CASE NO.:
Appeal (civil) 3190 of 1995
Appeal (civil) 3191 of 1995
Appeal (civil) 3192 of 1995
Appeal (civil) 2873 of 2001

PETITIONER:
STATE OF ORISSA & ORS.

Vs.

RESPONDENT:
K. SRINIVASA RAO (DEAD) THROUGH LRS.

DATE OF JUDGMENT: 18/04/2001

BENCH:
M.B. Shah & K.G. Balakrishnan

JUDGMENT:

Shah, J.

CIVIL APPEAL Nos. 3190, 3191 AND 3192 of 1995 :
L...I...T.....T.....T.....T.....T.....T.....T..J

-Can a married woman be termed as child and thereby member of her parents family? Or -Whether she is member of her husbands family?

-As per normal feature in the Society-she would be member of her husbands family and not that of her parents.

However, it is the contention of the State Government that she would be member of her parents family for the purpose of land ceiling under the Orissa Land Reforms Act, 1960 (hereinafter referred to as the Act) on the basis of definition given to the word family in Section 37(b) of the Act. The Full Bench of the High Court negatived the same by holding thus (Para 13):-

.I am inclined to take the view that while defining family, the legislature was conscious of the position of married daughters and in view of the rural and agricultural set up in this part of the country, it was perhaps thought that ipso facto they, on being married away, ceased to be members of the parents family and become members of the husbands family and therefore no provision was thought necessary to be made. Giving this interpretation to the statutory definition of the expression family would not work out any violation either of the scheme of the legislation or injustice to a daughter exposing her to double jeopardy, once by aggregating her properties with her fathers holdings and then with her husbands holdings if her husband happens to be a land holder as such.

That order is under challenge in these appeals.

For appreciating and deciding the controversy, we would refer to the relevant provisions of the Act which have bearing on the questions involved.

37-A. Ceiling area-The ceiling area in respect of a person shall be ten standard acres:

Provided that where the person is family consisting of more than five members, the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, so however, that the ceiling area shall not exceed eighteen standard acres.

37-B. Persons not entitled to hold land in excess of ceiling area-On and from the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (Presidents Act 17 of 1973), no person shall, either as landholder or raiyat or as both, be entitled to hold any land in excess of the ceiling area.

Explanation-For the purposes of this section all lands held individually by the members of a family or jointly by some or all the members of a family shall be deemed to be held by the family.

37. Definitions-In this Chapter-

(a) person includes a company, family, association or other body of individuals, whether incorporated or not, and any institution capable of owning or holding property;

(b) family in relation to an individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970.

Prior to the amendment by Act No.29 of 1976, Section 37 was as under:-

37. (1) No person shall hold after the commencement of this Act lands as land-holder or raiyat under personal cultivation in excess of the ceiling area determined in the manner hereinafter provided.

Explanation-For the purposes of this Chapter a person includes a company or any other corporate body or a joint Hindu Mitakshara family.

(2)..

As per Section 37-B, no person is entitled to hold any land in excess of ceiling area. Person includes family. So, a family is not entitled to hold land in excess of ceiling area and family in relation to an individual would mean husband or wife as the case may be, and their children. However, where such family is consisting of more than five members then ceiling area in respect of such family is to be increased by two standard acres for each member in excess of five but that ceiling area shall not exceed eighteen standard acres. As per the explanation to Section 37-B, all lands held individually by the members of a family or jointly by some or all the members of a family are deemed to

be held by the family. Further, in case where land is held by a family, the question-as to whether the holding of the family was in excess of the ceiling area has to be decided in reference to the state of affairs as it existed on and from the commencement of the Orissa Land Reforms (Amendment) Act, 1973 i.e. 2nd October, 1973.

