Rambhau Vs State of Maharashtra

Court: Bombay High Court (Nagpur Bench)

Date of Decision: July 9, 1985

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

Citation: AIR 1986 Bom 69 : (1985) MhLj 869

Hon'ble Judges: Patel, J; Deshpande, J

Bench: Division Bench

Advocate: R.R. Deshpande, for the Appellant; A.A. Desai, A.G.P., for the Respondent

Judgement

Deshpande, J.
The question, which arises for consideration in this letters patent appeal, is whether while calculating ceiling area under S. 3

of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, as amended by Act No.21 of 1975, (the Ceiling Act, for short), the

provisions for maintenance and marriage expenses of unmarried major daughters have to be taken into account.

2. The appellant-Rambhau Rajaram Mahure filed a return under S. 12(1)(a) of the Ceiling Act of the land held by his family before the Surplus

Land Determination Tribunal, stating that his family comprised of his two minor sons, wife and himself. The return disclosed the details of land as

106 acres and 24 gunthas held by the appellant along with his minor sons. The appellant''s wife-Indubai separately held 91 acres and 6 gunthas of

land which she had received under a gift-deed, dt. Oct. 8, 1949, from her mother. That land was transferred to different persons under agreements

of sale. Eventually, the Surplus Land Determination Tribunal declared that the family was the surplus holder of 129 acres and 38 gunthas, after

allowing 10 acres and 32 gunthas as "no land" from the appellant''s holding. The authorities found that the land held by Indubai was liable to be

included in the appellant''s family unit and the transfers by her were made in anticipation of, or in order to defeat or avoid the object of the

Amending Act, 1972. Dissatisfied by the order passed by the Maharashtra Revenue Tribunal, the appellant filed Writ Petition No. 642 of 1985,

challenging that order, inter alia, on the ground that the ceiling authorities ought to have seen that there were two major unmarried daughters and

while calculating the extent of the land in possession of the family unit, the liability of the joint family for the maintenance and expenses of the

marriages of the daughters had to be taken into account. The learned single Judge by the order passed on April 17, 1985, dismissed the writ

petition in limine.

3. It was pointed out to us that the ground, which had been raised by the appellant regarding the marriage expenses of unmarried daughters, ought

to have been considered by the learned single Judge, in view of a Single Bench ruling of this Court in Manaklal Nathmal Kothari v. State of

Maharashtra, 1982 MahLJ 654 and, in any event, it was necessary for the leaned single Judge to have referred the matter to a Division Bench,

even if the learned Judge were to have taken a view contrary to that taken in Manaklal''s case, though there was another Single Bench ruling

reported in Bhagwandas and Others Vs. State of Maharashtra and Others, which may have supported the view taken by the learned single Judge

who passed the impugned order.

4. In support of the proposition that while calculating the ceiling area under S. 3(3)(i) of the Ceiling Act, the question of provision for maintenance

and marriage expenses of major daughters is necessary to be taken into account . Shri R.R. Deshpande, the learned Advocate for the appellant,

referred to para. 304 (2) of Mulla''s Principles of Hindu Law, 15th Edition, where it has been observed that the case of an unmarried daughter

stands on a different footing, and her right to maintenance and marriage expenses out of the joint family property is in lieu of a share on partition;

provision should accordingly be made for her marriage expenses in the decree. The submission was that since the right of maintenance and

marriage expenses out o the joint family property is in lieu of a share in partition, that share had to be taken into consideration for the purposes of

S. 3(3)(I) of the Ceiling Act. S.3(3), so far as material, is as follows:-

3.(3) Where any land -

(a) is held by a family of which a person is a member, ...,

and the holding of such person or of a family unit of which such person is a member including the extent of share of such person, if any, in the land

answering to any of the descriptions in cls. (a),(b),(c) or (d) above, exceeds the ceiling area on or before the commencements date or any date

thereafter (hereinafter referred to as the relevant date), then for purpose of determining the ceiling area and the surplus land in respect of that

holding, the share of such person in the land aforesaid shall be calculated in the following manner:-

(I) in the land held by a family of which the person is a member, the share of each member of the family shall be determined so that each member,

who is entitled to a share on partition, shall be taken to be holding separately land to the extent of his share , as if the land had been so divided and

separately held on the relevant date.

A plain reading of these provisions would show that only the share of such a member shall be determined who is entitled to share on partition. In

the note below para. 317 of Mulla"s Principles of Hindu Law, Fifteenth Edition, it has been observed as follows:-

No female except those mentioned in paras 315 to 317 is entitled to a share on partition. Thus, daughters, sisters, etc., are not entitled to a share

on partition. But on a partition provision must be made for their maintenance and marriage expenses : (See para. 304).

