

(2005) 11 KAR CK 0037
In the Karnataka High Court
Case No : L.R.R.P. No. 6164 of 1989

Anantagiri Since deceased by his L.R. Sri. V. Nagaraj	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 21-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Certain Inam Abolition Act, 1977 — Section 5 (3)
Karnataka Land Reforms Act, 1961 — Section 121 A

Citation : (2006) ILR (Kar) 197 : (2007) 1 KarLJ 288 : (2006) 2 KCCR 1298

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Jayavittal Rao Kolar, for the Appellant; A.R. Sharadamba, HCGP for R1-2, B.R. Satenahalli, for R3(A-D) and S.G. Kulkarni, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The Petitioner, questioning the legality and validity of the order dated 12th October 1989 passed in Proceedings No. ALRAA/RA/ 162/87 on the file of the Additional Land Reforms Appellate Authority, Hospet, Bellary District, confirming the order dated 2nd March 1987 passed in proceedings Nos. 88, 89, 93 and 94/81-82 on the file of the Land Tribunal, Harapanahalli, has presented the instant revision petition.

2. Deceased third respondent-Sri B. Hiriappa, now represented by his legal representatives R3 (A-D) had filed two applications for registration of occupancy rights, fourth respondent, claiming to be predecessor of the suit schedule land had also filed Form No. 1 for registration of occupancy rights and petitioner herein also claiming to be inamdar of the said land, had filed Form No. 1 for registration of occupancy rights. On an earlier occasion, the applications filed by petitioner's father (deceased Sri. Ananthagiri), deceased third respondent-Sri B. Hiriappa and fourth respondent had come up for consideration before the Land Tribunal, Harapanahalli on 1st October 1981. The Land Tribunal, Harapanahalli,

by its order dated 1st October 1981, clubbing all the four applications, ordered for registration of occupancy rights in favour of the father of petitioner, i.e. late Sri. Ananthagiri. Being aggrieved by the said order passed by the Land Tribunal, Harapanahalli dated 1st October 1981, the third respondent herein, now represented by his legal representatives had filed a writ petition before this Court in Writ Petition No. 25271/1981. The said writ petition filed by third respondent herein was allowed by this Court by its order dated 15th December 1983 and the order passed by Land Tribunal, Harapanahalli dated 1st October 1981 was set aside and the matter was remitted back to Land Tribunal, Harapanahalli for reconsideration. After remand, the Land Tribunal, Harapanahalli took up the matter for reconsideration of all the applications filed by petitioner and respondents 3 and 4. The Land Tribunal, after appreciation of oral and documentary evidence available on file and after conducting enquiry in strict compliance of the Land Reforms Rules, by its order dated 2nd March 1987, has registered occupancy rights in favour of deceased third respondent and rejected the application filed by petitioner and the fourth respondent respectively u/s 5(3) of the Karnataka Certain Inams Abolition Act, in proceedings Nos. 88, 89, 93-94/81-82. Being aggrieved by the said order passed by the Land Tribunal, Harapanahalli dated 2nd March 1987, the petitioner herein filed the appeal on the file of the Additional Land Reforms Appellate Authority, Hospet (hereinafter called the "Appellate Authority") in proceedings No. ALRAA/RA/162/87. The Appellate Authority, after appreciation of oral and documentary evidence and after conducting enquiry, in strict compliance of the mandatory provisions of the Act and the Appellate Authority Rules and after giving sufficient opportunity to parties, after framing necessary issues on the basis of the pleadings and the stand taken by the parties, has dismissed the appeal filed by petitioner, confirming the order passed by Land Tribunal, Harapanahalli, by its order dated 12th October 1989. Assailing the correctness of the order passed by the Appellate Authority, Hospet, as stated supra, petitioner herein has presented the instant revision petition.

