

(2001) 11 KAR CK 0052
In the Karnataka High Court
Case No : Writ Appeal No. 4820 of 1999

A.G. Lakshminarayana

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-11-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A

Citation : (2002) 1 KCCR 458

Hon'ble Judges : R.V. Raveendran, J;N.K. Patil, J

Bench : Division Bench

Advocate : B. Rudragowda, for the Appellant; P.A. Kulkarni, for H.B. Narayana, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—The appellant and Respondents 1 to 3 were the Petitioner and Respondents 1 to 3 respectively in Writ Petition No. 13741 of 1992. This appeal is directed against the order dated 23.2.1999, dismissing the said writ petition.

2. The appellant is the owner of the land bearing Sy. Nos. 262 [1 acre 7 guntas], 263 [1 acre] and 252/1 [1 acre 36 guntas] of Bellur village, Nagamangala taluk, Mandya District. The said lands originally belonged to appellant's father Govinde Gowda, who owned extensive lands in Maharashtra and Karnataka. The said Govindegowda had three wives Boramma, Lingamma and Chikkamma. He had one daughter by name Jayamma (through his first wife) and a son Lakshminarayana (through his third wife). His only daughter Jayamma was married to one J.P. Shivalingaiah, who happened to be the brother of his second wife Lingamma. Third Respondent herein is the son of the said Shivalingaiah. J.P. Shivalingaiah, who was the son-in-law of said Govinde Gowda and brother-in-law of the appellant, was managing the lands and affairs of his father-in-law, and the said Shivalingaiah and his wife Jayamma (daughter of Govinde Gowda) were treated as members of the family of Govinde Gowda.

3. The said Govindegowda died in December, 1964, leaving a registered Will dated 13.11.1964. At the time of execution of the Will and death of Govinde Gowda, the appellant who was his only son was a minor aged about 14 years. Under the said Will dated 13.11.1964, Govindegowda bequeathed all his lands in Mabuli Village, Ramtek taluk, Nagpur district in Maharashtra [stated to be of an extent of 120 acres] and other properties to his son-in-law Shivalingaiah; and he bequeathed the B schedule properties, including the aforesaid three lands bearing Sy. Nos. 262, 263 and 252/1 to his son [appellant herein] subject to the right of his three wives to receive the income from the lands during their life time, by way of maintenance; and as the appellant was a minor, Govindegowda appointed his son-in-law Shivalingaiah as the testamentary guardian to look after and manage the "B" schedule properties bequeathed to his minor son [appellant] until appellant attained majority, making it clear that Shivalingaiah should not alienate the said properties and should deliver them to his son Lakshminarayana [appellant] on his attaining majority.

4. After the death of Govindegowda in the year 1964, Shivalingaiah was managing the properties of the appellant including the said three lands. Even after the appellant attained majority, Shivalingaiah continued to be in management of the lands and did not deliver the possession and control to the appellant. Apparently this was because he was continued to be treated as a member of Govindegowda's family as the son-in-law (as the first wife of Govindegowda was his mother-in-law and second wife of Govindegowda was his sister) and the widows of Govindegowda who were entitled to the income from the said properties during their lifetime also trusted him and wanted him to continue in management.

5. In the revenue records, Govindegowda was shown as the owner and later the appellant was shown as the owner of the said three lands. Shivalingaiah was shown as the person cultivating the said lands, till the year 1970-1971. From the year 1971-72 onwards the name of third Respondent Ramalingaiah, who is the son of said Shivalingaiah, was shown as the person cultivating the said three lands.

6. On 27.8.1974, third Respondent filed application in Form No. 7 u/s 48A of the Karnataka Land Reforms Act, 1961 [for short, the "Act"] and Rule 19(1) of the Karnataka Land Reforms Rules, 1974 [for short, the "Rules"], for registration of occupancy rights in regard to the said three lands belonging to the Appellant. In the said application, third Respondent stated that he was cultivating Sy. Nos. 262 and 263 from 1971-72 [for 3 years] and Sy. No. 251/1 from 1968-69 [for 7 years]. Subsequently, third Respondent appears to have corrected the survey number of third item as 252/1 instead of 251/1.

