
(2015) 01 KAR CK 0435

In the Karnataka High Court

Case No : Writ Appeal No. 6857 of 2013 (LR)

Asghari Banu and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 133, 3, 48

Citation : (2015) 2 AKR 345 : (2015) ILR Kar 1727 : (2015) 2 KCCR 1336 : (2015) 1 KCCR 954

Hon'ble Judges : S. Sujatha, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : M.G. Kumar for Harish Ganapathy, for the Appellant; Geetha M., High Court Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—Heard learned Counsel for the appellants and learned HCGP for respondents-1 and 2 and Sri Yoganarasimha, Senior Counsel, appearing for respondent No. 5. The legality and correctness of the order passed by the learned Single Judge in W.P. No. 4974/2012 is called in question in this appeal.

2. The facts leading to this appeal are here as under:

"Under a Rent Agreement dated 1.1.1957, one Shaik Ismail Saheb S/o Shaik Hussain Saheb, had taken the property in question from one Raghavendra Ballal, on a monthly rental of Rs. 14/- per month. The tenancy commenced from 1.1.1957. Lease was for a period of 11 months. The details of the property leased out under the agreement discloses here under:

"one tiled roof house, one stone built well, in Sy. No. 96-7 of Ward 56 of Badabettu village, No. 76, Udupi Taluk along with a Jackfruit tree, one gantri mango tree, breed mango, 16 coconut trees, two cashew nut trees and two teak wood trees." 3. An eviction petition was filed under the provisions of the Karnataka Rent Control Act, 1961 by the owner against Sheik Ismail Saheb in

HRC No. 43/1965 before the Munsiff Court at Udupi for eviction of the aforesaid person. Eviction petition filed by the landlord was allowed and an eviction order was passed. Execution Petition was filed by the landlord against the tenant and during the pendency of the Execution Petition, the land lord died. Consequently, the Execution Petition came to be dismissed as abated.

4. Later on, the legal representatives of the original land lord filed another HRC petition in H.R.C. No. 2/1976 before the II Additional Munsiff, Udupi and the same came to be allowed. In the meanwhile, taking advantage of the provisions of the Karnataka Land Reforms Act, an application came to be filed in Form No. 7 in Case No. LRY/76/40/TRI/7111/1978-79 contending that what was leased by Raghavendra Ballal in favour of Sheik Ismail Saheb was an agricultural land and not a residential building and claimed tenancy right in respect of 1 acre 50 cents in Sy. No. 96/7. The application filed by the tenant before the Land Tribunal came to be dismissed on 08.02.1979.

5. Aggrieved by the same, a writ petition came to be filed before this Court in W.P. No. 8102/2000 which came to be allowed by setting aside the order passed by the Land Tribunal and remanded the matter to the Land Tribunal for fresh consideration by its order dated 27.02.2003. Again the matter was heard by the Land Tribunal and rejected Form No. 7 filed by the petitioners on the ground that there is no existence of land lord and tenant relationship in respect of agricultural land and what was leased to the tenant was only a residential building by its order dated 30.12.2011. Therefore, challenging the same, the petitioners approached this Court in W.P. No. 4974/2012. The writ petition filed by the petitioners before the learned Single Judge came to be rejected on 06.06.2012. Aggrieved by the concurrent findings, the present appeal is filed by the appellants.

6. Learned Counsel appearing for the appellants contends that the Land Tribunal has committed a serious error in rejecting the application filed by the petitioners solely relying upon the order passed in HRC No. 43/1965 without giving any finding on the evidence let in by the parties to show whether there exists relationship of landlord and tenant in respect of agricultural land or not. According to him, the Tribunal was required to consider whether the land was leased to the appellants or the residential house alone was leased. Based on the appreciation of the evidence, if the Tribunal had given finding, the appellants could not have contended before this Court stating that the order passed by the Land Tribunal is correct. According to him, the Tribunal without giving any finding on the question of nature of property leased, based on the finding of the order passed in HRC No. 43/1965 an order has been passed. Therefore, he seeks this Court to set aside the order and remand the matter to the Tribunal for fresh consideration in accordance with law.

