

(1982) 08 KAR CK 0025
In the Karnataka High Court
Case No : RFA 1/75

Appi Belchadthi and Others		APPELLANT
	Vs	
Sheshi Belchadthi and Others		RESPONDENT

Date of Decision : 12-08-1982

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a (6)

Citation : (1982) 2 KarLJ 565

Hon'ble Judges : P. A. Kulkarni, J;K. Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-This appeal has been preferred against the judgment and decree dated July 31, 1974 made by the Prl. Civil Judge at Mangalore, D.K. District, dismissing O.S. No. 111 of 1970.

2. The case of the plaintiffs, briefly stated, is as follows:

One Bamu Belchadthi was a challgen tenant of the suit B Schedule properties consisting of agricultural lands and a house, the landlord of which was Sri Krishnapur Mutt, one of the 8 Mutts of "Sri Krishna Temple" at Udupi. In 1956, Bamu died leaving behind one son called Somappa and three daughters called Poovamma, Appi and Sheshi. Appi and her ten children are the plaintiffs. Sheshi is defendant-1. Poovamma was married to one Rama Bangera. She died leaving behind her daughter Leela (defendants) whose children are defendants 6 to 9. After the death of Poovamma, Rama Bangera married her sister Sheshi whose sons are defendants 2 to 4.

3. The parties are governed by Aliyasanthana Law of inheritance. Bamu cultivated the B Schedule properties with her children for over 45 years. In her old age, she was actively and affectionately assisted by her son Sonnappa and the challgen lease was also executed in his own name. After the death of Bamu, Somappa being the eldest became the Manager of the family. But Somappa unlike his mother did not. pay the rents regularly to the Mutt. The Mutt had to file a suit to recover the arrears. In 1960 Somappa found himself unable to cultivate the lands even, and so gave up the management in favour of Sheshi,

who by then came to live in the family house along with her husband by winding up her establishment in Bombay. Somappa, however, continued to live in the family house cultivating the tenanted lands till he died in 1970. After the death of Somappa, Sheshi with her husband started neglecting the plaintiffs who are legitimately entitled to a share in the family tenancy. So stating, the plaintiffs instituted; the suit claiming 11 out of 20 shares in the plaint B and C Schedule properties. They have also claimed past maintenance.

4. Defendant-5 supposed the case of the plaintiffs while claiming separation of her own share of 5/20 in the said property rights.

5. It was Sheshi who resisted the suit on these various and varied contentions:

Bamu was the Chalgeni tenant; but she surrendered the tenancy in favour of the Mutt by executing a sodachit. Even during her lifetime, Somappa, became the tenant executing the lease in his own name and not as the ejaman of the family or on behalf of the family. The last chalgeni chit executed by him was on June 18, 1954. When he failed to pay the rents for about three years, the Mutt filed a suit for recovery and obtained a decree against him. He could not even pay the decretal amount and so he put Sheshi and her husband in possession of the properties on receiving consideration under a document dated June 3, 1959. Immediately thereafter, he also surrendered his tenancy by executing a sodachit in favour of the Mutt. Sheshi and Rama Bangera then jointly executed a chalgeni chit in favour of the Mutt by paying all the arrears of rent. That chalgeni lease was not on behalf of the, family but in their own names and for their own benefit.

Sheshi has further stated that she has renovated the house, constructed a cow shed, deepened the existing well, installed pumpset and raised coconut garden with about 100 coconut palms, spending in all Rs. 18,000 out of her own private funds.

6. In the light of the contentions raised in the pleadings, the Court framed the following issues:

(1) Do the plaintiffs prove that the plaint B Schedule chalgeni properties belong to the family? or

Does the first defendant prove that the plaint B Schedule chalgeni holding belongs to her absolutely?

(2) Has the 1st defendant made the various improvements as averred by her in para-4 of her written statement and if so, is she entitled to be reimbursed?

(3) What is the share to which the plaintiffs are entitled?

7. The witnesses examined in the case are two as against three. The husband of the 1st plaintiff has been examined as P.W. 1 with the production of Exts. P-1 to P-4. The Court Commissioner who has prepared the inventory as per Ext. "C" has given evidence as P.W. 2. On behalf of the defendants, Sheshi has entered the witness box as D.W. 1. Her other two witnesses are Vasudeva Bhat (D.W. 2)

and Koraga Shetty (D.W. 3). She has also produced the documents Exts. D-1 to D-25.