3. The principal submission canvassed by learned Counsel appearing for petitioner is that, the impugned orders passed by both the authorities are liable to be set aside at the threshold itself for the reason that, the same are perverse, capricious and also on the wrong basis that, the evidence given by deceased third respondent and all the independent witnesses examined by him have categorically stated that, the deceased third respondent was cultivating the said land since 25 to 30 years especially when they have failed to state as to, under what capacity, the deceased third respondent was cultivating the said land. Secondly, he specifically contended that, the revenue records such as record of rights was not at all written for the agricultural years 1970-71 to 1973-74 in the entire Bellary District on the ground that, they were agitating their rights for regularisation of their services and both the authorities have committed grave error holding that, the third respondent was cultivating the land in question as tenant as on 1st March 1974 only on the sole ground that, deceased third

respondent and all the independent witnesses have spoken to the effect that, they are cultivating the said land, without any basis nor the deceased third respondent represented by his legal representative has produced any lease deed or any supportive documentary evidence. Further, he vehemently submitted that, the reasoning given by Appellate Authority for holding that, the name of deceased third respondent is found in the RTC extract from the years 1974-75 to 1977-78 and that, he is entitled to be granted occupancy rights, is without any basis. Further, to substantiate the submission that, the finding given by Land Tribunal also is perverse and is one without jurisdiction, he placed reliance on the judgment of the Apex Court in Wali Mohammad (Deceased) by Lrs Vs. Ram Surat and Others, and submitted that, any correct entry can be taken into consideration for deciding as to whether a person is bhoomalika or not and fictitious or fraudulent entries have no legal effect and cannot be considered whatsoever, Further, regarding the entry found from 1974-75 showing the name of deceased third respondent in the RTC extract, he submitted that, the reasoning given by the Appellate, Authority that, he is cultivating the said land as tenant, is also contrary to the judgment of the Calcutta High Court in the case of Hemendranathroy Chaudary v. Jnanendra Pasanna Bhaduri and Ors. in Civil Appeal No. 84/1933 disposed of on 14th 1935: Hemendra Nath Roy Choudhury Vs. Jnanendra Prasanna Bhaduri and Others, . Therefore, he submitted that, the impugned orders passed by both the authorities are liable to be quashed. Further, he submitted that, there is reference in the order of the appellate authority regarding the alleged receipts issued by deceased Dr. Ananthagiri sent through his servant, Sri. Berkeri Ramappa to collect the fees towards medical charges-but, except a stray reference in the order of the Appellate Authority, no receipt of that sort is available in the entire original records. Therefore, he submitted that, the impugned orders passed by both the authorities are liable to be set aside and the Land Reforms Revision Petition filed by petitioner may be allowed.

4. Learned counsel appearing for fourth respondent, after adopting the submission made by learned Counsel for petitioner submitted that, the finding given by both the authorities are perverse in nature and the same are passed without any basis. He submitted that, no documentary evidence such as lease deed etc. are coming forth from the records to show that, the deceased third respondent was cultivating the said land as tenant. Therefore, he submitted that, the impugned orders passed by both the authorities are liable to be set aside.

5. Per contra, learned Counsel appearing for third respondent, now represented by his legal representatives R3(A-D), inter alia, contended and substantiated the impugned orders passed by both authorities, stating that, both the authorities, after appreciation of oral and documentary evidence available on file, have given concurrent finding of fact, against the petitioner and both the orders are in accordance with law. He submitted that, all the four independent witnesses have deposed stating that, the deceased third respondent was cultivating the land in question since 25-30 years and that, his name is found in the RTC extract for the

years from 1974-75 to 1978-79. Further, he submitted that, when the order passed by the Land Tribunal was set aside by this Court and the matter was remitted back to the Land Tribunal for reconsideration and the same was pending, deceased Ananthagiri father of petitioner herein had sold the land in question in favour of the fourth respondent herein - Sri. A. Hanumanthappa and the same is not at all justifiable. He submitted that, the Appellate Authority has rightly rejected the claim of the petitioner and the said rejection made by the Appellate Authority is strictly in accordance with law and no error much less irregularity as such has been committed by the Appellate Authority. Further, he submitted that, as on the date of executing the sale deed by deceased Ananthagiri in favour of fourth respondent herein, he was not the owner of the land. Therefore he submitted that, petitioner has not made out any case to interfere in the well considered orders passed by both the authorities. In view of the concurrent finding of fact recorded by both the authorities against the petitioner, interference by this Court in exercise of the revisional jurisdiction u/s 121-A of the Land Reforms Act is not justifiable.

