

CASE NO.:
Appeal (civil) 7263 of 1996

PETITIONER:
B. CHANDRASEKHAR REDDY (D) BY LRS.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 23/04/2003

BENCH:
K..G. BALAKRISHNAN & P. VENKATARAMA REDDI

JUDGMENT:
JUDGMENT

2003 (3) SCR 870

The Judgment of the Court was delivered :by

K.G. BALAKRISHNAN, J. The father of the appellant nos. 2,4 & 5 to 7, late B. Chandrashekhhar Reddy, the husband of appellant no. 3, filed two separate declarations under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings), Act, 1973. By Order dated 23.1.1977, the Tribunal held that family of late B. Chandrashekhhar Reddy was entitled to hold one standard holding under the Act and the excess of 4.3360 standard holdings was held to be surplus land. Aggrieved by this Order, an appeal was preferred before the Land Reforms Appellate Tribunal as LRA No. 1107/77 which was partly allowed. Aggrieved by this Order, a revision petition C.R.P. No. 7171/79 was filed before the High Court of Andhra Pradesh. However, during the pendency of the Revision, B. Chandrashekhhar Reddy died and his LRs were impleaded. Pending this Revision application, there was a State amendment to Section 29 of the Hindu Succession Act whereby Section 29A was inserted. The appellants contended that they were entitled to the benefit of Section 29-A and thus an additional ground was sought to be raised in the Revision Petition. The High Court permitted them to urge the additional ground. However, the pleas raised by them were not allowed by the High Court and aggrieved by the same, the present appeal is filed.

We heard the appellants' Counsel and the Counsel for the State. The learned Senior Counsel, Shri M.N. Rao urged before us that by virtue of Section 29-A of the Hindu Succession Act, the daughters of a Hindu joint family acquired rights as a co-parcener in a joint Hindu family and thus they have got right by birth; hence, they are to be treated on the same footing as major sons and it was argued that the ceiling on land should have been fixed treating them as additional members of the family. However, the High Court rejected the plea of the appellants and held that the amendment to Section 29 of the Hindu Succession Act will not alter the position and the appellants herein are not entitled to get any additional share.

In order to appreciate the contention of the appellants, we have to consider the definition of the term 'family unit' which is defined in Section 3(f) in the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, which is as follows:-

"3(f)'family unit' means -

(1) in the case of an individual who has a spouse or spouses such individual, the 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 spouse are both dead, their minor sons and unmarried minor daughters."

As per Section 3(0), the 'family unit' takes into consideration, for the purpose of the Act, an individual or his or her spouse and their minor sons and their unmarried minor daughters. Unmarried major daughters are not included in the definition of the 'family unit'.

'Ceiling Area' is prescribed under Section 4 of the Act. Section 4 along with explanation reads as follows:-

"(1) The ceiling area in the case of family unit consisting of not more than five members shall be an extent of land equal to one standard holding.

(2) The ceiling area in the case of a family unit consisting of more than five members shall be an extent of land equal to one standard holding plus an additional extent of one-fifth of one standard holding for every such member in excess of five, so however that the ceiling area shall not exceed two standard holdings.

(3) The ceiling area in the case of every individual who is not a member of a family unit, and in the case of any other person shall be an extent of land equal to one standard holding

Explanation:- In the case of a family unit, the ceiling area shall be applied to the aggregate of the lands held by all the members of the family unit."

Section 4(A) is an additional benefit conferred on major sons. Section 4(A) reads as follows:-

"4. A Increase of ceiling area in certain cases:-

Notwithstanding anything in Section 4, where an individual or an individual who is a member of a family unit, has one or more major sons any such major son either by himself or together with other members of the family unit of which he is a member, holds no land or holds an extent of land less than the ceiling area, then, the ceiling area, in the case of the said individual or the family unit of which the said individual is a member computed in accordance with Section 4, shall be increased in respect of each such major son by an extent of land equal to the ceiling area applicable to such major son or the family unit of which he is a member, or as the case may be, by the extent of land by which the land held by such major son or the family unit of which he is a member falls short of the ceiling area."