7. The said application was registered as LRF 16 of 1974-75 on the file of Land Tribunal, Nagamangala. The Land Tribunal, by order dated 24.10.1975, granted the application for registration of occupancy rights in regard to the said three lands. The said order was set aside by this Court by order dated 6.12.1976 in

Writ Petition 6971 of 1975 filed by the Appellant, on the ground that the order was not a speaking order.

8. On remand, the Tribunal reconsidered the matter and by order dated 8.6.1979, rejected the application of third Respondent for grant of occupancy rights, on the ground that the lands were cultivated by Shivalingaiah (father of third Respondent) as Guardian of appellant under the Will and not as tenant. Third Respondent challenged the said order of the Tribunal in Writ Petition 15775 of 1979 and the said writ petition was allowed by order dated 24.1.1984 on the ground that the Tribunal had not followed the procedure prescribed by Rule 17 of the Karnataka Land Revenue Rules, 1974, and the matter was again remanded to the Land Tribunal.

9. The Tribunal considered the matter again and gave opportunity to the parties to let in evidence. The Appellant's evidence was recorded. The Third Respondent, in addition to giving his evidence, examined seven witnesses. After considering the matter, the majority members of the Tribunal held that as third Respondent was cultivating the land on 1.3.1974, he was entitled to be registered as occupant. However, the Chairman of the Tribunal expressed the minority view that the third Respondent was not the tenant as the third Respondent's father Shivalingaiah was cultivating the land as the testamentary guardian of the appellant herein and in view of it the name of Shivalingaiah was entered as the person cultivating the land, and instead of delivering the land to the Appellant he had managed to get his son's name entered and cause the application in Form No. 7 to be filed by his son. Based on the opinion of the majority members, the Land Tribunal has allowed the third Respondent's application by order dated 26.3.1992, directing registration of occupancy rights in regard to said three lands in favour of third Respondent.

10. Feeling aggrieved, the appellant challenged the order of the Tribunal in Writ Petition 13741 of 1992. A learned Single Judge of this Court by order dated 23.2.1999 dismissed the writ petition and upheld the majority decision of the Tribunal. The learned Single Judge accepted the contention of the Appellant that Shivalingaiah was in possession of the three lands as testamentary guardian of the appellant, but held that as the appellant did not take any steps to take possession from Shivalingaiah on attaining majority in the year 1968, for nearly six years till 1974 and as the Appellant failed to file any application under the proviso to Section 4 of the Act, for a declaration that the third Respondent was not the tenant, the Appellant should be deemed to have acquiesced in the possession of Shivalingaiah and later his son (Third Respondent) and therefore the possession of Third Respondent was lawful and consequently Third Respondent became a deemed tenant u/s 4 of the Act.

11. Feeling aggrieved, the appellant has filed this appeal. Appellant contends that third Respondent was neither a tenant nor a deemed tenant and grant of occupancy rights in his favour was unwarranted. He also points out that the third Respondent had put forth a specific case before the Tribunal that Govinde Gowda

had created a tenancy ("Guttige") in favour of his father Shivalingaiah, and he changed his case before the learned Single Judge, by putting forth a new case that he was a deemed tenant u/s 4 of the Act.

12. On the contentions raised, the following two points arise for consideration in this appeal:

i) Whether the third Respondent established that he was cultivating the three lands as on 1.3.1974 and immediately prior to it as a tenant, in pursuance of a tenancy granted by Govinde Gowda.

ii) Whether the third Respondent was a deemed tenant in regard to the three lands u/s 4 of the Act and therefore entitled to registration of Occupancy Rights.

Re: Point No. (i):

13. In the application in Form No. 7, submitted by the third Respondent in August, 1974, he stated that he was a tenant in regard to the lands in question and he was cultivating them for a period of seven years. In his evidence, third Respondent admitted that the lands originally belonged to Govindegowda; that Govindegowda died about one month after the execution of the Will dated 13.11.1964; that the said original Will was in the custody of his father Shivalingaiah and after the death of Shivalingaiah the said Will is in his custody; that his father Shivalingaiah died in the year 1977; and that Govindegowda had leased ("Guttige") the said three lands in favour of his father Shivalingaiah in the year 1960-61.

