

KATTITE VALAPPIL PATHUMMA AND ORS.

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v.

THE TALUK LAND BOARD AND ORS.

FEBRUARY 19, 1997

[K. S. PARIPOORNAN AND S.P. KURDUKAR, JJ.]

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Kerala Land Reforms Act, 1963—Sections 2(4), 82 Explanation I—Declarant having three wives and ten children—Determination of ceiling area—Lands owned by statutory family only to be considered—Held, lands owned by other wives and children not to be included in the family.

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Practice and Procedure—Decisions of Courts rendered long ago—Should not be interfered with unless it is manifestly wrong or unfair.

The appellants are the legal representatives of deceased M, a declarant under the Kerala Land Reforms Act, 1963. The declarant had opted his first wife and her minor children as his "statutory family" under Section 82 of the Act of 1963. Since the Board directed surrender of 160.54 acres of land held by the declarant, he filed a Revision in High Court wherein the High Court remanded the matter for fresh disposal. Thereafter the Board passed a fresh order determining 97.16 acres as surplus. Since the declarant had surrendered 43.20 acres, he was directed to surrender the remaining area. The aforesaid order of the Board was challenged in Revision by the declarant and after his death his legal representatives viz. the Appellants herein. The Appellants contended before the High Court that since the declarant had three wives and ten children, each wife and her children shall be deemed to be a separate family under Explanation I to Section 82 and therefore, the ceiling in respect of each family has to be deducted from the total holding.

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The High Court rejected the contention and held that the properties of the husband will not be taken into account for the purpose of fixing the ceiling area of the family constituted by other other wives and her children and that this position has been made clear by the Explanation, the intention of which was to confine the family to the husband and one of the wives and their unmarried minor children for the purpose of the ceiling provision of the Act.

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- A On appeal before this Court, it was contended that the declarant having three wives and ten children by the said three wives each wife and the children by her shall be deemed to be a separate family under Explanation I to Section 82 of the Act of 1963, and therefore the ceiling area in respect of each separate family has to be deducted from the total holdings of the declarant so that the other two wives and their minor children shall not be deprived of their legitimate right to get a larger area.
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- C The Respondents contended that under Section 82, when a declarant husband has more than one wife, the husband can be a member of only one such family and not of all families simultaneously and only the lands owned by the husband and the family so chosen by him will be taken into account for calculating the ceiling area, that the lands owned or possessed by the other wives and members of their families will not be taken into account for the purpose of fixing the ceiling area in respect of the family constituted by the husband, one of his wives and unmarried minor children of that wife constitutes the statutory family for the purpose of computing the ceiling area, that Section 82 was understood and interpreted in that light by the High Court of Kerala ever since the Act came into force, that the High Court has only given effect to the said legal position and a different view is not warranted specially at this stage when the law laid down by the High Court and followed by it in the impugned judgment has held the field for more than two decades.
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Dismissing the Appeal, this Court

- F HELD : 1. The finding of the High Court that only the lands owned by the husband and the family chosen by him will be taken into account for calculating the ceiling area of a family, is justified. The land owned and possessed by the other wives and members of their families will not be taken into account for the purpose of fixing the ceiling area in respect of the statutory family constituted by the husband as aforesaid. [184-E]

- G 2. It is not permissible to treat the other *wives* and their children as separate families and then to deduct that ceiling area for each of such family from the total holding of the declarant husband. [184-F]

- H *Kesava Menon v. State of Kerala & Anr.*, (1976) K.L.T. 408 and *Mayilammal v. Taluk Land Board*, (1984) KLT 962, approved.

3. A decision rendered long ago can be over-ruled only if this Court comes to the conclusion that it is manifestly wrong or unfair and not merely on the ground that another interpretation is possible and the Court may arrive at a different conclusion. Even if a different view is possible, if it will have the effect of upsetting or reopening past and closed transactions or unsettling titles all over the State, Court should be loathe to take a different view. [184-G-H, 185-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12058 of 1996.

From the Judgment and Order dated 18.7.94 of the Kerala High Court in C.R.P. No. 1894 of 1988.

E.M.S. Anam for the Appellants.

T.L. Vishwanatha Iyer and M.T. George for the Respondents.

