

\* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Civil Revision Petition No.44 of 2012

% 01-6-2015

# Smt. Nallamothu Siva Yogeswari

... Revision Petitioner/

Respondent No.1/Claimant Petitioner

Vs.

\$ State of A.P., Rep. by the Authorized Officer,

Land Reforms Tribunal, Bandar, Krishna district

... Respondent/Appellant/

Respondent No.2

Smt. Sadineni Annapurnamma

and another

... Respondents/Respondents 2 and 3/

Respondents 1 and 3

! Counsel for the Petitioner: Sri Ch.Dhanamjaya

Counsel for Respondent No.1: Government Pleader for

Arbitration

Counsel for Respondents 2&3: None

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.44 of 2012

Date: 01-6-2015

Between

Smt. Nallamothu Siva Yogeswari

... Revision Petitioner/

Respondent No.1/

Claimant Petitioner

and

State of A.P.,

Rep. by the Authorized Officer,

Land Reforms Tribunal,

Bandar, Krishna district

... Respondent/Appellant/

Respondent No.2

Smt. Sadineni Annapurnamma

and another

... Respondents/

Respondents 2 and 3/

Respondents 1 and 3

HON'BLE SRI JUSTICE R.KANTHA RAO

Civil Revision Petition No.44 of 2012

Order:

This civil revision petition is filed against the judgment dated 02-11-2011 passed by the Chairman, Land Reforms Appellate Tribunal cum II Additional District Judge, Eluru, West Godavari district in L.R.A.No.29 of 2000.

2. I have heard Sri Ch.Dhanamjaya, learned counsel appearing for the revision petitioner-respondent No.1 and the learned Government Pleader for Arbitration appearing for the 1<sup>st</sup> respondent-State.

3. The 2<sup>nd</sup> respondent is the mother and the 3<sup>rd</sup> respondent is the father of the revision petitioner. The revision petitioner is the only daughter of respondents 2 and 3. The 3<sup>rd</sup> respondent submitted a declaration under Section 8 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (the L.R. Act, for short) to the Land Reforms Tribunal, Bandar by mentioning therein that his family unit consists of himself, his wife (respondent No.2) and one unmarried daughter. By order dated 09-11-1997, the Land Reforms Tribunal, Vijayawada held that the unit of the declarant's family was in possession of excess land equivalent to 0.3438 standard holdings. Subsequently, the revision petitioner filed I.A.No.12 of 1996 in C.C.No.518/NDG/75, before the Land Reforms Tribunal, Bandar stating that the land of an extent of Ac.20-37 cents was gifted to her as pasupu-kumkuma by her mother from the coparcenary property on 24-9-1973 under an unregistered gift deed and the said land shall be excluded from the holding of the declarant. After making an enquiry into the claim petition, the Tribunal allowed the same by order dated 17-3-1997. Against the said order, the 1<sup>st</sup> respondent-State preferred an appeal with an application to condone the delay of 400 days in filing the appeal.

The Appellate Tribunal condoned the delay by order dated 27-10-

2000 and registered the appeal as L.R.A.No.29 of 2000. Against the order dated 27-10-2000 condoning the delay, the revision petitioner preferred a revision before this Court and this Court set aside the order dated 27-10-2000.

Feeling aggrieved, the 1<sup>st</sup> respondent-State filed a Special Leave Petition before the Supreme Court and the Supreme Court in C.A.No.7008 of 2004 set aside the order passed by the High Court and restored the appeal to file once again.

4. It was contended by the 1<sup>st</sup> respondent-State before the Appellate Tribunal that the unregistered gift deed dated 24-3-1973 under which the land was gifted away to the petitioner by her mother is not genuine since the same was not mentioned by the declarant in the declaration submitted by him. It is further contended that when the marriage of the petitioner took place in the year 1980, the execution of the unregistered gift deed on 24-9-1973 i.e.

7 years prior to the marriage cannot be believed and therefore, the order passed by the Land Reforms Tribunal, Bandar shall be set aside.

5. The petitioner produced the unregistered gift deed, dated 24-9-1973 and two land revenue receipts.

She examined the attester of the gift deed and a neighbouring land owner as witnesses on her behalf.

The learned Land Reforms Appellate Tribunal, Eluru accepted the contention put-forth by the 1<sup>st</sup> respondent-State, disbelieved the unregistered gift deed, declined to apply the provisions of amended Hindu Succession Act i.e. Act 39 of 2005 to the facts of the case on the ground that the said plea was not taken in the claim petition and ultimately allowed the appeal. Assailing the appellate judgment, the petitioner filed the present revision petition.