Benefit of Section 4(A) is given only to persons who are major sons as on the date of commencement of the Act. In the definition of the 'family unit', the major sons are not included. If on computation of the ceiling area of an individual or a family unit in accordance with Section 4 the individual or family unit holds in excess of the ceiling area, to which it is entitled, that entire extent would be determined as excess under Section 9 of the Act and the excess would have to be surrendered as laid down under Section 10 of the Act. But, in case of an individual, who is a member of family unit has one or more major sons and any such major son either by himself or together with the members of the family unit of which he is a member holds an extent of land less than the ceiling area of the individual or of the family unit which he is a member has to be increased as laid down under Section 4-A. If an individual or major son holds an extent which falls short of the ceiling area, that deficit would be added to the said individual or the individual who is a member of the family. If there is

more than one major son, the extent by which the holding of each of his major sons falls short of the ceiling area, would be added to the holding of said individual.

The argument of the appellant's Counsel is that the same benefit should be extended to the major unmarried daughters. It is submitted that as on the date of the commencement of the Act, appellants 6 and 7 were major unmarried daughters staying with the declarant. Appellant no. 6 got married on 29.8.1986 and the appellant no. 7 remained unmarried. The contention of the appellants' Counsel is that Section 29-A of the Hindu Succession Act being applicable to the State of Andhra Pradesh, the daughters are to be treated as members of the co-parcenary and they are entitled to equal shares as sons. In that view of the matter, they are entitled to the benefit of Section 4-A of the Act. Section 29-A of the Hindu Succession Act reads as follows:-

"Sec. 29-A -Equal rights to daughter in coparcenary property:-
Notwithstanding anything contained in sec. 6 of the Act:-

(i) In a joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son had have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son

(ii) At a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son;

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;

Provided further that the share allottable to the pre-deceased child or a pre-deceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of such pre-deceased daughter as the case may be.

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (A.P. Amendment) Act, 1989;

(v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (A.P. Amendment) Act, 1989."

The provisos to sub-Section (iv) & (v) of Section 29(A) are important in the sense that it is specifically mentioned that the benefit of Section 29(A) can be invoked only by major daughters if they are not married prior to the commencement of Section 29(A) of the Act. The said provision came into effect from 15.5.1986. Appellant No. 4 and 5 married prior to 15.5.1986. The sixth appellant was married on 29.8.1986, i.e., after the commencement of Section 29(A). Appellants 6 and 7 were minor daughters as on 1.1.75, the date of the commencement of the Act. Appellant No. 6, Kumudini Devi was born on 1.5.1962 and the appellant no. 7 Sridevi was born on 2.3.1971. Appellants 4 & 5 and 6 were major daughters and they were

married at the time of commencement of the Ceiling Act and appellant nos. 6 and 7 were minors on that date, and were unmarried. They were treated as members of the family and the declarant must have derived benefit of such fixation of the ceiling. So, in any view of the matter, Section 29-A has no impact on the fixation of the ceiling as far as these appellants are concerned. It is true that by Section 29(A) of the Hindu Succession Act, the daughters acquired a right by birth as they were deemed to be treated as co-parceners of the joint family and they have got a right to seek partition of the joint family property but as regards the fixation of the ceiling, in the instant case, Section 29(A) does not confer any additional benefit to the appellant nos. 6 and 7.

The learned Senior Counsel, Shri M.N. Rao contended that if major unmarried daughters are not treated as the members of the family unit and there is denial of justice to daughters, vis-a-vis sons, there is clear violation of principles of equality and there is discrimination between unmarried major daughters on the one hand, and the major sons and minor children on the other hand, in the matter of fixation of ceiling area under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The appellants have not challenged any of the provisions of the Act and it would not be proper to look into the plea of discrimination at this stage, especially in relation to a legislation on agrarian reforms. We do not, therefore, propose to go into the constitutional validity of any of these provisions.

The appeal is without any merits and the same is dismissed, however, without costs.