The Judgment of the Court was delivered by

PARIPOORNAN, J. This appeal by special leave is filed against the judgment of a Division Bench of the Kerala High Court, rendered in C.R.P. No. 1894 of 1988 dated 18.7.1994. The appellants are the legal representatives of T. Mammad, the 'declarant' under the Kerala Land Reforms Act, 1963 (hereinafter referred to as 'the Act'). The declarant had three wives and ten children by the said three wives. He filed a declaration regarding the land held and possessed by him before the Taluk Land Board, Taliparamba (hereinafter referred to as 'the Board'). In his statement, he had opted his wife Pathu (first wife) and her minor children as his "statutory family" by exercising the option specified in explanation I to section 82 of the Act. The Board, by order dated 28.8.1986 directed the declarant to surrender 160.54 acres of land held by him in excess of the ceiling area. In revision, C.R.P. No. 2131 of 1986 the High Court set aside the order of the Board and ordered a remit. Thereafter the Board by order dated 28.6.1988 passed a fresh order determining 97.16 acres as surplus land of the declarant. The Board also noticed that the declarant had already surrendered 43.20 acres as surplus land and, therefore, the declarant was directed to surrender the remaining area. The order so passed by the Board was assailed in revision before the High Court of Kerala in CRP No. 1894 of 1988. The declarant and after his demise his

A legal representatives contended that the declarant having three *wives* and ten children in the three *wives*, each wife and her children shall be deemed to be a separate family under explanation I to section 82 of the Act and, therefore, the ceiling area in respect of each family has to be deducted from the total holding of the declarant. This plea was repelled by the High Court. The High Court held thus :

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"The properties of the husband, the wife named by him and their unmarried minor children will be taken into account for the purpose of determining the ceiling area as if *they constitute one family*. Regarding *the other family* constituted by *the other wife* and her unmarried minor children, the ceiling provisions are to be enforced as if they *constituted a separate family and their properties alone will be taken into account for that purpose*. In other words, the properties of the husband will not be taken into account for the purpose of fixing the ceiling area of the family constituted by that wife and her children. This position has been made clear by the explanation, the intention of which was to confine the family to the husband and one of the *wives* and their unmarried minor children for the purpose of the ceiling provisions of the Act."

(emphasis supplied)

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The High Court observed further :

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"When the husband and one of the *wives* and their children constitute one family the ceiling area has to be *determined on the basis of the properties possessed or owned by them* and not by the other wife or *wives* as the case may be. The properties possessed or owned by the other wife or *wives* are not taken into account for the purpose of determining the ceiling area of the family *constituted by the husband, the wife named by him* and their children."

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(emphasis supplied)

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It was noticed by the High Court that the order passed by the court in CRP No. 1891 of 1988 to exclude an extent of 15 acres was not given effect to by the Board. So, an extent of 15 acres directed to be deleted by the order in CRP No. 1891 of 1988 was directed to be excluded from the properties mentioned in part D of the order showing the lands to be

surrendered. The revision filed by the declarant was allowed in part. Since the declarant is no more the legal representatives have come up in appeal against the said order passed in revision by the High Court dated 18.7.1994 modifying the order of the Board.

2. We heard counsel. The submission made before the High Court was repeated before us. Counsel contended that the declarant having three wives and ten children by the said three wives each wife and the children by her shall be deemed to be a separate family under the explanation I to section 82 of the Act, and, therefore, the ceiling area in respect of each family has to be deducted from the total holdings of the declarant. It was argued that the other wives and their minor children shall be deemed to be separate families and so the ceiling area in respect of each such family has to be deducted from the total holdings of the declarant so that the other two wives and their minor children shall not be deprived of their legitimate right to get a larger area. On the other hand, counsel for the respondent-State submitted that on a fair and proper reading of section 82 along with the explanations, it will be evident that when a declarant husband has plurality of wives and children, by exercise of the option under explanation I, the husband can be a member of only one such family and not all the families simultaneously and only the lands owned by the husband and the family so chosen by him will be taken into account for calculating the ceiling area of a family. It was argued, that the lands owned or possessed by the other wives and members of *their families* will not be taken into account for the purpose of fixing the ceiling area in respect of the *family constituted by the husband*, one of his wives and unmarried minor children in that wife, which constitute the *statutory family* for the purpose of computing the ceiling area. Section 82 was understood and interpreted in that light by the High Court of Kerala ever since the Act came into force and the High Court in the impugned judgment has only given effect to the said position. A different view is not warranted specially at this stage when the law laid down by the High Court and followed in the impugned judgment has held the field for more than two decades.