The definition of the term family in Section 37(b) of the Act came for consideration before this Court in Dibyasingh Malana v. State of Orissa and others [1989 Supp. (2) SCC 312]. In that case, the Court considered the contention that in view of partition in families of the appellants in the year 1965, the land in ancestral property which fell in the share of the appellants could not be clubbed with those of their father. That contention was negatived on facts by observing that the main provision containing the definition of the term family is to be found in the first part of Section 37(b) namely family in relation to an individual, means the individual, the husband or wife, as the case may be, of such individual and their children, whether major or minor. Later part of Section 37(b) namely, but does not include a major married son who as such had separated by partition or otherwise before the 26th day of September, 1970, does not, on the face of it, contain a matter which may in substance be treated as the fresh enactment adding something to the main provision but is apparently and unequivocally a proviso containing an exception. The Court further held thus: -

Given its proper meaning the words as such can only be interpreted to mean that it is only such son who would get the benefit of the exception who had separated by partition or otherwise before September 26, 1970 as major married son.

The Court also negatived the contention that a son who is separated by partition or otherwise from his father was himself an individual and if his land was clubbed with that of his father he will be subjected twice to the provisions relating to declaration of surplus land by holding that land of such son alone who does not fall within the exception is to be clubbed with that of his father and with regard to land which has been so clubbed the son obviously can not be treated as another individual in his own right for purposes of declaration of surplus land. Only such son who falls within the exception will be liable to be dealt with as an individual in his own right, as his land has not been clubbed with that of his father. The Court further observed, suffice it to say, so far as this submission is concerned that none of the appellants in these appeals is a married daughter and as such we do not find it necessary to go into this question. As the question-whether married daughters holding of land could be clubbed with her parents was kept opened, it has given rise to the present controversy.

In this background, we would consider the meaning of the term family in relation to a married daughter as per the definition. Married woman is an individual and as per the definition of word family, her family would consist of her-self, her husband and their children whether major or minor. This would also be in consonance with general understanding of the word family as well as status of a married woman in the society. If she is holding land, she would be regarded as a separate unit who will have to file a

separate declaration in respect of her holding and that of her family under the Act.

Secondly, for the purpose of the Act, definition clause Section 2(21) inter alia provides that person under disability means a widow or an unmarried woman or a woman who is divorced or separated from her husband by a decree or order of a Court or any custom or usage having the force of law. This definition would indicate that a woman is considered to be a separate entity having her own individuality and after marriage there is no question of clubbing her holdings with the family of her parents. Further, considering the aforesaid definition even if a married woman who has separated from her husband by a decree or order of a court or under any custom or usage having the force of law and staying along with her parents, it would be difficult to hold that she is a member of her parents family. After marriage, she looses the status of being member of her parents family. As against this, a major son after marriage would not automatically cease to be a member of his parents family. Therefore, the phrase children, whether major or minor as mentioned in the definition of the word family is required to be given reasonable meaning as understood in popular sense of the word. That appears to be the reason why the Legislature has not made any provision either excluding or including married daughters land holdings in her parents family, otherwise the definition of the word family would not be workable. For the married son, the Legislature has provided that his holdings of the land would not be clubbed if he is a major married son who had separated by partition or otherwise before 26th September, 1970. This also appears to be normal phenomenon with regard to the family in the society. It is to be stated that prior to the substitution of Section 37 and introduction of Sections 37-A and 37-B by Act 29 of 1976, person included a company or any other corporate body or a joint Hindu Mitakshara family. The legislative intent for this amendment appears not only to include the family which is known as joint Hindu Mitakshara family, but also to include other families which may not be covered by the concept of Hindu Mitakshara family and non-Hindu families. But, it would be difficult to presume that Legislature ever intended to cover married daughter, whose family is that of her husband, for the purpose of clubbing her land holdings with that of her parents. If the contention of the learned counsel for the appellant is accepted, holdings of a married daughter would be required to be included in her parents family as well as in the holdings of her husband and her children and this would lead to absurdity and unintended injustice to a woman. The object and reason for substituting Section 37 and incorporating Sections 37-A and 37-B is with a view to imposing a ceiling on the aggregate area of land held by all the members of a family. For achieving that object, it is not necessary to include married daughters holdings in the holdings of her parents by stating that she is major child of her parents. For the purpose of family she becomes part and parcel of her husbands family and that is the common notion and understanding. Hence, in our view, the interpretation given by the High Court is just and reasonable. It is also established rule of interpretation of a statute that court will interpret a statute as far as possible, agreeable to justice and reason, and avoid imputing to the legislature, an intention to enact a provision which flouts notions of justice and norms of fair play unless a contrary intention

is manifest from the words plain and unambiguous [Re. Madhav Rao Scindia v. Union of India, AIR 1971 SC 530].