8. The learned Civil Judge on an appraisal of the evidence produced by the parties, held as follows:

(i) Bamu with her children were living together and cultivating the tenanted lands; but Sheshi has proved that she alone was entitled to the tenancy rights and the plaintiffs are therefore not entitled to any share. (ii) When Bamu became, old, Somappa executed a chalgeni chit on his own and when he could not cultivate the lands, he transferred his right in, favour of Sheshi under the deed Ext. D-26 dated June 3, 1959. This document coupled with the evidence of D.Ws. 1, 2 and 3 goes to prove that the leasehold was the exclusive property of Somappa. (iii) Somappa ,also executed a sodachit (surrender deed) dt. July 9, 1960 in favour of the Mutt and thereafter Sheshi along with her husband to the exclusion of all others, took the plaint 13 Sch. properties on chalgeni. (iv) When Somappa executed the chalgeni chit, Bamu lost all her tenancy right and when Somappa executed the Soda chit, he also lost whatever rights he had and the plaintiffs, therefore, have no right to claim any improvements effected either by Bamu or by Somappa. And (v) The claim of defendant No. 5 was however, allowed to the extent of 1/5th share in the suit properties.

Being, aggrieved by the judgment and decree, the plaintiffs have preferred this appeal.

9. During the pendency of the appeal, one more event has intervened.

Sheshi applied for registration of occupancy right in respect of the plaint B Schedule properties before the Land Tribunal constituted under the Karnataka Land Reforms Act, 1961 (called shortly as "the Act"). The plaintiffs did not make any such application before the Tribunal since their appeal has been pending in this Court. The Tribunal has granted occupancy right in favour of Sheshi under S. 48A of the Act.

10. Laying emphasis on this subsequent development, Mr. Acharya counsel for the respondents, urged that this Court cannot now embark upon an enquiry whether the plaintiffs are entitled to a share in the lands in respect of which the occupancy right has been granted to Sheshi, since that question has become final under sub sec. (6) of S. 48A of the Act. He also urged that the Civil Court has no jurisdiction to determine the question whether the chalgeni tenancy in question exclusively belonged to Sheshi and her husband or to her joint family inclusive of the plaintiffs. According to the counsel, the Tribunal alone has to deal and decide those questions while granting occupancy right. Mr. Raghavendra Rao for the appellants on the other hand, contended to the contrary and we will refer to his contentions at the appropriate stages.

11. Among the points urged by the counsel on both sides, by far the most important and most interesting questions in this appeal are:

(1) Whether the occupancy right granted by the Land Tribunal in respect of the tenanted properties under the plaint B Sch. belonged to the joint family of the plaintiffs and defendants, or to defendant-1 alone? and (2) Whether the Civil Court has no jurisdiction to determine the above question in view of the provisions of the Karnataka Land Reforms Act, 1961?

12. We will take up the second question first for consideration. The respective limits of the Land Tribunal and the Civil Court must be culled from the words of the Act itself. S. 45 provides for filing applications by tenants for the purpose of registration as occupants of lands. S. 48A provides for enquiry by Land Tribunals. Sub-sec. (4) of S. 48A provides:

"Where no objection is filed, the Tribunal may after such verification as it considers necessary, by order, either grant or reject the application."

Sub-section (5) provides:

"Where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as occupant and pass orders accordingly."

Sub-section (6) states:

"The order of the Tribunal under Section 48A shall be final and the Tribunal shall send a copy of every order passed by it to the Tahsildar and the parties concerned."

Sub-section (8) of S. 48A reads:

"Where no application is made within the time allowed under sub-section (1), the right of any person to be registered as an occupant shall have no effect."

13. To make the picture complete, we may also refer to S. 132, which provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act, required to be settled, decided or dealt with by the Deputy Commissioner, an Officer authorised under sub-sec. (1) of S. 77, the Assistant Commissioner etc.