7. According to him, the order passed by the Munsiff Court at Udupi in HRC No. 2/1976 could not have been relied upon by the Land Tribunal since the landlord had filed an eviction petition afresh in HRC No. 2/1976 which petition has been

filed under the provisions of the Karnataka Rent Control Act, 1961 after the Land Reforms Amended Act 31/1974 came into force. Relying upon the Amended Act, he contends that any matter pending before the Civil Court in appeal or revision against the judgment of order of the Civil Court or finally disposed of by such Court after the First day of March, 1974, has to be re-opened and reconsidered only by the Land Tribunal constituted under Section 48 of the Karnataka Land Reforms Act, 1961, contending that the application filed for eviction in HRC No. 2/1976, the Amended Karnataka Act No. 31/1974 had come into effect and therefore, in view of the amendment to Section 3, the Tribunal was required to give a finding on merits in accordance with law with regard to the nature of the property leased to the appellants. Since an error has been committed by the Tribunal, he relied upon the judgment of this Court reported in 1979(1) KLJ 307 (Bhagirathi Amma and Ors. v. Land Tribunal, Udupi and Ors.) in support of his contention.

8. Per contra, Mr. Yoganarasimha, learned Senior Counsel, contends that the Tribunal as well as the learned Single Judge are justified in dismissing the writ petition rejecting the application filed in Form No. 7 since there was a categorical finding by the Civil Court. Therefore, he contends that there is nothing for the Tribunal to re-appreciate the findings and give a finding in regard to the nature of the lands. According to him, the finding of the Land Tribunal is justified. In support of his arguments, he relied upon the judgment of this Court reported in B.R. Ganganna Gowda since dead by LRs. (Rangaswamy B.G., Ramakrishnegowda B.G., Narayana Gowda B.G. and Honnamma Gowda) Vs. The State of Karnataka, Smt. Parvathamma since dead by LR, Smt. Munigangamma, Sri H.P. Thandavachari husband of Munigangamma and The Land Tribunal,

9. Having heard learned Counsel for the parties, what is required to be considered in this appeal is:

"Whether the rejection of the application filed by the tenants in Form No. 7 by the Land Tribunal based on the findings of the Civil Court is just and proper and does it require interference?" 10. Upon hearing learned Counsel for the parties and on perusal of the rent deed, it is clear that the lease was granted to the tenant in the year 1957. What is contended by the landlord is that what was leased was only a residential premises in Badagubettu village of Udupi. It is not in dispute that he was a coppersmith by profession and a residential building was covered with few fruit bearing trees and such property as to be considered as residential property. It is also not in dispute in HRC No. 43/1965 the landlord had filed eviction petition against the tenants which ended in favour of the landlord. Thereafter, an Execution Petition was also filed and the same also came to be dismissed as abated in view of death of the landlord. Subsequently, an eviction petition in HRC No. 2/1976 was filed by the legal representatives of the landlord before the Munsiff Court at Udupi, under the provisions of the Karnataka Rent Control Act, 1961. It is also not in dispute that Amendment Act 31/74 came into force w.e.f. 3.8.1974. Therefore, it is clear that when HRC No. 2/1976 was filed

by the landlord under the provisions of the Karnataka Rent Control Act, the amended Karnataka Land Reforms Act, 1974 had come into force. In this background, what is to be considered by us is:

"whether in view of the amended provisions of Section 3 of the Karnataka Land Reforms Act, 1961, was it required for the Tribunal to give a finding in regard to the nature of the property leased by the owner to the tenant and whether the finding of the Civil Court on an earlier occasion, which has become abated in view of filing of HRC No. 2/1976 and whether the finding given in HRC 2/1976 is binding upon the Land Tribunal?." 11. It is no doubt true that this Court in the case of B.R. Ganganna Gowda since dead by LRs. (Rangaswamy B.G., Ramakrishnegowda B.G., Narayana Gowda B.G. and Honnamma Gowda) Vs. The State of Karnataka, Smt. Parvathamma since dead by LR, Smt. Munigangamma, Sri H.P. Thandavachari husband of Munigangamma and The Land Tribunal, , has ruled that if any proceedings are concluded by a Civil Court prior to 01.03.1974, such findings of the Civil Court is binding upon the Land Tribunal and the matter cannot be reopened by the Land Tribunal afresh.

