PETITIONER:
KHACHAR BHIKHUBHAI UNADBHAIAND TWO OTHERS.

Vs.

RESPONDENT:
STATE OF GUJARAT AND ANOTHER

DATE OF JUDGMENT: 10/05/1996

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
KULDIP SINGH (J)

CITATION:
1996 AIR 2104 1996 SCC (4) 738
JT 1996 (6) 264 1996 SCALE (4)492

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

This appeal has been directed against the judgment and order dated June 30, 1995 passed by a learned single Judge of the High Court of Gujarat at Ahmedabad, in a Special Civil Application No. 4891 of 1995. filed by the appellants against the judgment dated March 31, 1995 passed by Gujarat Revenue Tribunal in Revision Application No. TEN.B.A.184 of 1994, in a case arising out of Gujarat Agricultural Lands Ceiling Act. 1960 (hereinafter referred to as the Act').

Unadbhai Apabhai Khachar was recorded holder of land measuring 72 acres 4 gunthas situated in village Ratanoar and Motachheda in Bocad Taluka. On coming into force w.e.f. 1.4.1976, of the amended Celling Act II of 1974, the Mamlatdar gave a notice to land-holder Unadbhail Apabhai for taking action for failure to submit information in respect of his holdings in prescribed form. Since Unadbhai had already died on April 27. 1970. his heirs - two sons and a daughter - the present appellants - submitted information in the prescribed form. The mamlatdar made an inquiry under the provisions of the Act and vide order dated January 5, 1982 declared an area of 26 acres 16 gunthas as surplus land as the appellants were jointly found entitled to retain only one unit of 45 acres of land out of the holdings comprising of an area of 72 acres 4 gunthas.

The appellants challenged the said order of Mamlatdar in appeal before the Deputy Collector which was dismissed. But the Revenue Tribunal by its order dated November 5, 1988 passed in the Revision preferred by the appellants remanded the case back to the Deputy Collector. The Deputy Collector by his fresh order set aside order of Mamlatdar dated January 5. 1982 and allowed the appeal party and remanded the case back to Mamlatdar to decide afresh after hearing the parties. The Mamlatdar made an inquiry as directed in the Remand Order and by his fresh order dated March 31, 1989

declared an ares of 26 acres 16 gunthas as surplus land. The Mamlatdar took the view that since on 1.4.76 the date on which the amended Act came into force, all the three appellants being the heirs of the deceased Unadbhai were minors and, therefore, they were not entitled benefit of sub-sections (3B) or (3C) of Section 6 of the Act as introduced by amending Act of 1974 with some other relevant provisions by Amending Act No. II of 1974. The main Act of 1961 was brought into force with effect from 15th June, 1961. The appellants again preferred an appeal against the said order before the Deputy Collector which was dismissed by an order dated March 26, 1990. The appellants went up in revision before the Revenue Tribunal. The Revenue Tribunal set aside the orders passed by the Mamlatdar as well as the Deputy Collector in appeal and remanded the case back to Mamlatdar for deciding the case afresh according to law, as per observations made therein.

In the third round, the Mamlatdar by his order dated March 30, 1993 held that there was no surplus land with the appellants as both the sons of the deceased-holder Unadbhai were entitled to one unit each. Aggrieved by the said order, the State Government went up in appeal before the Assistant Collector, Palitana, who allowed the appeal, setting aside the order of the mamlatdar dated March 30. 1993 and restored the original order of the mamlatdar dated January 5, 1982 passed in Ceiling Case No. 132. This order of the Assistant Collector was challenged in Revision before the Revenue Tribunal. The Tribunal dismissed the Revision relying on the decision in the case of State of Gujarat v. Patel Kala Sana, 1994 (1) Gujarat Law Reporter 448. wherein it has been held that in a family comprising of only brothers, a major brother cannot be treated as a major son for the purpose of sub-section (3C) of Section 6 of the Act, as the word "son" has to be understood in the context of living parents and such s living parent could either be such a son mother or father. According to the said decision of the High Court, if either parent is living. a major son will get a separate ceiling unit of land otherwise not. The appellants challenged the decision of the Revenue Tribunal in the High Court of Gujarat in Special Civil Application No. 4891 of 1995. The High Court, relying on its decision in Patel Kala Sana's case (supra), dismissed the application by order dated June 30, 1995 as well as the review by order dated September 5, 1995 against which this appeal by a special Leave has been directed.