In any case, the impugned judgment of the High Court excluding married daughters from the concept of family of her parents is based on interpretation of term family given in the local law which is thereafter consistently followed and, therefore, at the fag end of the implementation of Orissa Land Reforms Act, it would not be proper to disturb the course of decisions by interpreting that provision differently. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling orders and/or transactions which might have been entered into on the faith of those decisions.

In the result, these appeals are dismissed. There shall be no order as to costs.

C.A. No. OF 2001 (Arising out of SLP (C) No.6099/92)

Leave granted.

In this appeal, the question which was considered by the High Court (paragraph 5 of the judgment) reads thus: -

For getting a separate ceiling area distinct from his father, petitioner is to prove that he as a major married son had separated by partition or otherwise before 26.9.1970. Question is whether majority of petitioner, his marriage and separation are to be taken into consideration independently of each other to have happened before 26.9.1970 or the separation is required to be as a major married son. If all the three are to be taken into consideration independently, petitioner can succeed in getting a separate ceiling by proving his marriage in 1969, as claimed by him. If, however, majority and marriage are to precede separation, petitioner would fail in his claim even if his marriage in 1969 is accepted.

The Court thereafter considered the decision rendered by this Court in Dibyasingh Malana (supra) and held that this Court arrived at the conclusion that for getting benefit of exclusion clause he must be major married son who as such had separated by partition or otherwise before 26th September, 1970. In the said case, the Court has approved the decision rendered by the Full Bench of the Orissa High Court in the case of Nityananda Guru v. State of Orissa (AIR 1983 Orissa 54 FB). In Nityanandas case in paragraph 2, it has been specifically mentioned that Nityananda Guru had three sons and three daughters; admittedly, none of the sons was major and married on the cut off date; and by a registered deed of partition dated 31st December, 1965, the lands were allotted to the shares of the sons and daughters. In that circumstances, the Court held that in view of the definition of family contained in Section 37, the land of such sons would be clubbed with the lands held by the parents in determining the ceiling area. In Dibyasinghs case also, it has been recorded in paragraph 3 that according to the appellants, partition in the respective families had taken place in the year 1965. Objections were filed asserting inter alia that in view of the partition in the families of the appellants in the year 1965, the lands

in the ancestral properties which fell in the share of the appellants could not be clubbed with those of their father. That contention was not accepted in view of the definition by holding that such of the major married sons who as such had separated by partition before the cut off date as contemplated by the definition of the term family were allotted separate ceiling units but so far as the appellants were concerned, their shares were clubbed with those of their father and only one ceiling unit was allotted as contemplated by the relevant provisions of the Act. In that context, the Court decided the matter and interpreted the definition of the word family, but it is nowhere laid down that for getting benefit of the said exclusion clause, such son must be first major, thereafter he should get married and subsequently should get himself separated by partition or otherwise prior to the cut off date. In some cases, son may be major, he may get himself separated prior to the cut off date and he may get himself married subsequently before the specified date. That would not mean that he is not entitled to get benefit of the said provision. Only requirement of exclusion clause is that before the cut off date, such son should be major, married and separated by partition or otherwise. In short, for the purpose of the land holding under the Act, the term family does not include such a son, who is major, married and separated by partition or otherwise prior to cut off date.

In this view of the matter, this appeal is allowed and the impugned judgment and order passed by the High Court is set aside. As the High Court has not decided the matter on merits, it is remitted back to the High Court for decision in accordance with law. There shall be no order as to costs.