14. What becomes fairly clear from these provisions is that the orders made by the Tribunal on matters which it has exclusive jurisdiction to deal and decide become final and cannot be questioned in any Civil Court. In other words, the Civil Court shall have no jurisdiction to determine the questions decided by the Tribunal in the exercise of its exclusive jurisdiction. As far as we could see, the exclusive jurisdiction of Tribunals extends to only two questions. They are (i) whether the land in question was a tenanted land as on March 1, 1974, and (ii) whether the applicant and if there are rival applicants who amongst them, is entitled to be registered as occupant. The Tribunal in the first place is required to locate the land and determine whether it was tenanted. Secondly, it must identify the person in possession as a tenant and register him as an occupant. The Act imparts finality only in respect of these two questions determined by the Tribunal

and not in regard to other matters. A person who has not filed an application for occupancy right within the time allowed by law, cannot thereafter approach the Tribunal. It is in this context, sub-section (8) of S. 48A provides that if a person who is entitled to be registered as an occupant, has not made any application within the time allowed under law, his right, to have the lands registered in his name as an occupant would be extinguished. To put it briefly, his right to have the tenanted lands registered in his name would be barred by time, if he does not approach the Tribunal within the period prescribed.

15. Mr. Acharya, however, submitted that sub-sec. (8) of S. 48A has the effect of extinguishing every right of the person who does not file an application before the Tribunal. This, we think, is too broadly stated. Sub-sec. (8) only extinguishes the right to have the lands registered in one's name as an occupant and it has no impact on any other right. The Tribunal is not concerned about whether an applicant "A" is a member of the family of the tenant "B", and if so, whether he is entitled to a share in the occupancy right which "B" is entitled to. The Tribunal is also not concerned about whether "A" gets his share in that occupancy right, by birth, succession or survivorship. The Tribunal, if we may say so, is wholly unconcerned about those rights. It is therefore needless to state that even if the Tribunal has expressed its opinion on those matters while granting occupancy right to "B", it cannot become final and binding as between the parties.

16. It is against this statutory background, we may now hark back to the case of the appellants. The appellants are not asking for registration of occupancy right as such. They claim a share in the occupancy right granted to Sheshi. It was their case as succinctly put by Sri Raghavendra Rao that the tenancy in respect of the plaint B Schedule properties was the right of the joint family of the parties, and Sheshi with her husband had no exclusive right over it. The counsel urged that the chalgeni chit might have been executed by Sheshi with her husband, but that alone would not confer absolute right on her. It was an internal arrangement, of the family affairs and cannot be construed as depriving the property rights of the other family members. The other members cannot be denied of their legitimate rights, merely because the Tribunal has registered Sheshi as the occupant. Sheshi with her husband cannot appropriate the said property for herself. The counsel also said that the Tribunal is not concerned whether there exists a joint family at a given point of time and if so, what were the inter-se rights of the members thereof in the tenancy in question.

17. These contentions, in our opinion, are sound. The decision on the claim of the appellants for a share in the occupancy rights depends upon in the first place, whether the tenancy rights held by Bamu were inherited by all her children and whether they constituted a joint family; Secondly, whether Somappa executed the chalgeni lease as manager. of that family; and thirdly, whether Sheshi and her husband became exclusively entitled to that tenancy rights when they executed the chalgeni lease in their own names. The decision also turns upon whether Somappa had surrendered the tenancy, in favour of the

Mutt and if it was a joint family tenancy, whether he alone had the right to surrender on behalf of the other members. In our opinion, these questions in their very nature cannot properly be enquired, into and decided by the Tribunal. The Act does not provide a proper procedure or the determination of such disputes. Rule 17 of the Karnataka Land Reforms Rules provides procedure to be followed by the Tribunal. It states that the Tribunal shall in respect of applications made to it follow the same procedure specified for summary enquiry under S. 31 of the Karnataka Land Revenue Act subject to the condition that the records of the proceedings shall be maintained in a language understood by all its members.

Sub-rule (5) of Rule 17 provides:

"The opposite party shall be allowed to cross examine the witness and if it does not wish to so cross-examine, a note shall be made accordingly. A brief summary of the evidence given by each witness shall be recorded by the Chairman."

A reference may also be made to S. 34 of the Karnataka Land Revenue Act, 1964. It reads:

"34. Summary inquiry.-When a summary inquiry is prescribed for determination of any question by or under this Act or any law for the time being in force, the officer conducting inquiry shall himself, as such inquiry proceeds, record in his own hand, in Kannada or in English or in any other language of the taluk or village as declared by State Government, the summary of the evidence and minutes of the proceedings containing the material averment made by the parties interested, the decision and the reasons for the same. (Underlining (italics) is ours) (Proviso omitted).

