
(2013) 12 KAR CK 0348

In the Karnataka High Court

Case No : Writ Petition No. 26445 of 2003 (LR)

Ambabai since Deceased by her L.Rs. (Ramesh and Others)
and Somanath by her L.Rs.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0348

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : S.S. Magadum, for P1 A to P1E, for the Appellant; V.M. Sheelvant, Advocate for C/R. 3-5 and Sri Vinayak S. Kulkarni, HCGP for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

Ravi Malimath, J.—The case of the petitioners is that the land in question bearing R.S. No. 24/2, measuring 9 acres 6 guntas, situated at Tondihal village, Hungund Taluka, Bagalkot District, was owned by deceased Narasappa Hanchate. He is the father of the 2nd petitioner and father-in-law of the 1st petitioner. He had five sons. A partition took place among the five sons in the year 1955 by a deed of partition which was registered. Thereafter the deceased Narasappa purchased the land through a sale deed dated 19.3.1956 from one Siddanagouda. Hence he became the absolute owner of the said land. The 1st petitioner is a granddaughter of deceased Narasappa and wife of Somanath, who is one of the sons of Narasappa. During his lifetime Narasappa gifted the land in favour of the 1st petitioner by virtue of the gift deed dated 26.3.1980. In pursuance whereof the 1st petitioner's name was entered in the record of rights. For some time Narasappa used to employ labourers for cultivation of the land. The name of one Lalsab Onti was entered in the record of rights from 1958-59. The name of deceased Narasappa was deleted in terms of the mutation entry No. 1060. Narasappa was cultivating the land from 1972-73, through one Erappa Harijan on

hire basis. A deed was executed on 6.3.1972 as Ex. P. 4. Thereafter one Ganganagoudar was hired to cultivate the land for the year 1974-75 by virtue of a deed marked at Ex. P. 1. For the year 1975-76, the land was cultivated through Mahantappa by virtue of deed vide Ex. P. 3. The deceased Hanumantappa namely the original applicant drafted the sale deed Ex. P. 1 and P. 4. Therefore it is the case of the landlord that the lands have been cultivated by him on hire basis. That the deceased Hanumantappa never cultivated the lands in question and hence tenancy rights could not be claimed by him. On coming into force of the Karnataka Land Reforms (Amendment) Act, the deceased Hanumantappa made an application in Form No. 7 claiming tenancy rights. By the order dated 7.4.1976 it was rejected. W.P. No. 175/1981 was filed by him, wherein the order of the Land Tribunal was set aside and the matter was remanded to the Land Tribunal for fresh consideration. After remand, by the order dated 19.6.1987, occupancy rights were granted to Hanumantappa. The landlord namely the petitioner herein, filed LRA No. 28/1987 before the Appellate Authority. Documents were produced, their witnesses were examined and on the Appellate Authority being abolished, the same was converted into W.P. No. 12822/1996. By the order dated 21.7.1998, the writ petition was allowed. The order was set aside and the matter was remanded to the Tribunal. The parties were permitted to lead further evidence. Thereafter by the impugned order, Hanumantappa was granted tenancy rights. Hence, the present petition. Learned counsel for the petitioners Sri S.S. Magadum, contends that the order of the Land Tribunal is erroneous and liable to be set aside. That substantial material has been let in by him before the Tribunal. That the claim of Hanumantappa cannot be considered. That the evidence on record would show that Exs. P. 1 and P. 4 have been drafted by Hanumantappa himself. Therefore the document itself would show that the lands were being cultivated on hire basis. It is his further contention that the evidence let in by the petitioners has not been considered. That the mutation entry standing in the name of Hanumantappa is concocted. That the tenant claims his rights in terms of mutation entry 1060 in the year 1970. Therein it is stated that the name of the tenant has been entered in view of the death of Lalsab who is said to have died three years earlier. Therefore Lalsab could have died somewhere in the year 1967. If he died in the year 1967, the question of Hanumanthappa seeking tenancy rights from 1970 onwards is doubtful. Moreover the record of rights shows that the mode of cultivation is 4, which has been added. Hence he pleads that the order of the Land Tribunal is erroneous.

2. On the other hand, Sri V.M. Sheelavant, learned counsel for the tenant defends the impugned order. He submits that there are no grounds to interfere. Admittedly the record of rights stand in the name of tenants. Hence the Tribunal has rightly granted occupancy rights. The Government Advocate defends the impugned order.

3. Heard learned counsels and examined the records. The Tribunal while considering the plea of the tenants was of the view that ever since 1964-65 the name of Lalsab Onti was entered. That in terms of the mutation entry, it would

show that Lalsab having died, the owner is cultivating the land in question. However in the record of rights for the period 1968 onwards, the name of Hanumantappa has been shown as a person in cultivation. Based on this material the Land Tribunal granted occupancy rights.

4. On hearing learned counsels and examining the records, I am of the considered view that appropriate relief requires to be granted. Contentions have been advanced by the landlord before the Tribunal as well as before the Appellate Authority with regard to the material and the evidence in support of his case. That Hanumantappa never cultivated the land in question. Admittedly he was a bond writer. He is the son of the landlord. How can a son be a tenant of his father. It was he who prepared the documents. The documents would show that the landlord has been in cultivation in terms of Exs. P. 1 to P. 4. However none of this has been considered by the Land Tribunal.

5. Merely on the basis of the name of Hanumantappa being entered in the year 1968 onwards, tenancy rights have been granted. I am of the considered view that the impugned order passed by the Land Tribunal is not sustainable. There has been no appreciation of the material produced by the landlord as well as the evidence by the tenant. Specific case of the landlord is fabrication. It has not been considered. Irrespective of the plea whether the plea of the landlord has to be accepted, necessarily the Tribunal would have to record its finding with regard to the contentions advanced. It has failed to do so. Purely and simply in view of the name of Hanumantappa being found in the record of rights, cannot form the basis for the grant of occupancy rights.

6. The further contention of the landlords is that the name of Hanumantappa has been wrongly entered. In view of the fact that Lalsab died almost three years prior to the date on which the mutation entry was made, has also not been adverted to by the Land Tribunal. Hence I am of the considered view that, in view of the substantial evidence being let in and when written arguments are also filed before the Land Tribunal, they have not been considered. Only because the name of the tenant is entered in the record of rights, occupancy rights have been granted.

7. The appreciation of evidence by this Court for the first occasion, in my considered view, is wholly inappropriate. Appreciation of evidence is to be done by the Court of first instance. It has failed to do so. Hence the impugned order is unsustainable. When such an exercise is not done, a writ Court would not look into it. It would be inappropriate for this Court to record any assumptions based on the contentions and the plea of the parties. Having not done so, it is just and necessary that the same be considered by the Tribunal. It is therefore just and necessary that the Tribunal hear the parties and considers the material and evidence on record and thereafter pass an appropriate order. Under these circumstances, I have no hesitation to hold that the Tribunal has failed to consider the evidence as well as the documentation produced by the parties. Consequently, the petition is allowed in the following terms.

- (a) The order dated 8.4.2003, passed by the 2nd respondent/Land Tribunal, in No. KLR. 2. SR/714, is set aside.
- (b) The matter is remanded to the Land Tribunal for a fresh enquiry.
- (c) Both parties are directed to appear before the Land Tribunal on 20.12.2013.
- (d) All the contentions are kept open. The Land Tribunal to hear both the parties and pass appropriate orders, in accordance with law, by the end of June 2014.