

STATE OF MAHARASHTRA

v.

VYASENDRA

May 3, 1983

[Y. V. CHANDRACIUD C. J. AND E. S. VENKATARAMIAH, J.]

*Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 27 of 1961—
s. 4(1)—Scope of—Land owned and held by wife as separate property or stridhan
property—Deemed to be held by the family unit.*

Whether the land owned and held by the wife as her separate property can be clubbed together with the lands held by her husband and the other members of the family for the purpose of computing the ceiling on the holding of the 'family unit' under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

Section 4(1) of the said Act provides that for the purpose of determining the ceiling area of the family unit all land held by each member of a family unit, whether jointly or separately, shall be deemed to be held by the family unit. Explanation to s. 4(1) states that 'Family unit' means a person and his spouse and their minor sons and minor unmarried daughters, if any.

Respondent's claim that certain land which stood in the name of his wife was her separate property was not accepted by the Surplus Lands Determination Tribunal, which included that land in the total holding of the respondent. Before the Additional Commissioner, the respondent contended that the land which was sold by his wife after the notified date was wrongly included in the holding of the family unit. The Additional Commissioner remanded the matter to the Tribunal for a fresh inquiry into the question as to whether the sale effected by the Respondent's wife was supported by legal necessity. On a writ petition filed by the respondent the High Court directed the Tribunal to enquire also into the question as to whether the land which was in the name of the respondent's wife was her separate property. On appeal, the appellant contended that the High Court was in error in enlarging the scope of the order of remand passed by the Additional Commissioner.

Allowing the appeal,

HELD: All land held by each member of the family unit, whether jointly or separately, is to be deemed to be held by the family unit, for the purpose of determining the ceiling area which the family unit may retain. The circumstance that the land held by a constituent members of the family unit is separate property or stridhan property is a matter of no consequence whatso-

A ever for the purpose of determining the ceiling area which the family unit can retain. [4 E-G]

B In the instant case the respondent, his wife and their minor sons and minor unmarried daughters, if any, are all constituent members of the family unit and all the lands held by them have to be pooled together for the purpose of determining the ceiling area which is permissible to the family unit. The nature or character of their interest in the land held by them is irrelevant for computing the ceiling area which the family unit may retain. [4 G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4264 of 1983.

C Appeal by Special leave from the Judgment and Order dated the-25th April, 1979 of the Bombay High Court in Writ Petition No. 1117 of 1979.

V. S. Desai and *M. N. Shroff* with him for the Appellant.

D *Nemo* for the Respondent.

The Judgment of the Court was delivered by

E CHANDRACHUD, C.J. A question frequently arises under the Agricultural Ceiling Acts passed by the State Legislatures as to whether the land owned and held by a wife as her separate property can be clubbed together with the lands held by her husband and the other members of the family for the purpose of computing the ceiling on the holding of the 'family unit'. That question arises in this appeal under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 27 of 1961, (The Act').

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G The respondent Vyasendra filed a return under section 12 of the Act showing the lands held by him and mentioning that certain lands which stood in the name of his wife were her separate property. The Surplus Lands Determination Tribunal held under section 21 of the Act that the total holding of the respondent, including the land which was alleged to be the separate property of his wife, was 67 acres and 34 gunthas. Since the ceiling under the Act is 54 acres, the respondent was asked to surrender an area admeasuring 13 acres and 34 gunthas.

H The Additional Commissioner, Aurangabad, called for the record and proceedings of the Tribunal *suo motu*. The respondent

contended in those proceedings that an area of 17 acres and 27 gunthas which was sold by his wife after the notified date, was wrongly included in the holding of the family unit on the basis that the sale was *mala fide* and was not supported by legal necessity. By an order dated January 16, 1979 the Additional Commissioner remanded the matter to the Tribunal for a fresh inquiry into the question as to whether the sale of land effected by the respondent's wife after the notified date was supported by legal necessity. The contention was that the respondent's wife had sold the land in order to meet the medical expenses in connection with her illness.

The respondent filed a writ petition (No. 1117 of 1979) in the High Court of Bombay against the judgment of the Additional Commissioner. The contention of the respondent before the High Court was that the Additional Commissioner should have remanded the proceedings to the Tribunal not only for the purpose of determining whether the respondent's wife had sold the land for the purpose of legal necessity but also for the purpose of determining whether the land which stood in the name of the respondent's wife constituted her separate or Stridhan property. This contention was accepted by the High Court which, by its judgment dated April 25, 1979 enlarged the scope of the remand by directing the Tribunal to inquire also into the question as to whether the land which stood in the name of the respondent's wife was her separate property. The correctness of the judgment of the High Court is challenged by the State of Maharashtra in this appeal.

By an order dated March 8, 1983 this Court had issued a show cause notice to the respondent stating therein that the matter will be finally heard and disposed of at the next hearing. The show cause notice has been served on the respondent but he has not put in his appearance.

Shri V. S. Desai, who appears on behalf of the appellant, contends that the High Court was in error in enlarging the scope of the order of remand passed by the Additional Commissioner by directing the Tribunal to hold an inquiry into the question whether the land which stood in the name of the respondent's wife and which was sold by her allegedly for medical expenses, was her separate property. This contention is well-founded and must be accepted. Section 3(1) of the Act provides, to the extent material, that no 'family unit' shall, after the commencement date, hold land in excess of the ceiling

A areas as determined in the manner provided by the Act. By subsection (2) of section 3, the land held by a family unit in excess of the ceiling area is regarded as surplus land, liable to be dealt with in the manner prescribed by the Act. Section 4(1) of the Act, which is of crucial importance in this case, reads thus :

B “4. *Land held by family unit*—(1) All land held by each member of a family unit, whether jointly or separately, shall for the purposes of determining the ceiling area of the family unit, be deemed to be held by the family unit.

C *Explanation*—A ‘Family unit’ means,—

(a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any; or

D (b) where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughters; or

E (c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses.”

F It is clear from these provisions that all land held by each member of the family unit, whether jointly or separately, is to be deemed to be held by the family unit, for the purpose of determining the ceiling area which the family unit may retain. The expression ‘family unit’ is defined by the Explanation to mean “a person and his spouse.....”. The circumstance that the land held by a constituent member of the family unit is separate property or stridhan property is a matter of no consequence whatsoever for the purpose of determining the ceiling area which the family unit can retain. The respondent, his wife and their minor sons and minor unmarried daughters, if any, are all constituent members of the family unit and all the lands held by them have to be pooled together for the purpose of determining the ceiling area which is permissible to the family unit. The nature or character of their interest in the land held by them is irrelevant for computing the ceiling area which the family unit may retain. The High Court was, therefore, in error in directing the Tribunal to

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inquire into the question as to whether the land which stood in the name of the respondent's wife and which was sold by her was her personal or separate property. Assuming it was so, it is still liable to be aggregated with the land held by the respondent.

In the result, we allow the appeal, set aside the judgment of the High Court and confirm the order of remand passed by the Additional Commissioner, Aurangabad. The Surplus Lands Determination Tribunal will inquire into the limited question referred to it by the Additional Commissioner, Aurangabad, only.

There will be no order as to costs.

H.S.K.

Appeal allowed.

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