6. Learned Government Pleader appearing for respondents 1 and 2, inter alia, contended and submitted that, the Appellate Authority as well as Land Tribunal, after appreciation of oral evidence adduced by the deceased third respondent himself and the deposition of four independent witnesses in support of his claim for registration of occupancy rights, have rightly registered the occupancy rights in favour of third respondent and no error much less irregularity as such has been committed by both the authorities in passing the impugned orders. Therefore, interference by this Court is not justifiable.

7. After hearing learned Counsel appearing for the parties, after careful perusal of the orders passed by both the authorities and after evaluation of the entire original records available on file, threadbare, it is manifest on the face of the orders passed by both the authorities that, both the authorities have not committed any error or material irregularity as such in registering the occupancy rights in favour of deceased third respondent, now represented by his legal representatives, R3(A-D). Both the authorities, after conducting enquiry in strict compliance of the mandatory provisions of the Land Reforms Act and Rules and after critical evaluation of the oral and documentary evidence threadbare, have recorded concurrent finding of fact against the petitioner and ordered for registration of occupancy rights in favour of deceased third respondent. It is significant to note that, the deceased third respondent has examined himself and adduced his evidence wherein, he has categorically stated that, he has been cultivating the said land since 25-30 years and therefore, he is entitled for registration of occupancy rights in his favour. To substantiate the claim for registration of occupancy rights in his favour, the deceased third respondent has examined four independent witnesses, namely, 1) Jinnappa, S/o Adeppa 2) Durgappa, Son of Ningappa, 3) Hanumappa S/o. Sidyappa and 4) Smt. Kenchamma. All these four independent witnesses have stated in unequivocal terms that, the deceased third respondent was cultivating the land in dispute

since 25 to 30 years. The Land Tribunal as well as the Appellate Authority, after appreciation of the oral evidence, coupled with the entry found for the agricultural years 1974-75 to 1978-79, have given a finding holding that, the land in question is a tenanted land as on 1st March 1974 and the same was vested in the Government and further, the deceased third respondent had made out a case for registration of occupancy rights in his favour.

8. On a microscopic evaluation of the entire original records available on file, threadbare it is not in dispute that, from the agricultural years 1970-71 to 1973-74, the cultivator's column in the RTC extract shows "blank". It is relevant to take into consideration that, for the agricultural years 1974-75 to 1978-79, the name of third respondent has been shown in the RTC extract in column 12(2)- cultivator's column, as cultivating the said land. From the said entries, it emerges that, as on 1st March 1974, the name of third respondent was found in the RTC extract. The Appellate Authority after appreciation of the oral evidence given by aforesaid four independent witnesses coupled with the credible documentary evidence, has given a finding which proves beyond all reasonable doubts that, the third respondent was cultivating the said land as tenant as on 1st March 1974 and immediately prior to that date. Further, the Appellate Authority has disbelieved the evidence of deceased appellant Sri. Ananthagiri and two other independent witnesses on the ground that, the petitioner himself in his cross examination has clearly admitted that, he came to know the agricultural work from the year 1981 onwards and that he did not know about the cultivation of the suit land from the agricultural year 1968-69 till the year 1973-74. Therefore, from the above admission of the petitioner in his cross examination, it becomes abundantly clear and evident that, he had no personal knowledge of the suit land's cultivation by his father or by anybody else. Therefore, the appellate authority observed that, the statement given by deceased father of the petitioner before the Land Tribunal during the course of the first enquiry also cannot be relied. Therefore, it rejected the statement of the deceased Ananthagiri on the sole ground that, he does not get any support from the very evidence of his son petitioner herein. Another witness Sri. Hanumappa, who was examined as witness for deceased Sri. Ananthagiri, says in his examination -in-chief that, he cultivated the suit land for about three years prior to his statement before the Land Tribunal on 9th September 1981. The Appellate Authority has observed that, if the version of said Hanumappa is believed, then certainly the testimony of deceased Sri. Ananthagiri has to be discarded or vice versa for the reason that, the statement of deceased Sri. Ananthagiri also goes against his own statement given in examination-in-chief when he says that, he was personally cultivating the suit land since the year 1963-64. Therefore, the Appellate Authority has recorded a specific finding that, the statements given by deceased Ananthagiri as well as Hanumappa cannot be believed on the point of possession for the reason that, though the deceased third respondent is stated to have executed a sale deed in favour of fourth respondent herein and handed over possession of the suit land in 1981, no such statement was made by him or by

