

(2002) 09 KAR CK 0045

In the Karnataka High Court

Case No : Civil Revision Petition No. 134 of 2002

Bakki Reddy deceased by L.Rs.

APPELLANT

Vs

Govinda Reddy

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11D
Karnataka Land Reforms Act, 1961 — Section 133

Citation : (2002) 4 KCCR 2916

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

Bench : Single Bench

Advocate : B.A. Reddappa, for the Appellant; P.T. Hebbar, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—This revision is directed against the order dated 28.12.2001 passed on IA 12 in O.S. 213 of 1979 by the learned Additional Civil Judge (Junior Division) Anekal.

2. Brief facts of the case are narrated as follows:

The husband of the 1st Petitioner late Sri Bakki Reddy filed a suit in O.S. No. 454 of 1976 for grant of permanent injunction against the Respondent. It was renumbered as O.S. No. 213 of 1979 after transfer of the suit to the Court of Munsiff, Anekal. The suit has been dismissed on 28.11.2001 as not maintainable on the interim application filed by the Defendant-Respondent under Order 7, Rule 11(d) of CPC read with Section 133 of the Karnataka Land Reforms Act (for short the Act).

3. The Respondent who is the brother's son of late Bakki Reddy claimed to be the tenant of the suit lands filed an application in Form No. 7 under the Act. It was registered in LRF No. 2421 of 1975-76 before the Land Tribunal, Anekal. After several rounds of litigation, an order dated 7.12.1988 came to be passed by the Tribunal rejecting the tenancy claim of the Respondent over the suit lands.

The said order was challenged in earlier Writ Petition 28718 of 1991 and the writ petition came to be dismissed on 12.3.1999 by this Court. Against the said order, the Respondent filed Writ Appeal 5495 of 1999 before this Court which is pending. Be that as it may, the trial Court has dismissed the suit as sought for by the Respondent holding that the question of tenancy between the parties is pending in writ appeal and hence the suit is not maintainable.

4. The principal submission of the learned Counsel for the Petitioners, is that the impugned order passed by the trial Court on IA-12 is contrary to the provisions of the Act and hence the same is liable to be rejected. The learned Counsel vehemently submitted, that the reasoning assigned by the trial Court in dismissing the suit is erroneous because the trial Court without going into the merit of the case that too, as the suit was filed as early as in the year 1976 at this distance of time there is no justification for the trial Court to dismiss the suit as not maintainable in view of the application filed by the Respondent. Therefore, the approach of the trial Court is perverse and not sustainable.

5. The learned Senior Counsel appearing for the Petitioners to substantiate his submission placed reliance on the judgment of this Court in the cases of Mallappa Nilappa Sankunatti v. Ramachandra Naru Chavan alias Sanadi reported in ILR 2000 Kar 1548 and Raviraja Shetty v. Bhoopala Shetty reported in ILR 2001 Kar 2836. In view of the law laid down by this Court in similar facts and circumstances, the ratio of the judgments referred to supra directly have bearing on the facts and circumstances of the present case. Hence, he prayed that on this ground also the impugned order is liable to be set aside.

6. Per contra, the learned Counsel for the Respondents, inter alia, contended that the impugned order passed by the trial Court is strictly in accordance with law. The suit filed by the Petitioner is not maintainable on the ground that the tenancy matter has been seized by this Court in the writ appeal. In support of his submission he pointed out the definition of decree in Section 2(ii) of the Code of Civil Procedure. He also placed reliance in the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, and justified the impugned order passed by the trial Court. However, he is not in a position to persuade the well settled law laid down by this Court which has bearing directly on the facts u/s 133 of the Act.

7. The question that arises for consideration is whether the impugned order passed by the trial Court is in accordance with law?

8. As rightly pointed out by the Senior Counsel for the Petitioners, the Plaintiff has filed the suit for bare injunction and it is maintainable under the relevant provisions of the Act. Therefore, the reasoning given by the trial Court that as the tenancy issue is pending in the appeal, there is a bar under the Land Reforms Act to proceed with the Civil suit is not proper. In my considered view, the approach of the trial Court is not strictly in accordance with law.

9. This Court in the case of Raviraj Shetty referred to supra held thus-

From the three judgment referred to by me, it is clear to me that when there is already a concluded decision by the tribunal on a tenancy issue, mere pendency of a writ petition by itself cannot be a reason for invoking the power u/s 133 of the Act. If there is not even a remote possibility of the said plea being upheld by the land tribunal, the Civil Court need not stay the proceedings in terms of Section 133 in all the cases and any such stay would unnecessarily prolong the litigation. Grant of stay depends on the facts of each case.

The law laid down by this Court in the above cited case squarely applies to the facts of the present case.

10. In my considered view, the suit filed by the Petitioner is maintainable. Further, I hold that mere pendency of the writ appeal by itself cannot be a reason to invoke the power u/s 133 of the Act. Having regard to the factual and legal position and taking into consideration the totality of the case, I have no hesitation to hold that the impugned order passed by the trial Court is liable to be set aside.

11. In the circumstances stated above, revision is allowed. The impugned order dated 28.12.2001 passed on IA 12 in O.S. 213 of 1979 by the learned Additional Civil Judge (Junior Division) Anekal is set aside. The suit filed by the Petitioners is restored. The matter stands remitted to the trial Court for fresh disposal to proceed with in accordance with law after giving opportunity to both the parties. The trial Court is also directed to expedite the matter taking into consideration the duration of the pendency of the suit on its file.