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STATE OF GUJARAT
v.
NARGES K. PANTHAKY

NOVEMBER 2, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Gujarat Agricultural Lands Ceiling Act, 1960 :

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S.8(1)—Determination of Ceiling area and surplus area—Agreement to transfer title in favour of mother—Since such agreement is a compulsorily registerable document under S.17 of Registration Act, non-Registration thereof, the owner is not divested of the right and title—Matter remitted to ceiling authority to compute the ceiling area—Registration Act, S.17.

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While proceedings were initiated under the Gujarat Agricultural Lands Ceiling Act, 1960, the respondents claimed that under an agreement, 30 acres of land was transferred in favour of the respondent's mother which was duly recognised by mutation proceedings. The respondent's plea was accepted by the authorities and the High Court. Hence this appeal by the State Government.

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Allowing the appeal, this Court

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HELD : 1. By operation of Section 17 of the Registration Act, agreement transferring title is a compulsorily registerable document. Since it has not been registered, the owner has not been divested of the right, title and interest in the land and thus continued to be the owner of the land under the Act [736-B]

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2. The matter is remitted to the ceiling authority to compute the ceiling area keeping in view what has been held in this order. The authorities would take further action according to law. [736-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10481 of 1995.

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From the Judgment and Order dated 14.7.83 of the Gujarat High Court in S.C.A. No. 2482 of 1983.

Dushyant Dave and Ms. H. Wahi for the Appellant.

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R.P. Bhatt Ms. Neelam Kalsi and Vimal Dave, for the Respondent.

The following Order of the Court was delivered :

Leave granted.

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The proceedings were initiated under the Gujarat Agricultural Lands Ceiling Act, 1960 (for short, "the Act") to determine the ceiling area and the surplus area. The respondent claimed that under an agreement dated October 14, 1969, thirty acres of land had been transferred in favour of the respondent's mother which was duly recognised by mutation proceedings dated 15.9.1971. The question is whether it is to defeat the provisions of the Act. Sub-section (1) of Section 8 of the Act reads thus :

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"8. Transfers or partitions made after 15th January 1959 but before commencement of this Act. (1) Where after 15th day of January, 1959 but before the commencement of this Act or after 24th day of January, 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Where such transfer or partition was made after 15th day of January 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day of January, 1971 but before the specified date."

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A reading thereof would clearly indicate that notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of the Act. The question is whether this agreement is a transfer. Shri R.P. Bhatt, learned senior counsel appearing for the respondent, has taken us through the agreement which had specifically stated that right, title and interest of the land was conferred for the first time in favour of the respondent under this document. Thereby, the right title and interest held by the owner of the land is

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A sought to be extinguished. In turn it is sought to be conferred in favour of the respondent for the first time under the document. By operation of Section 17 of the Registration Act, it is a compulsorily registerable document. Since it has not been registered, the owner has not been divested of the right, title and interest in the land and thus continued to be the owner of the land under the Act.

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The authorities and the High Court have not appropriately considered this question. The appeal is allowed accordingly and the matter is remitted to the ceiling authority to compute the ceiling area keeping in view what has been held in this order. The authorities would take further action according to law. No costs.

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G.N.

Appeal allowed.