
(1978) 11 KAR CK 0008
In the Karnataka High Court
Case No : WP. 8153/76

Bhagirathi Amma and Others

APPELLANT

Vs

Land Tribunal, Udupi and Others

RESPONDENT

Date of Decision : 23-11-1978

Acts Referred:

Karnataka Land Reforms (Amendment) Act, 1974 — Section 3(1)

Citation : (1979) 1 KarLJ 307

Hon'ble Judges : Rama Jois, J

Judgement

1. The petitioners are land owners. They have presented this writ petition against the order of the Land Tribunal, Udupi, allowing the application filed by respondent-2 in Form No. 7 read with S. 48-A of the Karnataka Land Reforms Act (hereinafter referred to as "the Act") and directing conferment of occupancy rights of the petitioners' lands in his favour under the provisions of the Act.

2. Facts; Respondent-2 filed an application before the Land Tribunal, Udupi, claiming occupancy rights in respect of 1 acre of land in Sy. No. 43/4 and 2 acres of land in Sy. No. 43/6 in Nanchar village, Udupi Taluk. Respondent's brother Rama Pujari also filed a similar application claiming occupancy rights in respect of the aforesaid lands and also lands in Sy. No. 43/1 of the said village. The petitioners resisted the claims of respondent-2 and his brother. Their case was that though respondent-2 and Rama Pujari were tenants only in respect of 2 acres of land in Sy. No. 43/6 and in respect of 42 cents of land in Sy. No. 42/2, they falsely claimed tenancy right in respect of another extent of 2 acres of land in Sy. No. 43/6 and also in respect of lands in Sy. Nos. 43/1 and 43/4 and in those circumstances the petitioners filed a suit for permanent injunction in the Court of the Principal Munsiff, Coondapur in O.S. 220 of 1974. In the said suit respondent-2 and Rama Pujari gave up their claim of tenancy and on the basis of the joint memo filed by the petitioners and respondent-2 and his brother, who were defendants in the said suit, permanent injunction was issued against them restraining them from interfering with the alleged peaceful possession of the petitioners in respect of the lands specified above. The petitioners also further

stated that after the Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act, 1974, came into force, Rama Pujari filed an application under S. 3 of the said Act before the Principal Munsiff, Coondapur, praying for the reopening of the suit by setting aside the alleged consent decree, dated 3-7-1974 and to refer the question of tenancy to the Land Tribunal and even that application was dismissed by the Munsiff by his order dated 17-5-1975 (Ext.-B) and no appeal was preferred against the said order either by Rama Pujari or by respondent-2 to District Court under S. 118 of the Act and, therefore, the consent decree as well as the order passed by the Munsiff as aforesaid have become final and the Land Tribunal has no jurisdiction to deal with the application presented by respondent-2 and Rama Pujari. The petitioners also requested for clubbing the applications of Rama Pujari and respondent-2 as some of the lands claimed by them are common and to dispose of the same together. The Land Tribunal rejected the, preliminary objection of the petitioners regarding the jurisdiction of the Tribunal to entertain the application of respondent-2 and decided the case in favour of respondent-2 by its order dated 19-5-1976 (Ext.-F) keeping the application of Rama Pujari pending. Aggrieved by the aforesaid order of the Land Tribunal, the petitioners have presented this writ petition.

3. Sri B.P. Holla, learned counsel for the petitioners, urged the following two contentions:

(1) The Land Tribunal has no jurisdiction to entertain the application of respondent-2 as the orders passed by the Court of Munsiff Coondapur, in O.S. 220/74 and on the application filed by the brother of respondent-2 for reopening the suit became final in view of S. 3(1) of the Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act, 1974 read with S. 118 of the Act.

(2) Even assuming that the Land Tribunal had jurisdiction to decide the application of respondent-2 and Rama Pujari, the Land Tribunal ought to have clubbed both the applications together as some of the lands claimed by these two persons are common.

Elaborating the first contention, the learned counsel for the petitioners argued that as the suit in question was instituted after 1-3-1974, the provisions of S. 3(1) of the Karnataka Land Reforms (Second Amendment and Miscellaneous Provisions) Act 1974 (Act 31 of 1974) applies and consequently sub-sec. (2) thereof which empowers the Land Tribunal to decide the question of tenancy arising before it, notwithstanding any judgment or decree or order of any civil court has no application. He also argued that the only remedy for the 2nd respondent and Rama Pujari against the order of the Court of Munsiff was to appeal to the District Court under S. 118 of the Act and on such appeal any decision given by the District Judge would be final and binding and, therefore, the Land Tribunal functioning under the Act has no jurisdiction to affect the finality of such an order and when that is the position, even if the parties fail to prefer an appeal under S. 118 of the Act, which is a specific remedy provided,

the order of the original court becomes final and its finality cannot be affected by the Land Tribunal functioning under the Act.