12. But amended Section 3 of The Karnataka Land Reforms Act, 1961, reads as under:

"3. Disposal of certain pending proceedings, etc.--(1) Notwithstanding anything in any law for the time being in force, the provisions of clause (a) of sub-section (2) of Section 133 of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962) as amended by this Act, shall be applicable to all proceedings commenced before the date of commencement of this Act and--

(a) pending before any Civil Court;

(b) pending in appeal or revision against the judgment or order of the Civil Court; or

(c) finally disposed of by such Courts after the First day of March, 1974, as if the said clause as amended by this Act was in force when the right accrued or the liability was incurred and every such Court shall deal with the proceedings accordingly and any interim or final order or judgment passed by such Court or Appellate authority shall be reopened and the suit or the appeal shall be disposed of in accordance with the said amended clause.

(2) Notwithstanding any judgment, decree or order of any Civil Court, the Tribunal constituted under Section 48 of the Karnataka Land Reforms Act, 1961 shall enquire into any claim for registration as occupant made by a person who was a tenant within the meaning of the said Act immediately prior to 1st March, 1974 and who by reason of any such judgment, decree or order has subsequent to the said date been dispossessed of the land of which he was a tenant or is any way precluded from pleading this tenancy, and direct, if the merits of the case so warrant, that such person be registered, subject to the other provisions of the said Act, as occupant of such land."

13. In the instant case, though eviction proceedings had come to an end prior to 1974, pursuant to the order passed by the Munsiff Court at Udupi, in HRC No. 43/1965, unfortunately, the said decree has become unexecutable, on account of the death of the owner and thereafter the legal heirs of the owners have filed one more HRC petition for eviction in HRC No. 2/1976. If the eviction petition is filed subsequent to the Karnataka Land Reforms Amendment Act, and if by that time, if any application was pending before the Land Reforms Tribunal, it was incumbent upon the Tribunal to give its finding on the question of relationship of landlord and tenant to find out whether there is any agrarian relationship or not. But unfortunately in the instant case, though eviction order was passed in HRC No. 2/1976 the same has been filed subsequent to the Amended Land Reforms Act came into force. In such circumstances, this Court had an occasion to consider the very same point in Bhagirathi Amma and Others v. Land Tribunal, Udupi and Others reported in 1979 (1) KLJ 307.

14. Though there are two different decisions rendered on the same subject, both the judgments have been rendered by this Court under a different context. We are of the view that the judgment in Ganganna Gowda's case has no application to this case because in Ganganna Gowda's case, the findings of the Civil Court had attained finality even before this Court in a Regular Second Appeal before the amended Land Reforms Act, came into force. In such circumstances, this Court ruled Section 3 of the Amended Karnataka Land Reforms Act, has no application, but in the present case when HRC No. 2/1976 was filed by the landlord against the tenant, there was already an application pending before the Land Tribunal, Udupi. In such circumstances, it was for the Civil Court to await the decision of the Land Tribunal and it is the domain of the Land Tribunal to give a finding whether there exists an agrarian relationship of landlord and tenant between the parties herein.

15. In the instant case, the Land Tribunal as well as the learned Single Judge have come to the conclusion that the finding of the Civil Court in HRC No. 2/1976 is conclusive and has become final and therefore, the matter cannot be reopened. Such a finding is incorrect and contrary to the amended provisions of Section 3 of the Karnataka Land Reforms Act.

16. In the circumstances, we are of the view that an error is committed by the Land Tribunal, Udupi and so also by the learned Single Judge. Accordingly, the orders passed by the Land Tribunal and the learned Single Judge are required to be set aside. In the result, the appeal is allowed. The matter is remanded to the Land Tribunal, Udupi, for fresh consideration to give a finding whether the property leased by the landlord was in respect of a residential building or agricultural land. Based on the outcome of the same, it is open for the owner to execute the decree passed in HRC No. 2/1976. Since the application is of 1974, we direct the Land Tribunal to dispose of the matter within six months from today.