3. On hearing the rival pleas, we are of the view that the judgment of the High Court does not call for any interference.

4. Section 2(14) of the Act defines 'family'. It states :

A "Family" means husband, wife and their unmarried minor children or such of them as exist.

Section 82 of the Act along with explanation is as follows :

B "82. Ceiling area - (1) The ceiling area of land shall be, -

(a) in the case of an adult unmarried person or a family consisting of a sole surviving member, five standard acres, so however that the ceiling area shall not be less than six and more than seven and a half acres in extent;

C (b) in the case of a family consisting of two or more, but not more than five members, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent;

D (c) in the case of a family consisting of more than five members, ten standard acres increased by one standard acre for each member in excess of five, so however that the ceiling area shall not be less than twelve and more than twenty acres in extent; and

E (d) in the case of any other person, other than a joint family, ten standard acres, so however that the ceiling area shall not be less than twelve and more than fifteen acres in extent.

F (2) For the purposes of this Chapter, *all the lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family.*

G (3) In calculating the extent of land owned or held *by a family or an adult unmarried person, the shares of the members of the family or the adult unmarried person, as the case may be, in the lands owned or held -*

H (a) by one or more of such members jointly with any person or persons other than a member or members of such family or by such adult unmarried person jointly with any other person or persons; or

(b) by a co-operative society or a joint family, shall be taken into account. A

Explanation - For the purposes of this sub-section, the share of a member of a family or an adult unmarried person in the lands owned or held jointly or by a co-operative society or a joint family shall be deemed to be the extent of land which would be allowed to such member or person had such lands been divided or partitioned, as the case may be, on the date notified under section 83. B

(4) Where, after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion. C

(5) The lands owned or held by a private trust or a private institution shall be deemed to be lands owned or held by the person creating the trust or establishing the institution, or, if he is not alive, by his successors-in-interest. D

(6) In computing the ceiling area, lands exempted under section 81 shall be excluded. E

Explanation I - For the purposes of this section, *where a person has two or more legally wedded wives living, the husband, one of the wives named by him for the purpose and their unmarried minor children shall be deemed to be one family and the other wife or each of the other wives and her unmarried minor children shall be deemed to be a separate family.* F

Explanation II - For the purposes of this section, an adult unmarried person shall include a divorced husband or divorced wife who has not remarried : G

Provided that if such divorced husband or divorced wife is the guardian of any unmarried minor child, he or she together with such unmarried child shall be deemed to be a family."

(emphasis supplied) H

A 5. Section 82 of the Act came up for consideration before a Division Bench of the High Court of Kerala in *Kesava Menon v. State of Kerala and Another*, (1976) KLT 408. The facts of the case, the plea put forward and the decision are neatly stated in paragraphs 1 to 3 of the judgment thus :

B "One Kesava Menon who has two *wives* owns extensive lands. While he has no issue through first wife he has issues through the second but their number is not more than four. In the statement he filed under section 85(2) of the Act regarding excess lands he treated his two *wives* as members of two different families and *named the first wife as a member of his family*. The Taluk Land Board treated his first wife as a member of his family and fixed the ceiling area of his lands accordingly as for one family, namely 14.91 acres, and directed him to surrender the excess portion of 67.44 acres. It is the correctness of that order that is challenged in these revision petitions, one of which is filed by Kesava Menon and his two *wives* and the other by the heirs of a transferee of some of his lands.

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E The contention of the petitioners in these two Revision Petitions is that if a person who *owns lands has two wives and they have no lands*, as regards *his lands the ceiling limit is that for two families* and that is justified by Explanation I."