his son on that point. Further, the Appellate Authority has observed that, the fourth respondent has filed an affidavit before the Land Tribunal to the effect that, he was put in possession of the land in question only on 4th May 1981, i.e. a day prior to the execution of the said sale deed. It is significant to note that, the petitioner-deceased Sri Ananthagiri and deceased third respondent Sri. Hiriappa have filed Form No. 1 for registration of occupancy rights before the second respondent - Land Tribunal and the same were pending adjudication as on the date of execution of the sale deed. Therefore, no occupancy rights as such could have been or has been registered in favour of deceased Ananthagiri when the matter had come up for consideration before the Land Tribunal on 1st October 1981. This clearly goes to show the conduct of the petitioner - deceased Ananthagiri and the manner in which he has proceeded to execute the sale deed in favour of fourth respondent when the applications were pending before the competent authority, as rightly held by both the authorities. The Appellate Authority has specifically referred that, Form No. 1 filed by fourth respondent is not maintainable for two reasons. First of all for the reason that, he filed Form No. 1 claiming himself to be the tenant over the suit land and thereafter changed his stand by filing an affidavit stating that, he claimed occupancy rights on the basis of a sale deed executed by deceased Ananthagiri in the year 1981. The said land being an inam land and also tenanted land as on 1st March 1974,. was vested in Government u/s 4 of the Karnataka Certain Inams Abolition Act, 1977 and u/s 44 of the Karnataka Land Reforms Act, 1961. Therefore, the said sale was prohibited under the provisions of the said Acts. The Appellate Authority held that, under the said sale deed of the year 1981, the fourth respondent does not get any proprietary right over the suit land to claim occupancy rights over it under the provisions of the Inams Abolition Act. The Appellate Authority has further observed that, moreover, the fourth respondent has not filed any appeal against the order passed by Land Tribunal, rejecting his Form No. 1 and therefore, it has to be held that, he is disentitled to seek occupancy rights over the suit land.

9. So far as the reliance placed by learned Counsel for petitioner, referred above, is concerned, there is no dispute regarding the well settled law laid down by the Apex Court and Calcutta High Court, referred above. But, the facts and circumstances of those cases are entirely different from the facts and circumstances of the case on hand and the same cannot be applied to the instant case nor the ratio of law laid down by the Apex Court can be applied to the case on hand. In the instant case, it is the serious grievance of the learned Counsel for petitioner that, for the agricultural years 1970-71 to 1973-74, the cultivator's column in the RTC extracts are left blank and therefore, the Appellate Authority ought to have given a finding that, the name of the petitioner was deemed to have been there in the said column as having cultivating the said land as tenant. The said submission of the learned Counsel for petitioner cannot be accepted for the reason that, all the four independent witnesses have categorically stated that, the deceased third respondent was cultivating the said land since 25-30

years but have not stated as to under what capacity, the deceased third respondent was cultivating the land in question, but that does not take away the right of third respondent as tenant. Both the authorities, after conducting enquiry in strict compliance of the mandatory provisions of the Act and Rules and after critical evaluation of oral and documentary evidence, have recorded concurrent finding of fact against the petitioner. Therefore, I do not find any justification or good grounds to interfere in the impugned orders passed by both the authorities. Both the authorities, after thorough evaluation of oral and documentary evidence and after appreciation of the material available on file, have rightly rejected the claim of petitioner. Hence, in view of concurrent finding of fact recorded by both the authorities against the petitioner, interference by this in exercise of Section 121-A of the Act is not justifiable nor petitioner has made out any good grounds to entertain the instant revision petition. It is well settled principles of law laid down by Hon''ble Supreme Court of India reported in *Management of Kalpataru Vidya Samasthe (R) and Another Vs. S.B. Gupta and Another*, that," The High Court in its revisional jurisdiction u/s 115 cannot interfere with the findings of fact recorded by the Courts below and re-appreciate the evidence and interfere with the findings unless it is found that the findings recorded by the lower Court are perverse or there has been non application of mind". Further, in the case of *Masjid Kacha Tank, Nahan Vs. Tuffail Mohammed*, the Hon''ble Supreme Court at paragraph 3 of its judgment has held as follows:-

It is well settled position in law that u/s 115 of the CPC the High Court cannot re-appreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact, if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the Courts below. Simply because another views of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction.