In the summary enquiry contemplated under these provisions, it is seen that there is no obligation to record the evidence in entirety. It may be sufficient if a brief summary of the evidence given by each witness is recorded. While recording the summary of the evidence given by each witness, it is not uncommon that subtle shades of evidence are often missed. When such evidence is missed, the parties have to thank themselves, since there is no remedy to challenge the correctness of the findings recorded on the basis of such summary of the evidence. That being the prescribed procedure and the resulting consequence, it would be difficult to visualise that the legislature then intended to entrust the claim such as the one before us to the exclusive jurisdiction of the Tribunal. It is one of the well accepted principles that the judicial interpretation should be close to the legislative intent.

18. The questions such as, the existence of a joint family, the rights of the members thereof, the position and power of the manager, and the nature of the property acquired by them are not so simple to be decided by a summary enquiry, and that too without the assistance of trained lawyers. The joint Hindu family or coparcenary is a creature of Hindu Law. The status of every Hindu family is presumed to be joint, joint in food, worship and estate. That

presumption is stronger in the case of brothers. Once the family is proved to be joint, that presumption continues until it is rebutted. Those who allege separation must prove unless it is admitted that there was a separation at some point of time. The question as to whether a particular family retains its character of jointness at a particular time is a difficult question for decision. Mere severance in food and worship does not effect a separation of the family nor separate residence by members operates as a severance of the joint status. We are only mentioning some of these principal features to impress upon that the decision on these questions requires a lot of brooding even by Courts of law. One could only imagine the difficulties of Tribunals without proper wherewithal.

19. In *K.P. Jamdar v. K.M. Irani*, AIR 1973 Bom. 130, the present learned Chief Justice of the Supreme Court, then speaking for the Full Bench of the Bombay High Court while dealing with the questions that fall to be determined in the summary enquiry by the Deputy or Assistant Charity Commissioner under S. 19 of the Bombay Public Trusts Act, observed at page 135:

"Rule 11 provides that the officer holding the inquiry may only make a memorandum of the substance of what each witness deposes.

It is unthinkable that questions of title could be permitted to be decided by a tribunal finally and conclusively without any obligation to record the evidence fully. It is a matter of common experience that subtle shades of evidence are often missed in a memorandum containing merely the substance of the evidence."

We are happy to find support for this view of the matter in a Full Bench decision of this Court in *Sri Gurupadayya v. Chikkayya*, 1979 (2) Kar.L.J. 53 to which one of us was a party. It is trite law that complicated questions are not allowed to be decided finally and conclusively by rough and ready methods unless a statute expressly provides for it. We think it is wiser as well as better in the general interest to leave the parties to work out their rights in the Civil Court in respect of the occupancy right granted by the Tribunal.

20. We will now consider the decisions relied upon by the Counsel on both sides. Mr. Acharya strongly relied upon the decision of this Court in *Mudakappa v. Rudrappa*, 1978 (1) Kar.L.J. 459. Therein, one of the members of the family had claimed occupancy rights on the ground that he alone was the tenant of the land in dispute to the exclusion of others. But the other members of the family contended that they were jointly cultivating the land as lessees along with the applicant and the tenancy belonged to the joint family and that was not divided in the partition. The question between the parties therein was therefore, mainly based on the possession and cultivation of the tenanted lands and it was in that context his Court has rightly observed that it was an incidental question the determination of which was within the powers of the Tribunal. It was observed therein that the question whether the tenancy was held by one of the members of the family exclusively or by all the applicants jointly would be a question

incidental and ancillary to the main question to be decided, the main question being who was entitled to be registered as occupant. The question; invoked in the present case is quite different. The crux of the matter herein, as we have noticed earlier, is as to the right of the appellants to claim a share in the occupancy right granted in respect of the plaint B Schedule properties. The decision in *Mudakappa v. Rudrappa*, 1978 (1) Kar.L.J. 459 has been exhaustively considered by Venkatesh, J. in *Dhareppa v. State of Karnataka*, 1979 (1) Kar.L.J. 18 at 24, wherein it was observed:

"Is it the intention of the legislature that all such issues like the existence of a joint family or coparcenary, whether a person is a member of a joint family; if he is, had he succeeded by survivorship to the property of such family; to what extent; and whether a person who claims to be an heir of the deceased tenant was in fact the heir to what quantum of a share in the property of the deceased is he entitled to; and whether the will or the gift set up by a party is genuine or not etc., should also be decided by the Tribunal? If we look at the broad scheme of the Act that does not appear to be the intention at all. On the other hand, the intention of the legislature was to allow such complicated questions to be fought out by the contesting parties in Civil Courts."