(emphasis supplied)

F Delivering the judgment on behalf of the Bench Narayana Pillay, J. stated the law thus :

G "If a person has two wives, including them and his children through them, as a matter of fact in the ordinary sense there is only one family. But Explanation I has introduced a fiction by which he is allowed to treat the two wives with their children as constituting two separate families. Along with the granting of that privilege a restriction is also placed by the Explanation. *The restriction is that he can be a member of only one of such families to be chosen by him and not of both the families simultaneously.*

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That the husband can be a member of only one of the families is an integral part of the Explanation. While sub-section (1) has fixed the ceiling area sub-section (2) has prescribed the lands to be taken into account in calculating the ceiling area of a family. Sub-section (2) says that in calculating the lands owned by a family those owned individually and jointly by the members of that family should be taken into account and Explanation I is an explanation to the entire section including sub-section (2). *The result is that although notionally the second wife of Kesava Menon and her issues constitute a separate family, as he is not a member of that family his lands cannot be taken into account in fixing the ceiling area of that family.* Otherwise it would lead to the absurd consequence of having to take into account the lands of a stranger to a family also in fixing the ceiling of that family. *If the husband cannot be a member of both the families at the same time it inevitably follows that his lands can be taken into account only in calculating the ceiling area of the family to which he is deemed to belong.* It was the same conclusion that was reached by our learned brother, Viswanatha Iyer J, in *Kuttan v. State of Kerala and Others*, (1976) KLT 49. In the present case the Taluk Land Board was right in fixing the ceiling area of the lands held by Kesava Menon as 14.91 acres and directing him to surrender 67.44 acres as excess land."

(emphasis supplied)

6. In a later decision in *Mayilammal v. Taluk Land Board*, (1984) KLT 962 the declarant having two wives, opted to treat the second wife and children as members constituting his family. The question arose as to whether the *other wife* and children should be treated as *another family* entitling them to share the properties for the purpose of ceiling limits. Bhaskaran, Acting Chief Justice, held thus :

"It was argued on behalf of the petitioner that unless the first wife and her children also are treated as a separate family entitled to the properties of the declarant in the ceiling proceedings, it would cause hardship as far as the first wife who is not named by the declarant to be his wife for the purpose of the ceiling provisions, and children born to the declarant in that wife. He submitted that the purpose of the Explanation is to ensure that where the

A declarant has more wives than one, then each with her minor children should be treated as persons who are entitled to claim share in the property for the purpose of the ceiling area. In other words, according to him, it is only after setting apart sufficient land permitted for two families, the extent depending upon the number of persons constituting each family, that the balance area should be ordered to be surrendered. The scheme of the Act, according to me, does not permit his interpretation inasmuch as the declarant *could be a member of one of the families only; and the determination of the ceiling area has to be made with reference to his statutory family, which includes himself, his wife nominated by him in that behalf, and minor children, if any, born in that wife.* For that matter even the major sons and daughters might fall out of the ambit of the statutory family."

(emphasis supplied)

D We are of the view that the aforesaid decisions lay down the law correctly. The High Court was justified in holding that only the lands owned by the husband *and the family chosen by him* (as per explanation I to section 82 of the Act) will be taken into account for calculating the ceiling area of a family. The land owned and possessed by the other *wives* and members of their families will not be taken into account for the purpose of fixing the ceiling area in respect of the statutory family constituted by the husband as aforesaid. *It is not permissible to treat the other wives and their children as separate families and then to deduct the ceiling area for each of such family from the total holding of the declarant husband.* We concur with the reasoning and conclusion of the High Court. We are further of the view, that even if another view is possible, we are not inclined to take a different view at this distance of time. Interpretation of the law is not a mere mental exercise. Things which have been adjudged long ago should be allowed to rest in peace. A decision rendered long ago can be over-ruled only if this Court comes to the conclusion that it is manifestly wrong or unfair and not merely on the ground that another interpretation is possible and the court may arrive at a different conclusion. We should remember that the law laid down by the High Court in the above decision has not been doubted so far. The Act in question is a State enactment. These are weighty considera-

tions to hold that even if a different view is possible, if it will have the effect of upsetting or re-opening past and closed transactions or unsettling titles all over the State, this Court should be loathe to take a different view. On this ground as well, we are not inclined to interfere with the judgment under appeal. A

7. The judgment of the High Court of Kerala rendered in C.R.P. No. 1894 of 1988 is affirmed. The appeal is dismissed. There shall be no order as to costs. B

V.M.

Appeal dismissed.