14. Thus the specific case of third Respondent was that his father Shivalingaiah was the tenant of the said lands having taken them on tenancy basis in the year 1961-62. Shivalingaiah who was very much alive on 1.3.1974 (the date of commencement of the Amendment Act, which is the relevant date for claiming occupancy rights) and on 27.8.1974, (when the third Respondent filed Form No. 7 before the Land Tribunal), did not apply for grant of occupancy rights. Third Respondent has not explained how he can claim to be a tenant or file an application in Form No. 7, when his specific case is that the tenancy rights in respect of the lands in question were granted to his father Shivalingaiah in the year 1961-62 and Shivalingaiah was very much alive in the year 1974. It is not the case of third Respondent that his father surrendered the lands in favour of Govindegowda and Govinde Gowda thereafter granted a fresh tenancy in his favour. Nor is it his case that his father had sub-let the lands in his favour and the Govinde Gowda recognised him as being legally in possession. In fact the Will shows that Govindegowda was in possession in 1964 and gave only the management to Shivalingaiah in 1964. Be that as it may.

15. The essential condition for an applicant to be registered as an occupant is that he should be the tenant in respect of the land in respect to which he claims occupancy rights on and before the date of vesting (1.3.1974) and should have been personally cultivating the land. If a land is leased to the father, and the

father was alive on 1.3.1974 and even thereafter, a son cannot file an application for registration of occupancy rights during the life time of the father. In this case Shivalingaiah, who according to third Respondent, was the tenant, was alive till 1977. Therefore third Respondent could not have filed Form No. 7 in 1974 on the ground that he was the tenant. We are fortified in this view by a decision of a Learned Single Judge of this Court in *Jahirodin v. Land Tribunal* 1979 (1) Kar LJ 207. In that case the applicant claimed that his father was the tenant and that as his father was old, he was cultivating the lands and filed an application for registration of occupancy rights in his name. This Court held that the application was liable to be rejected, as he was not the tenant as on the date of vesting, namely 1.3.1974. We, therefore hold that the Tribunal ought to have rejected the claim of the third Respondent for registration of occupancy rights in view of his specific admission that his father was the tenant in respect of the lands and his father was alive on the date when he (third Respondent) filed Form No. 7.

16. The third Respondent did not also prove that his father Shivalingaiah was the tenant in respect of the lands in question. Though the third Respondent stated that he had documents to show the grant of tenancy by Govindegowda in favour of his father in regard to the said three lands in the year 1961-62, he did not produce any lease deed or tenancy Agreement or receipt issued by the owner to prove tenancy. He produced a letter, said to have been written by the owner Govindegowda to his (third Respondent's) father Shivalingaiah, referring to the crops grown in the lands. This obviously cannot be treated as proof of tenancy in favour of Shivalingaiah, as admittedly, Shivalingaiah as the son-in-law of deceased Govindegowda and as a member of his family, was managing and looking after the lands of Govindegowda, including the said lands in question. The letter admittedly does not refer to any tenancy, or sharing or crops on tenancy basis. The Third Respondent in his evidence, does not state that his father was giving a portion of the crop or any rent to Govindegowda.

17. The third Respondent did not allege or prove grant of any tenancy by Govindegowda in his favour. The third Respondent stated that there is no document to show the tenancy from 1961-62, but he has some documents to show the tenancy from 1972-73. He did not however produce the same. Third Respondent stated that from 1972-73 till filing the application in Form No. 7 before Tribunal in 1974, he was giving a share to his grandfather Govindegowda, but he did not have any receipts or documents in that behalf. This is obviously an outright lie as Govinde Gowda had died in the year 1964 itself. Hence there is absolutely no evidence to prove grant of tenancy by Govindegowda.