The learned Judge after summarising the various provisions of the Act and the Rules, continued (*Ibid* Note (4) at Page 27.):

"Now while deciding the rights of rival claimants if it becomes necessary to decide questions such as heirship, succession and existence of a joint family, and the like, how should the Tribunal proceed with the matter? It cannot refer such issues to the Civil Courts. Even if the parties are already litigating in the civil court re: their respective rights the Tribunal cannot await the decision from that court keeping the applications pending before it. The only course that it can adopt is to choose one of the rival claimants for conferment of occupancy rights reserving liberty to other claimants claiming occupancy rights before it to establish their rights, if any in the land in question in a civil court of competent jurisdiction."

We entirely agree with the above view expressed by Venkatesh, J., we may only add that a person's right to get a share in the occupancy right does not depend upon the liberty being reserved by the Tribunal to approach the Civil Court, because as seen earlier, such a right is not extinguished by not approaching the Tribunal. It is pertinent to remember that the grant of occupancy right by the Tribunal in the name of a given individual in respect of joint family tenanted lands will not have the effect of converting that in to a separate property of that individual. Nor the occupancy right granted in respect of a personal tenancy of that individual would acquire a different character. In both the cases, the antecedent tenancy rights are enlarged into permanent occupancy rights by doing away with the landlord. To put it shortly, the Act converts the lease hold into freehold and does no damage to the existing rights of the occupant's family or any member thereof.

21. This takes us back to the first question: The question is who their the appellants are entitled to a share in the occupancy right granted in respect of the plaint B Schedule properties. The parties are governed by Ahyanthana law of inheritance. Originally Aliyanthana law like Marumakkathayam was a body of customs and usages which have received judicial recognition. But recently within the last half a century, the Legislature has modified the law so as to bring it into conformity with the needs and aspirations of the people. Under the customary law, the need of the family is ordinarily the eldest and in him or other vested actually all the family properties moveable and immoveable. It was the right and duty of the head of the family to manage and take care, all by himself, the property of the family. It was he alone who could speak for the family.

22. In South Kanara, there were two types of well recognised leases of agricultural lands: (i) Chalgeni or precarious lease; and (ii) Permanent lease or Mulgeni. Chalgeni tenants were held entitled to the value of improvements. This has been so stated by Sundara Aiyar in his Treatise on Malabar and Aliyanthana Law, 1322 Edn. at page 318.

The Karnataka State Gazetteer (1973 publication) gives us the following information about the rights of chalgeni tenants at page 432:

"The chalgeni tenants, though mere tenants-at-will, used to hold their lands from father to son, at a rent paid in kind or cash or both without any written agreement. This tenancy-at-will gave rise to a provision in Section 13 of the Rent Recovery Act (VIII of 1865) stipulating that a landholder should not be at liberty to proceed, under the Act against his tenant unless he had a written agreement with him."

Sundara Aiyar in his book called "Land Tenures in the Madras Presidency", 1921, 2nd Edn., at page 60, states:

"Temporary tenants in South Kanara are known as Chaliegani or chalgeni tenants. The tenancy is, usually allowed to descend from father to son at the original rent agreed upon, but the landlord has got the right to raise the rent or oust the tenant. The latter is entitled to compensation for everlasting improvements made by him before he is evicted. He is entitled to reasonable notice on eviction."

This much can be deduced and safely stated that, even the chalgeni tenancy right was usually allowed to descend from father or mother to his or her children. The tenants were allowed to make improvements and entitled to compensation before they were evicted as per law. They were also entitled to reasonable notice on eviction. The customary law thus recognised the property rights of even such temporary or precarious tenants.

23. Coming back to our present case it is not in dispute and indeed cannot be disputed that the chalgeni concerned was an ancient lease obtained by the family of Bamu from Krishnapur Mutt. Bamu was cultivating the lands with the help of

her children throughout her life. She had a son and three daughters. All were born in the chalgeni house. The daughters after the marriage, went with their husbands but the joint family, however, continued. Sheshi went to live with her husband at Bombay who was originally working in a hotel. Later on he purchased a taxi and finally wound up his business and landed with his wife and children in the chalgeni family house. At that time Somappa was the manager with the chalgeni lease in his name.