The Learned counsel for the appellants submitted that the father of the appellants had died on April 27, 1970, much before coming into force of the amended Ceiling Act on April 1, 1976 and, therefore, the appellants being the heirs of Unadbhai will be deemed to have become owners of the respective shares in the land in question prior to the date of coming into force of the said Act and that being so, there will be no land exceeding the ceiling limit. He further submitted that even otherwise having regard to the provisions contained in sub-section (3C) of Section 6 of the Act, the two major sons of the deceased Unadbhai would be entitled to get one unit each of 54 acres and, therefore, there will be no land with them exceeding the ceiling limit out of a area of 72 acres 4 gunthas. He submitted that it would be wrong to interprate sub-section (3C) of Section 6 of the Act in a way so as to exclude the sons from the entitlement of a separate unit simply because neither of their parents was alive on the date of coming into force of the amended Ceiling Act. Thus, the main contention that centres round is with regard to the interpretation of sub-

section (3C) of Section 6 of the Act, which was introduced by Amending Act II of 1974, which came into force on April 1, 1976.

Here it would be relevant to see some of the relevant definitions of various expression. The expression "appointed day" has been defined in Section 2(4) to mean the day on which this Act comes into force, i.e. 15.6.1961. The term "joint family" has been defined in Section 2(16) to mean Undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence. The expression "person" in Section 2(21) includes a joint family. Further Section 2(27A) defines the expression "specified date" to mean the date of coming into force of the Amending Act, which admittedly came into force w.e.f. April 1, 1976.

The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act No. XXVII of 1961) was brought into force in the Stare of Gujarat on June 15, 1961 with a view to fix the ceiling on holding agricultural land and to provide for the acquisition and surplus agricultural land. As said earlier, the main question involved in this appeal is the interpretation of sub-section (3C) of Section 6 of the Act. Sub-section (3C) of Section 6 of the Act reads as follows :-

> "6(3C): Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1)."

In the case of Patel Kala Sana (supra), the question before the High Court was whether or not the legislature contemplated any Kind of family or a Joint family other than the family or the joint family of the father and his major sons for the purposes of sub-section (3C) of Section 6 of the Act. After analyzing the various relevant provisions of the Act, the high Courts came to the conclusion that the word "son" occurring in sub-section (3C) of Section 6 of the Act is quite plain and unamabiguous in its meaning in as much as a son in a family or for that matter a joint family would connote a son in the context of a living parent. The High Court also took the view that a family or a joint family consisting of mother and her major son or sons would also get the benefit of sub-section (3C) of Section 6 of the Act, as the word "son" has to be understood in the context of a living parent and such a living parent could either be son’s mother or father. If either parent is living, a major son in the family will be regarded as a son and nothing else. it has been further held by the high Court that the family unit. though the mother may not be the head of the family for all purposes, will be headed by the mother and none else. In that context, the son will have to be recognized as a son of that mother who is found living. According to the High Court, the existence of the male benefit of Section 6(3C) of the Act to a major son in the family would also be entitled to the benefits flowing from Section 6(3C) of the Act. This view of the High Court of Gujarat taken in the case of Patel Kala Sana (supra) came up for consideration of this Court in a bunch of petitions which were disposed of by this Court by order dated November 30, 1995 passed in Civil Appeal No. 7227 of 1995, wherein the interpretation of sub-section (3C) of Section 6 of the Act as expressed by the High Court has been accepted and upheld by this court.

In the present case before us, neither of the parents (father and mother) of the present appellants was alive on

the specified date i.e. 1.4.1976. This fact has been stated by the Revenue Tribunal in its judgment dated March 31, 1995 and the said fact was not disputed before us. That being so, the appellants being tow sons and a daughter of the deceased-holder of the land would not be entitled to a separate unit and having regard to the provisions of Section 6 (3C) of the Act, we find no error in the impugned judgment of the High Court.

Consequently, the appeal fails and is hereby dismissed. We make no order as to costs.