18. The other witnesses who were examined on behalf of third Respondent before the Tribunal, merely stated that the lands belonged to Govinde Gowda and they were being cultivated by Shivalingaiah and later by Ramalingaiah [third Respondent]. None of them have said that the lands were cultivated by either Shivalingaiah or Ramalingaiah [third Respondent] as tenants. One Dhananjaya, who is brother of third Respondent, examined as a witness on behalf of third

Respondent, admits that his father Shivalingaiah, his brother Ramalingaiah (third Respondent) and himself constituted a joint family till 1977. The oral evidence only proves that Shivalingaiah was cultivating the lands and third Respondent as son of Shivalingaiah was assisting him. But this in no way helps the third Respondent, as in this case, there is no dispute that the Shivalingaiah was in fact cultivating the land, in a position of trust. Thus the oral evidence let in by Third Respondent is also of no assistance to prove tenancy.

19. We have referred to the evidence in detail, only to show that the Third Respondent has not let in any evidence to prove that he was the tenant of the said lands. Merely proving that he and his father were cultivating the land on 1.3.1974 will not entitle him to registration of occupancy rights, when it is admitted that Shivalingaiah was the Testamentary Gurdian of Appellant and was put in charge of the lands. In spite of it, the majority members of the Tribunal have ordered registration of occupancy rights in the name of third Respondent, solely on the ground that third Respondent was cultivating the lands in question as on 1.3.1974 without recording a finding as to the nature of his possession and on the question whether he was a tenant. The Chairman of the Tribunal had given cogent reasons for his dissent and correctly held that third Respondent failed to prove that he was tenant. The decision of the Tribunal based on the majority view, cannot therefore be sustained. Accordingly, we answer point (i) in the negative.

Re: Point No. (ii):

20. Before the Tribunal, the case urged was that the tenancy was granted by Govindegowda to Shivalingaiah. In the Statement of objections filed in the writ petition, the third Respondent slightly modified his case, as follows, by alleging for the first time, tenancy under his grandmother Boramma (first wife of Govindegowda):

It is submitted that Respondent 3 and earlier to him, his late father Sri Shivalingaiah have been cultivating the above lands under Late Sri Govinde Gowda, father of Petitioner and thereafter under Smt. Boramma, the first wife of Late Sri Govinde Gowda as tenants from the year 1961-62 onwards.... It is submitted that as on 1.3.1974 and earlier to that there is sufficient documentary evidence to prove that Respondent 3 and earlier to him his father late Shivalingaiah who were cultivating the above lands as tenants, earlier under Govinde Gowda father of the Petitioner and thereafter under Smt. Boramma, the late first wife of Sri Govinde Gowda.

21. Having realized that it was not possible to support the said case, the third Respondent again changed his stand at the time of arguments in the Writ Petition. During the arguments before the learned Single Judge, third Respondent completely gave up the case that the lands were given by Govindegowda on tenancy basis. For the first time he contended that he should be considered to be a deemed tenant u/s 4 of the Act. According to third Respondent, he was lawfully

cultivating the lands in question belonging to the appellant as on 1.3.1974 and he was neither a member of the family of appellant nor was a servant or a hired labourer under the appellant nor was a mortgagee and the appellant had not filed any application to declare that he (third Respondent) was not a tenant; and therefore it should be held that he had become a deemed tenant u/s 4. This argument found favour of learned Single Judge. We will now consider whether the contention of the third Respondent and the finding of the learned Single Judge, are justified. For this purpose, we will assume that the third Respondent could for the first time in the writ petition put forth such a new case.

22. A careful reading of Section 4 of the Act makes it clear that a person can be deemed to be a tenant only if the following conditions are fulfilled:

- a) He should have been lawfully cultivating the land belonging to another [owner].
- b) The land should not be under the personal cultivation of the owner.
- c) He should not be a member of the owner's family nor a servant or hired labourer under the owner nor a mortgagee in possession.

22.1) The owner is however enabled by the proviso to Section 4, to file an application within one year from the appointed day (2.10.1965) to declare the person so cultivating the land was not a tenant. If the Court (later the Tribunal, with effect from 1.3.1974) or the Appellate Authority declares that he is not a tenant, then the person so cultivating will not be deemed to be a tenant.