24. Somappa defaulted to pay the chalgeni rents to the Mutt and the Mutt instituted a suit to recover the arrears. That suit was decreed as per decree Ext. D-2 dated June 22, 1959. During the pendency of the suit, it appears, Somappa paid some amount towards the rents due and the decree was passed for the balance of about Rupees 200. According to Sheshi, it was she who paid that decretal amount to Somappa who in turn passed on the same to the Mutt. She has further stated that under Ext. D-26 dated June 2, 1959 Somappa transferred his management in her favour with the rights and liabilities of the tenants lands on the ground that he was unable to cultivate and unable to pay the rents to the Mutt. That agreement also states that the lease in question was an ancient lease. There is some dispute, with regard to the execution and validity of this deed, but it may not be necessary for us to determine that question? We may proceed on the assumption that Ext. D-26 was executed by Somappa. Still the question remains as to the right of Somappa to transfer the family management including the tenancy rights in favour of Sheshi and her husband who was not even a member of the family. There was no law-customary or statute known to us conferring such a power on Somappa.

25. By the deedi Ext. D-3 dated July 9, 1960, Somappa was said to have surrendered the tenancy rights to Krishnapur Mutt. On the next day i.e., on July 10, 1960 Sheshi and her husband executed chalgeni lease Ext. D-1 covering the said properties. Sheshi has been examined as D.W. 1. She has produced the original chalgeni lease marked as Ext. D-1 and is duplicate marked as Ext. D-25. Sheshi in her evidence has stated that Bamu had surrendered the tenancy and it was thereafter, Somappa executed; the lease. According to her, even Somappa executed a Sodachit. But there is hardly any evidence to support the contention that Bamu had surrendered the tenancy in favour of the Mutt. It is true that the lease deed stood in the name of Somappa at the fag and of the life of Bamu. But we do not find anything strange in it. Nor we could infer that Somappa became the exclusive owner of those tenancy rights. It was but natural that Somappa being the eldest in the family ought to manage the properties and affairs of the family. All the children of Bamu were born in the chalgeni house and they were maintained from the income from the tenanted lands. They jointly cultivated the tenanted lands till Bamu's death and even thereafter. There can, therefore, be no dispute that upon the, death of Bamu, all her children inherited the tenancy rights in question.

26. The next question for consideration is whether Somappa surrendered the

tenancy in favour of the Mutt and if so, whether that surrender was valid and binding on the other members of the family including the appellants. Ext. D-3 is the Sodachit and Exts. D-23 and D-24 are its copies. Vasudeva Bhat (D.W. 2) was the Shanbhogue of the Krishnapur Mutt during the relevant period. He has been examined to prove the consents of that document. He has stated that Ext. D-3 was written at his instructions and one copy was handed over to him and the other to Somappa. This evidence is substantially corroborated by Sheshi (D.W.1)

27. Here again, we may presume, the execution of Ext. D-3 by Somappa although the counsel for the, appellants has seriously challenged the factum of execution. He also urged that Ext. D-3 was invalid as it was contrary to the statutory provisions then prevailing. Counsel said that since Somappa was not the exclusive tenant, he had no right to execute the Sodachit without the written consent of the other members of the family.

28. There is much force in the, above contention. The Madras Cultivating Tenants Protection Act, 1955 which was in operation in South Kanara Dist. on the date of the Reorganisation of States, came to be amended by Karnataka Act 15 of 1957 inserting S. 3A. The material portion of S. 3A reads:

"A surrender shall not be effective unless it is made by the cultivating tenant in writing, and is admitted by him before, and is made in good faith to the satisfaction of the Tahsildar, and is registered in the office of the Tahsildar in the prescribed; manner:

Provided that where the land is cultivated jointly by joint cultivating; tenants or members of an undivided Hindu family, unless the surrender is made by all of them it shall be effective in respect of such joint tenants as have not subscribed to such surrender."

Section 3-B inserted by the same Amending Act provides:

"Where a tenant surrenders his rights in any land under Section 3-A, the landlord shall be entitled to retain the land so surrendered for the like purposes, and; to the like extent and in so far as the conditions are applicable, subject to the like conditions as are provided in Section 4-A for the resumption of land for personal cultivation."

It is clear from these provisions that a surrender by a tenant if it is to be effective, should, be made by the cultivating tenant in writing before the Tahsildar and the Tahsildar should be satisfied that the surrender is made in good faith. The lands surrendered can not be utilised by the landlord for any other purposes except for his personal cultivation. If the lands are not put into personal cultivation by the landlord, then under Ss. 6 and 7 of Act 15 of 1957 the State Government could take possession of the lands for the purpose of ensuring the full and efficient use for agriculture.

