitioner

should be given one more opportunity to lead evidence and file necessary documents in this regard.

16. Under these circumstances, the Revisions arc allowed to the extent indicated above and the matters are remanded back to the original Tribunal

with the following directions:

(i) The Tribunal shall now give an opportunity to the petitioners to adduce evidence and to file documents only relating to the land covered by the

land acquisition proceedings and also held by the tenants and recompute the same in accordance with law.

(ii) The Tribunal shall exclude the lands held by Smt. B.Meenakshamma to the extent covered by the land ceiling cases.

(iii) The Tribunal shall complete the exercise and pass the appropriate orders within a period of four months from the date of receipt of copy of this

order.

However, it is made clear that if the petitioners fail to adduce any evidence either documentary or oral, in spite of opportunity having been given to

them by the Tribunal, it is open for the Tribunal to pass appropriate orders.