22.2) Section 4 provides that a person, though not holding any tenancy right can be deemed to be a tenant, if he had been lawfully cultivating the land belonging to another. Thus, the condition precedent for third Respondent to claim that he was a deemed tenant, was that he should have been "lawfully cultivating the lands" belonging to Appellant. The proviso enables the owner to file an application within one year from the appointed day (2.10.1965) for a declaration that such person is not a tenant. It is significant that the words "within one year from the appointed day" was not amended as "within one year from the date of commencement of the Amendment Act" when other provisions were exhaustively amended by Act 1 of 1974 with effect from 1.3.1974. A combined reading of the main section and the proviso to Section 4 would show that a person lawfully cultivating the land of another can be deemed to be a tenant only if he was so cultivating the land as on 2.10.1965 when the Act came into force and continued to cultivate the land for a period of year there from. For example, if a person started cultivating the land of another only in 1967 or 1968 or 1970, obviously the question of his being deemed as a tenant u/s 4 does not arise, as the owner could not have made an application for a declaration that such person was not a tenant, within one year from 2.10.1965. The scheme of the Act and the object of the Act and the wording of Section 4 makes it clear there cannot be deemed "tenancy" unless it is established that the person claiming to be a deemed tenant was lawfully cultivating the land of another between 2.10.1965 to 2.10.1966.

22.3) Section 4 has been amended by Act No. 1 of 1974. The proviso to Section 4 as it originally stood contemplated the owner approaching the "Court" for such declaration that such person is not a tenant and the "Court" making a declaration that the person cultivating the land is not a tenant. The Section has been amended with effect from 1.3.1974 giving the power to make such declarations to the Tribunal. The substitution of the word "Tribunal" for the word "Court" in the proviso to Section 4 with effect from 1.3.1974, in Section 4 does not mean that an application could be made by the owner to the Tribunal after 1.3.1974. The last date for making the application by the owner under the proviso to Section 4 continues to be 2.10.1966 and that has not been altered by the amendment to Section 4. The effect of the amendment is that any application made to the Court before 2.10.1966, if pending on 1.3.1974, had to be transferred and disposed of by the Tribunal.

23. In this case the third Respondent was admittedly not cultivating any of the three lands, let alone lawfully cultivating the lands as on 2.10.1965. In the application (Form No. 7) dated 27.8.1974, he states that he was cultivating the lands for seven years. He has further clarified that he was cultivating Sy.Nos. 262 and 263 for 3 years that is from 1971-72 and Sy.No. 251/1 (later corrected as 252/1) for 7 years, that is from 1968-69. As third Respondent was not cultivating the land as on 2.10.1965, he cannot seek the benefit of deemed tenancy u/s 4 of the Act.

24. We will next consider whether the third Respondent has made out a case for deemed tenancy, even assuming that he can seek the benefit of Section 4, on the basis of cultivation from 1971-72 (in respect of Sy.Nos. 262 and 263) and from 1968-69 (in respect of Sy.No. 251/1).

25. The term "lawful" means warranted or authorised by law or having the qualification prescribed by law or not contrary to or forbidden by law. In Black's Judicial Dictionary, while defining the term "lawful", the distinction between the term "lawful" and "legal", has been highlighted. It is pointed out that the term "lawful" contemplates substance of law whereas the term "legal" contemplates the form of law. An act is "lawful" if it is authorised or sanctioned or at any rate not forbidden by law. On the other hand, an act is "legal", if it is done or performed in accordance with the forms and usages of law or in a technical manner and the word "lawful" more clearly implies an ethical content than does "legal". An illustration of a contract or Will executed without the required formalities is given. Such a contract or Will might be said to be invalid or illegal or not legal, but could not be described as unlawful. We may now refer to some decisions which have considered what is "lawful" in the context of Section 4 of the Act.

25.1) In Ramappa Kadappa Konnur Vs. Sangappa Parappa Kavalli, a Division Bench of this Court held that for registration as an occupant u/s 45, the land should have been held by the applicant as a "tenant" as on 1.3.1974. In that case the Applicant for registration of occupancy rights was inducted as a tenant

by the Court of Wards in 1943 during the period of management of the land. It was held that the Court of Wards had only the power of superintendence, and when that power is withdrawn, nature of possession will have to be relegated to earlier position; and if the applicant was legally obliged to surrender possession, on the withdrawal of the management by the Court of Wards in the year 1958, but failed to do so, his possession and cultivation thereafter cannot be termed as "lawful"; and in such a case, Section 4 was not attracted as he was not "lawfully" cultivating the land on the appointed date (2.10.1965).