10. In the instant case, it can be seen that, the petitioner - son of deceased Ananthagiri has admitted that, he did not know about the cultivation of the suit land from the year 1968-69 till 1973-74. It becomes evident that, he had no personal knowledge about the suit land's cultivation by his deceased father Sri. Ananthagiri or by anybody else. The Appellate Authority has rightly appreciated this fact and disbelieved the evidence adduced by deceased Ananthagiri. The deceased Ananthagiri has produced Exhibits A1 to A3 and placed reliance on the same. Ex.A1 is the title deed of grant of Inam land; Ex-A2 is the certified copy of the Inam Register and Ex-A3 is the certified copy of the order on Form No. 11 filed by deceased Ananthagiri for grant of Inam land. After careful perusal of the certified copy of the Form No. 11 filed by deceased father of petitioner-Sri. Ananthagiri, which is very much available in the original records, it can be seen that, no where in the said form, has he mentioned as to the title holding of his land, particularly, there is no whisper regarding the land in question land in question and its extent in the said Form No. 11. This document makes amply

clear that, neither the petitioner nor the deceased father of petitioner - Sri Ananthagiri had stated the true facts before both the authorities, i.e. the Land Tribunal as well as the Appellate Authority. On the contrary, it is the deceased Ananthagiri that, he being a doctor by profession has given treatment and sent a chit through his servant one Sri. Berkeri Ramappa to collect the balance fees towards medical charges and not rent of the land. Further, the said deceased Ananthagiri has categorically stated in his evidence that, he has maintained the records and accounts in respect of each patient from whom the amount is due and that they are very much available with him and would produce them before the authority on the next date of hearing. But, it is significant to note that, the said Ananthagiri has failed to produce the said register and accounts alleged to have been maintained by him in spite of giving sufficient opportunity both before the Land Tribunal as well as before the Appellate Authority. Therefore, in my considered view, it is not a case for interference by this Court in exercise of its revisional powers.

11. In view of the concurrent finding of fact recorded by both the authorities and after critical evaluation of oral and documentary evidence, interference by this Courts is not justifiable in view of the well settled proposition of law laid down by the Apex Court and this Court in catena of judgments. Therefore, I am of the considered view that, interference by this Court in exercise of the power u/s 121-A of the Act is not justifiable.

12. Further, so far as the scope and jurisdiction of this Court u/s 121-A of the Land Reforms Act for interfering with the orders of the Appellate Authority and the Land Tribunal is concerned, the same is very much limited. This Court in the case of Smt. Akkawa v. Sri. Basanagouda and Ors. 1988(1) KAR. L.J. 67 considering the dicta laid down by the Hon'ble Supreme Court in the case of Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, and in the case of Vilas Gund Ananthacharya v. State of Karnataka KLR 1987 (1)KAR 1427 has held that, the scope and jurisdiction is very limited and only if this Court finds that the Appellate Authority has committed an error of jurisdiction or has misconstrued any document or there is any wrong appreciation of evidence, this Court can interfere with the orders passed by the said authorities. The same is reiterated by this Court in the case of Syed Sadiq Vs. State of Karnataka, whereby it is held that, this Court should not interfere with the findings of fact as if this Court is a Court of First Appeal and only when there is illegality or irregularity in the procedure of appreciation by the authorities below, this Court can exercise power u/s 121-A of the Land Reforms Act.

13. Having regard to the facts and circumstances of the case, after careful perusal of the original records available on file and having regard to the factual legal aspect of the matter, as stated supra, I do not find any good grounds or justification to interfere in the impugned orders passed by both the authorities. The Land Tribunal as well as the Appellate Authority, after critical evaluation of the evidence of the parties coupled with the documentary evidence, have passed

the impugned well considered orders. Therefore, interference by this Court is not justifiable nor I find any good grounds made out by petitioner for interference. Therefore, the instant revision petition filed by petitioner is liable to be dismissed as devoid of any merits. Accordingly, it is dismissed.