

PETITIONER:
KUPPUSAMY

Vs.

RESPONDENT:
THE AUTHORISED OFFICER AND ASSISTANT COMMISSIONER (LAND REFORM

DATE OF JUDGMENT: 03/07/1996

BENCH:
J.S. VERMA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami, J.

This appeal by special leave is preferred against the order of the Tamil Nadu Land Reforms. Special Appellate Tribunal, Madras in T.R.P. No. 17 of 1994 dated 28 March, 1995.

One Sellappa Gounder died in the year 1949 leaving behind two wives, Nallammal and Periammal and also a registered will dated 16.2.1948. The said Sellappa Gounder had a daughter through Periammal by name Kuppammal. The appellant is the son of said Kuppammal. As per the terms of the will, the properties set out thereunder will have to be enjoyed by the widows in equal shares during their lifetime and if any one of them pre-deceased, the survivor will enjoy the entirety. And after the death of both, his daughter Kuppammal will enjoy for her life time and after her death the children of Kuppammal will enjoy absolutely.

Periammal, the second wife of the said Sellappa Gounder died in 1967. The provisions of the Tamil Nadu Land Reforms (Reduction of Ceiling on Land) Act, 1970 (hereinafter referred to as "the Act") came into force on 15.2.1970. The Authorities under the Act assumed that on the death of Periammal, Nallammal succeeded to the entire estate by survivorship. Further treating the first wife Nallammal as limited owner and thereby coming within the purview of 'owner' under section 3(33) of the Principal Act, the authorities under the Act declared an extent of 36.65 ordinary acres equivalent to 9.163 standard acres out of 91.78 1/2 ordinary acres equivalent to 24.393 standard acres of land as surplus. Aggrieved by that after exhausting the statutory remedies, the appellant moved the High Court by filing Writ Petition No. 8824 of 1989 which was transferred to the Special Appellate Tribunal (hereinafter referred to as "the Tribunal") on the constitution of the same.

Before the Tribunal two contentions were raised. The first contention was that the first wife Nallammal was only a limited owner and as per the will executed by the deceased Sellappa Gounder and having regard to the intention of the testator, it must be held that the estate will vest absolutely with the children of Kuppammal and therefore, the

provisions of the Act are not attracted. This contention was not accepted by the Tribunal in view of Section 3(33) of the Act which includes 'limited owner' also in the definition of 'owner'. The next contention advanced before the Tribunal was that a dispute regarding the title to the property in question has already been decided in favour of the appellant, and therefore the proceedings taken under the Land Reforms Act should be modified accordingly. This contention also was rejected by the Tribunal holding that on date of coming into force of the Act on 15.2.1970, there was no litigation pending regarding title and interest of Nallammal and as such the subsequent proceedings cannot be taken note of. In the result the Special Appellate Tribunal sustained the surplus declared under the Act. Aggrieved by the order of the Tribunal, the present appeal has been filed.

Before us different arguments were addressed by the learned senior counsel Mr. Sivasubramanian for the appellant. According to him after the coming into force of the Hindu Succession Act 1956, both the widows of Sellappa Gounder would get the properties given to them under the will absolutely and as per the terms of the will, they succeeded to the properties in equal shares without partition by metes and bounds. That being the position, when the second wife died on 3.10.67, her undivided half share in the properties will go to her children and the first wife will succeed only to the other half of the undivided share. That being the position, it is contended the authorities went wrong in proceeding as if Nallammal and Periammal were joint owners and on the death of Periammal, Nallammal succeeded to the entire property by survivorship and it is contrary to the terms of the will read with section 14(1) of the Hindu Succession Act.

Mr. Krishnamurthy, learned counsel appearing for the respondent State however submitted that on the facts of this case, section 14(2) will apply and not section 14(1). He also submitted that terms of the will only support the stand taken by the authorities, namely, that Nallammal succeeded to the entire property by survivorship. ;

To appreciate the rival contentions, it is necessary to set out the terms of the will as translated in English and filed in this Court. Relevant portion of the will read as follows :

"The undermentioned properties having come to belong to me as of hereditary rights shall be bequeathed to both individual nos. 1 & 2, being my wives in equal share after my lifetime and enjoy the same without subjecting the respective property into any encumbrance till the life of both of you respectively. If one of you were to pre-decease the other individual, the surviving individual shall obtain the entire properties and enjoy the same without subjecting the properties into any encumbrance and even granting that the same were to be encumbered, the same would not be valid. After the life time of the individual nos.1 and 2, the third individual aforesaid being my only daughter namely Kuppathal shall

obtain the properties and enjoy the same during her life time without subjecting the same into any encumbrance or alienate."

From the above terms it is clear that on the death of the testator, the widows shall succeed to the estate in equal shares for enjoyment of the same which means that they succeeded to the properties as common owners and not as joint owners. If they have succeeded to the properties as common owners then after the coming into force of the Hindu Succession Act and in the light of section 14(1) and each widow being in possession of the undivided half share, their respective share enlarges into absolute one and they will be absolute owners of their respective half share in the undivided estate left by the testator.

The above being the position, Nallammal will be entitled to only half of the properties given under the will on the death of Periammal and not the entire properties as assumed by the authorities under the Ceiling Act. If Nallammal succeeded only to half of the properties under the will, then on 15.2.1970, which is not in dispute, she was not in a possession of any excess land and therefore, the surplus declared on the assumption that she possessed of properties in excess of ceiling limit cannot be sustained. On the facts as found by the Tribunal below, there is nothing to show that Section 14(2) of the Hindu Succession Act is attracted.

In this view of the matter, the appeal has to be allowed and accordingly, it is allowed and the order of the Special Appellate Tribunal is set aside. No costs..