25.2) In J.V. Karkad Vs. State of Karnataka, , another Division Bench of this Court held that where applicant for registration of occupancy rights held and cultivated the land on behalf of the owner of the land, while administering the affairs of the owner, such person will not become a "tenant" or a "deemed tenant".

25.3) In Timmakka Kom Venkanna Naik Vs. Land Tribunal, , it was held that no person can be called a tenant unless he cultivates the land lawfully and the lawful nature will have to be substantiated by a lease or by the factors stated in Section 4 and a person who is not inducted lawfully, but who is cultivating the land, cannot claim the status of a tenant at all.

26. Let us now examine whether third Respondent has made out that he was "lawfully" cultivating the land belonging to the appellant and that the appellant was not cultivating the same personally. We have already rejected the claim and contention of third Respondent that he was a tenant in regard to the three lands, in pursuance of a tenancy created by the owner. In fact before the learned Single Judge, third Respondent did not pursue the contention that he was a tenant under Govindgowda and instead put forth a case of deemed tenancy.

27. It is common ground that when Govindgowda died in 1964, leaving a registered Will dated 13.11.1964, the appellant was a minor and Govindgowda therefore appointed Shivalingaiah as testamentary guardian of the Appellant. He bequeathed the properties described in Schedule "A" to the Will to Shivalingaiah. He bequeathed the properties described in Schedule "B" to the Will to the Appellant subject to the right of maintenance in favour of his three wives and directed Shivalingaiah to manage the "B" schedule lands. Shivalingaiah as noticed above was married to the elder daughter of Govindgowda through his first wife and was brother of his Second wife. Shivalingaiah was already managing the family properties even before execution of the Will and enjoying the trust and confidence of Govindgowda and was treated as a member of Govindgowda's family. Therefore, the possession and cultivation of the said three lands by Shivalingaiah, after the death of Govindgowda, was as a testamentary guardian or a trustee of the Appellant, managing the properties. In other words, the possession and cultivation was for and behalf of the owner himself namely the appellant, and not independent of the Owner's possession and enjoyment. It cannot, therefore, be contended that the cultivation by Shivalingaiah or subsequently his son third Respondent herein is an independent

lawful possession, or a lawful cultivation independent of the owner's right to cultivate the land. The mere fact that the appellant attained majority in 1968 and Shivalingaiah did not choose to hand over the possession or management of the land to appellant does not mean that after appellant attained majority, Shivalingaiah asserted any right adverse to that of the appellant. He continued to hold the land in trust and was continued to be liable to deliver the lands to the appellants. It is quite possible, as the mother-in-law of Shivalingaiah and sister of Shivalingaiah (who were the first and second wives of Govindegowda) were entitled to the income by way of maintenance, Shivalingaiah continued to manage the said three lands, even though Appellant attained majority. Be that as it may. The cultivation of lands in question by Shivalingaiah or later Ramalingaiah (third Respondent) was therefore cultivation on behalf of the owner (appellant), in the absence of any material to the contrary. It cannot therefore be said that third Respondent was "lawfully" cultivating the land of appellant. Hence Section 4 is not attracted.