6. Since the gift deed was unregistered and only two land revenue receipts were filed to prove the possession of the petitioner over the land in question and also in view of the fact that the declarant viz., the father of the petitioner failed to mention about the gifting of the land in favour of the petitioner under an unregistered gift deed in the declaration submitted by him, I am of the view that the learned Land Reforms Appellate Tribunal, Eluru is right in not accepting the unregistered gift deed dated 24-9-1973. However, it is also not proper to presume that the said gift deed is false as it was executed 7 years prior to the marriage of the petitioner. In any event, this Court is also of the view that the petitioner failed to establish the genuineness and authenticity of the gift deed and also the fact that it was acted upon.

7. However, the crucial question would be whether the Appellate Tribunal is justified in refusing to examine the claim made by the petitioner in the light of Act 39 of 2005 and also having regard to the provisions of the L.R. Act.

8. According to the petitioner, she is the only daughter of respondents 2 and 3 and was born on 13-3-1954 in Madras. She also filed a certificate issued by the Corporation of Madras dated 18-9-1996. This fact has not been disputed by the 1<sup>st</sup> respondent. As such, she was a major on the date of coming into force of the L.R. Act i.e. by 01-01-1975.

9. Section 3(f) of the L.R. Act reads as under:

“family unit’ means—

- i. in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and their unmarried minor daughters, if any;
- ii. in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried minor

daughters;

- iii. in the case of an individual who is a divorced husband and who has not remarried, such individual and his minor sons and unmarried minor daughters, whether in his custody or not; and
- iv. where an individual and his or her spouse are both dead, their minor sons and unmarried minor daughters.

**Explanation:--** Where a minor son is married, his wife and their offspring, if any, shall also be deemed to be members of the family unit of which the minor son is a member.”

10. The petitioner was unmarried but was major on 01-01-1975. Therefore, she cannot be said to be the member of the family in the family unit of her father.

At the time of submitting declaration, her father erroneously mentioned her as one of the members of his family unit. After coming into force of Hindu Succession Act as amended by Act 39 of 2005 with effect from

09-9-2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son, provided the partition of properties has not been effected before 20<sup>th</sup> day of December, 2004. Therefore,

by virtue of Section 4-A of the L.R. Act, as the petitioner is a coparcener, the ceiling area of the unit will be increased in respect of the petitioner considering her to be a major son for an extent of land equal to that of her father, the

3<sup>rd</sup> respondent herein. Therefore, the family unit of the

3<sup>rd</sup> respondent gets 2 standard holdings on account of the fact that the petitioner was major by 01-01-1975 and by virtue of Act 39 of 2005. The declaration erroneously made by the 3<sup>rd</sup> respondent does not bind the petitioner since she was major on the date of submitting the said declaration. The petitioner filed the claim petition I.A.No.12 of 1996 before the Land Reforms Tribunal, Bandar in the year 1996. Therefore, by the date of coming into force of the Act 39 of 2005 i.e.

09-9-2005, the proceedings were pending before the Tribunals below. The learned Appellate Tribunal therefore ought to have taken into consideration the change in the law brought about by Act 39 of 2005 during the pendency of the appeal before it. The Appellate Court under Order XLI, Rule 33 of the Code of Civil Procedure shall have the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to only part of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

11. In the instant case, the learned Appellate Tribunal ought to have taken into consideration the change of law brought about by Act 39 of 2005 conferring the status of coparcener on a daughter. Even though the said issue was specifically raised in the appeal, the learned Appellate Tribunal declined to answer the issue on the ground that

it was not raised in the claim petition before the Tribunal. The approach adopted by the Appellate Tribunal refusing to exercise the power vested in it by Rule 33 of Order XLI, CPC is totally erroneous and it is in the nature of subjecting parties to multiplicity of proceedings. The appeal is nothing but continuation of the original proceedings and when the appeal is still pending, no finality could have been attached to the original decree and it is the duty of the Appellate Court to take note of the subsequent changes in law and it is obliged to mould the relief in accordance with the rights conferred on the petitioner by virtue of Act 39 of 2005.

This is a clear case wherein the petitioner is entitled to one standard holding in the coparcenary property in her own right under Section 6 of the Hindu Succession Act i.e. Act 39 of 2005. The petitioner claims to be in possession of the property in question and no finality has so far been attached to the proceedings under the L.R. Act in respect of the share of the petitioner. If the petitioner is entitled for

a standard holding in the coparcenary property in her own right, admittedly there may not be any surplus land to be surrendered under the L.R. Act.

12. For the foregoing reasons, the judgment dated 02-11-2011 passed by the Appellate Tribunal in L.R.A.No.29 of 2000 is set aside confirming the order passed by the Land Reforms Tribunal, Bandar in I.A.No.12 of 1996 in C.C.No.518/NDG/75, dated 17-3-1997. The civil revision petition is accordingly allowed. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

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R.KANTHA RAO, J.

01<sup>st</sup> June, 2015.

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Note:-

L.R. Copy to be marked.

(B/o)

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Civil Revision Petition No.44 of 2012

01<sup>st</sup> June, 2015.

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