29. By Karnataka Ordinance 4 of 1957, the protection given to tending from eviction was made available with effect from March, 11, 1957. Subsequently, the

life of that Act was extended from time to time by Kar. Act 16 of 1957, Act 13 of 1958, Act 22 of 1958, Act 23 of 1958, Act 7 of 1959, Act 17 of 1950, Ordinance 8 of 1960, Act 37 of 1961 and finally by Act 13 of 1963. The alleged surrender of the tenancy under the Ext. D-3 was therefore governed by the provisions of the Madras Cultivating Tenants Protection Act, 1955 as amended by Karnataka Act 15 of 1957.

30. Let us now examine the validity of Ext. D 3. At the end of the deed the Tahsildar has made the following endorsement.

Sd/- Tahsildar."

"Before me 9-2-1960.

Tahsildar, Mangalore.

It appears to us that even if Ext. D-3 is held to have been executed by Somappa before the Tahsildar, it was not in conformity with the statutory requirements of S. 3-A above referred to. The prescribed requirements under S. 3-A were intended to protect the cultivating tenants who were constantly under the threat of eviction and therefore, they must be regarded as mandatory. The proviso to S. 3-A also made it obligatory that where the land was cultivated jointly by joint cultivating tenants or members of a Hindu undivided family, then the surrender should be executed by all of them by subscribing their signatures to the deed. In other words, the deed executed by one of them would be invalid and of no effect. Ext. D-3 clearly falls short of these requirements. Firstly, there is no evidence to show that Ext. D-3 was registered in the register maintained by the Tahsildar. No such register was produced by any person from the Tahsildar Office. Secondly, there is no indication in Ext. D-3 that the Tahsildar was satisfied about the good faith in which Somappa surrendered all the tenanted lands and the house, in favour of the Mutt. Thirdly, the other children of Bamu were not signatories to Ext. D-3.

31. Counsel for the respondents, however, urged that there was substantial compliance of the second requirement of S. 3-A of Karnataka Act 15 of 1957 since the Tahsildar has endorsed on Ext. D-3 stating that it was signed before him. According to the counsel, it must be presumed that the surrender was made to the satisfaction of the Tahsildar. He also submitted that the Tahsildar was not required to make a judicial enquiry in the matter. We agree with the counsel that the Tahsildar was not required to make a judicial enquiry to satisfy himself. But we cannot agree with him that the Tahsildar has satisfied himself that the surrender was made voluntarily and in good faith. The endorsement made by the Tahsildar only shows that Somappa signed the deed and it does not indicate that there was any application of mind. The satisfaction of the Tahsildar even if it is assumed to be subjective, cannot be a matter for speculation. It must be apparent from the terms of Ext. D-3 or by surrounding circumstances. Unfortunately, there is nothing on record. We cannot, therefore, hold that the Tahsildar was satisfied about the bonafides of the surrender.

32. What follows from the discussion is that the tenancy rights of the other members of the family remained undisturbed even after Sheshi and her husband executed the chalgeni lease at July 10, 1960. It must also be stated that the landlord Krishnapur Mutt has not taken possession of the properties at any time. After the death of Bamu, the entire family with Somappa as Ejaman cultivated the lands. Sheshi has admitted, that Somappa continued to live with them till his death in 1970. That means, for 10 years after the execution of Ext. D-1 Somappa lived in the family house contributing his labour for cultivating the lands. There was no dispossession or disturbance of possession of the tenanted properties. Sheshi along with her husband executed the chalgeni lease Ext. D-1 on July 10, 1960. The tenancy rights of the family, in the circumstances, cannot, therefore, be said to have been extinguished by a mere change in the name of the person executing the chalgeni lease.

33. C Schedule consists of moveable properties which, according to the appellants, belong to the family. But there is no acceptable evidence to prove this contention. It is, therefore, not proper for us to bring them into the hotch pot for division.

34. So far as the quantum of share claimed by the appellants is concerned, there is no dispute before us.

35. In the result, we allow the appeal. In reversing the judgment and decree of the Court below, we decree the appellants' suit with a direction to divide the plaint B Schedule properties into twenty equal shares and make, over to the appellants their eleven shares therein.

36. In the circumstances, however, we make no order as to costs.

37. Counsel for the respondents seeks a certificate for appeal to the Supreme Court. We do not think that the case involves any substantial question of law of general importance which needs to be decided by the Supreme Court. The certificate prayed for is, therefore refused.