28. We may at this stage notice an additional ground urged by the learned Counsel for Appellant. A deemed tenancy u/s 4 will not occur where a person cultivating the land is a member of owner's family. He contended that the term "a member of the owner's family" should be given a wider meaning for the purpose of Section 4 than what is contained in Section 2(A)(12) of the Act and Shivalingaiah and third Respondent should be considered as members of owner's family, for purposes of Section 4 as the Will makes it clear that Shivalingaiah was considered as a part of Govindegowda's family. He pointed out that the restrict definition of the term "family" in Section 2(A)(12) of the Act, will not apply to Section 4 as the opening words of Section 2(A) makes it clear that the definitions in Section 2(A) are "unless the context otherwise requires". He submitted that in the context in which the term "member of the owner's family" is used in Section 4, it is clear that the narrow definition of "family" in Section 2A(12) will be inapplicable and the term "member of the family" should be construed in the normal and usual sense, as including the son-in-law or grandson who is managing the properties. It is pointed out that the Will clearly states that deceased Govindegowda had three wives; Shivalingaiah was the husband of Govindegowda's daughter through his first wife; and the appellant was the son of Govindegowda through his third wife; and Shivalingaiah was looking after the welfare and interests of the family of Govindegowda and was managing his properties. It is contended that Shivalingaiah was therefore cultivating the lands of appellant as a member of the family. The said contention appears to be reasonable, logical and meriting acceptance. However as we have already held that third Respondent is not entitled to claim that he is a deemed tenant u/s (4), we do not feel it necessary to examine the said additional ground urged by the Appellant in greater detail.

29. The contention of third Respondent that once he established that he was cultivating the land as on 1.3.1974 and his name was entered in the cultivator's column in the revenue records for 1973-74, and as the Appellant did not make

an application as contemplated by the proviso to Section 4 for declaration that he (third Respondent) was not a tenant, it was not necessary for him to explain the nature of his possession or occupation or how he came to be possession or was cultivating the land, is without merit. The question of appellant filing an application under the proviso to Section 4 to seek a declaration that third Respondent was not a tenant, would arise only if third Respondent was lawfully cultivating the land contemplated u/s 4. If third Respondent was not lawfully cultivating the land, or if the cultivation was as a member of the family, or if the cultivation was only after 2.10.1966, the question of appellant filing an application for a declaration that the third Respondent is not a tenant does not arise. The learned Single Judge was in error in holding that third Respondent was a deemed tenant u/s 4, merely because the appellant did not approach the Court between 1968 (on his attaining majority) and 1.3.1974 (date of commencement of Amendment Act) to obtain back the possession of the lands.

30. We therefore hold that the third Respondent has failed to prove that he was a deemed tenant in regard to land in question.

31. Shivalingaiah and third Respondent were treated as members of his family by Govindgowda and Appellant. Shivalingaiah got a large part of the properties of Govindgowda by way of bequest. He was made testamentary guardian of Appellant to look after his properties. Shivalingaiah did not assert any right or interest adverse to that of Appellant, but was managing the lands on behalf of Appellant. There was no need for appellant to take immediate steps to recover the possession, on attaining majority. By the time, the real intention of Shivalingaiah and the third Respondent was made known by third Respondent filing Form-7, there was a bar of jurisdiction of Civil Courts u/s 132 and Appellant had to await the decision on Form No. 7.

32. It is unfortunate that third Respondent had misused the trust imposed by Govindgowda in Shivalingaiah under the Will and has managed to continue in possession for nearly three decades. The matter has been pending for nearly 27 years from the date of filing Form No. 7. The matter has been twice remanded to the Tribunal. No purpose would be served by again remanding the matter to Tribunal, when we have found that third Respondent has not established that he is a tenant or deemed tenant and that the three lands in question are not subject to any tenancy and that "possession" remained with the Appellant and Shivalingaiah and later third Respondent are only in management of the land on behalf of Appellant.

33. In the result, we allow this appeal as follows:

- a) The order of learned Single Judge dated 23.2.1999, made in Writ Petition No. 13741 of 1992 is set aside;
- b) The order of the Land Tribunal, Nagamangala, dated 26.3.1992 made in No. LRF 16 of 1974-75 is quashed and the Form No. 7 filed by third Respondent claiming occupancy rights in respect of the three lands stands rejected.

c) Liberty is reserved to the appellant to recover possession of the lands in question from third Respondent in accordance with law with mesne profits from 1.3.1975 (i.e. three years prior to the appointed date) till date of delivery of possession. Having regard to the facts and circumstances, it is open to the appellant to request the Court or the Forum, where he initiates action to recover the possession of the said three lands from third Respondent, to deal with the matter expeditiously.

d) Third Respondent shall pay costs of the writ petition and this appeal to the Appellant. It is quantified as Rs. 5,000.00.