The observations in para. 304(2) referred to above have to be understood in the context that the daughters, sisters, etc., are not entitled to a share

on partition, and what they are entitled to is only provision for maintenance and marriage expenses out of the joint family property. Shri

Deshpande, however, urged that in M.A. Rajagopala Ayyar v. M.A. Venkataraman AIR 1947 PC 122 , the observations of Sir Dinshah Mulla in

paragraph 304 were quoted with approval, and so the proposition that the provision for maintenance and marriage expenses out of the joint family

is in lieu of a share on partition cannot, now, be disputed. The Privy Council was, however, considering the claim of a widow of a coparcener who

spent her own money for the marriage expenses of her daughter, to be reimbursed on a partition, and found that she was entitled to the

reimbursement. There was no question there of the Privy Council holding that a daughter was entitled to a share on partition. In Rangubai Vs.

Laxman Lalji Patil, this Court only held that by the decree in a suit for partition, the Court should make provision for the maintenance and marriage

expenses of the daughters. In Sankaranarayanan and Another Vs. The Official Receiver, Tirunelveli and Others, it was held that in the case of a

daughter, after filing of partition suit, the amount expended for her marriage is to be provided by joint family. Both these cases speak of the

provision to be made for the marriage expenses of a daughter in the event of a partition and do not say, as tried to be contended by Shri

Deshpande, that a daughter is entitled to a share on partition. In itself, the proposition is so well settled that no further discussion on this point is

called for.

5. The next submission was that though there may not be actually a partition but the share of the member who is entitled to a share on partition has

to be determined, all these considerations will have to be taken into account. However, what has to be done under the statute would have to be

limited by the specific provision of the statute. The object of the Ceiling Act, inter alia, is to impose a maximum limit on the holding of agricultural

land in the State of Maharashtra and to provide for the acquisition and distribution of land held in excess of such ceiling, and it is for this purpose

that the share of a person, who is entitled to a share on partition, has to be determined in the agricultural land alone, without taking into

consideration the other movable or immovable property of the family or the encumbrances and claims on the property belonging to the family. S.18

of the Ceiling Act enumerates the matter to be considered by the Collector at the hearing and it does not refer to matters such as the right to

maintenance and the provisions for expenses on the marriages of the unmarried daughters. In fact, such an elaborate enquiry would not be relevant

for the purposes of the Ceiling Act. We are clear that for the purpose of S.3(3)(i) of the Ceiling Act, it is not necessary to ascertain the entitlement

of the daughters who do not have a share in the property. There is nothing in the Ceiling Act which is calculated to defeat the claims of such

daughters. Their claim for maintenance and marriage expenses would be available against whatever property might be left with the family after the

declaration of the surplus. Even the judgement in Maneklal''s case 1982 MahLJ 654 does not say that the daughters are entitled to a share in the

partition or that for purposes of sub-sec.(3) of S.3, their shares have to be carved out.

6. We may point out that a similar contention had been raised by the landholder in Nagendra Verma v. State of Maharashtra Writ Petn. No. 661

of 1977, decided by a learned single Judge of this Court on Sept. 13, 1982 and had been negatived. That decision was relied upon by another

learned single Judge in Bhagwandas and Others Vs. State of Maharashtra and Others, and it was observed as follows:-

While calculating the extent of surplus land under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act as amended by

Act 21 of 1975, it is not necessary to ascertain the question as regards setting apart of any area to meet the marriage and maintenance expenses of

an unmarried major daughter. The combined effect of Ss. 3 and 4 of the Ceiling Act is to calculate the share of each member separately for the

purpose of the Act and to club together the lands of those who fall within the concept of family unit for determining the total holding and

consequently the surplus if any. What is thus contemplated by S.3(3)(i) of the Ceiling Act is not actual general partition by metes and bounds but

an imaginary or notional partition merely to calculate the total land of the family unit or the person.

We respectfully agree with the decisions in Nagendra Verma v. State of Maharashtra Writ Petn. No. 661 of 1977 and Bhagwandas and Others

Vs. State of Maharashtra and Others, and disagree with the view in Maneklal''s case 1982 MahLJ 654. The correct legal position under S.3(3)(i)

of the Ceiling Act is that while calculating the extent of share which the members of a family unit are entitled to hole, the claims of the unmarried

daughters to maintenance and marriage expenses are not required to be taken into account; but what is to be determined is the share of such a

member of the family who is entitled to a share on partition. The case of a daughter who is not entitled to a share on partition would not, therefore,

come within that provision.

7. In the result, the appeal is dismissed, but there will be no order as to costs. Appeal dismissed.