4. In order to appreciate the aforesaid contention of the petitioner, it is necessary to refer to the relevant provisions of the Act. The Act was subjected to revolutionary amendments by Act 1 of 1974 in order to transfer the ownership of agricultural lands to the actual tillers and to put an end to absentee landlordism. The main effect of the said amendment was that every agricultural land which was held by a tenant on the appointed date i.e., 1-3-1974 stands vested in the State Government. The Land Tribunal appointed under the Act is empowered to entertain an application by the concerned tenant and if the Tribunal is satisfied that he was a tenant as on 1-3-1974, of the land, in respect of which he claims tenancy, he be registered as an occupant of the said land subject to the provisions of the Act. S. 132 of the Act completely barred the jurisdiction of the civil courts to decide the question of tenancy. Section 132 reads thus: "132. Bar of jurisdiction.- (1) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government in exercise of their powers of control.

(2) No order of the Deputy Commissioner, the Assistant Commissioner, the Tribunal, the Tahsildar, the Karnataka Revenue Appellate Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court."

Section 133 of the Act made it obligatory for the civil court to refer the question of tenancy arising in any suit before it to the Tribunal and to decide such issues in the suit after the receipt of, and in accordance with the finding of the Tribunal on the said question. Notwithstanding the jurisdictional bar created by Ss. 132 and 133 of the Act, it appears that there were several instances wherein the land owners filed suits before the Civil Courts and obtained interim or final orders before the Act was amended by Act 1 of 1974 which came into force with effect from 1-4-1974 and also even after the said date. In these circumstances the Legislature found it necessary to make further amendments by Act. 31 of 1974. By the said Act S. 133 of the Act was also amended. The said section as amended by Act 31 of 1974 reads as follows:

"133, Suits involving issues required to be decided under this Act.- (1) ** ** *

(2) (a) if any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Tribunal or any suit is instituted in any such court for possession of or injunction in respect of an agricultural land on the allegation that the defendant has trespassed or is trying to trespass on such land and the defendant denies the said allegation, and claims that he is in possession on the strength of a tenancy existing from prior to 1st March 1974, then the Civil court shall stay the suit and refer such issues or the

claim, as the case may be, to the Tribunal for decision.

(b) On receipt of such reference the Tribunal shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court which has made the reference."

Having incorporated sub-sec. (2) of S. 183 as above, S. 3 of Act 31 of 1974 provided for the reopening of the orders already passed by the Civil Courts in cases which involved the question of tenancy and also conferred power on the Land Tribunal to decide the question of tenancy notwithstanding any decree or order passed by the Civil Court. The said section reads as follows:

"3. Disposal of cases pending proceedings etc.- (1) Notwithstanding anything in any law for the time being in force, the provisions of clause (a) of sub-sec. (2) of S. 133 of the Karnataka Land Reforms Act, 1961 (Karnataka Act, 10 of 1961) 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 S. 48 of the Karnataka Land Reforms Act, 1981 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 in any way precluded from pleading his 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,"

The answer to the first contention urged for the petitioners entirely depends upon the interpretation of this section. According to the learned counsel for the petitioners sub-section (1) of section 3 governs all orders or judgments made by the Civil Courts on or after 1st March 1974 and sub-section (2) of the said section applies to judgments, decrees or orders made by any civil court prior to 1st March 1974. He argued that in respect of orders passed by the civil court after 1st March 1974, the remedy provided under sub-section (1) of Sec. 3 of Act 31 of 1974 is that the concerned parties may apply to the court for reopening the case and thereafter refer the question of tenancy to the Land Tribunal under section 133(2) of the Act. He also argued that the reopening provided under sub-section (1) of section 3 of Act 31 of 1974 is not automatic, but only if the Civil Court is satisfied that the suit disposed of finally by it after 1st March 1974

involved a question of tenancy If after such consideration the Civil Court comes to the Conclusion that there was no question of tenancy in the suit and,, therefore, the matter cannot be reopened, the only remedy is by way of appeal to the District Judge under section 118 of the Act and a decision of the District Court thereon is final. He further submitted that any such order made by the Civil Court under sub-section (1) of section 3 of Act 31 of 1974 even if not appealed against under section lie of the Act, it becomes final and the Land Tribunal has in jurisdiction to gobehind any such order. In this behalf he further contended that though under sub-section (2) of section 3 of Act 31 of 1974 it is provided that the Land Tribunal is not in any way precluded from deciding the question of tenancy notwithstanding any order, decree or judgment of any civil Court, and even though it does not limit its operation to decrees passed after 1.3.1974, the said sub-section cannot cover the cases failing under the first sub-sec. (1) of section 3 of Act. 31 of 1974 and any interpretation to the contrary would render sub-section (1) of section 3 of Act 31 of 1974 otiose and, therefore, haying regard to the well accepted canons of interpretation, namely, that no provision can be rendered otiose, sub-sec. (1) of section 3 of Act 31 of 1974 must be held to cover cases of judgments and decrees passed on or after 1st March 1974.

5. Now I shall proceed to consider the correctness or otherwise of the contention urged by the petitioners. Sub-sec. (2) of S. 3 of the Act 31 of 1974 is clear and unambiguous. It provides in emphatic terms that notwithstanding any judgment, decree or order of any civil court, the Tribunal constituted under the Act can decide any claim for registering as occupant made by a person who was a tenant immediately prior to 1st March 1974 and further provides that even if such a person is by reason of any judgment, decree or order of any civil court either dispossessed of the land or precluded from pleading his tenancy, the Tribunal shall decide on the merits of the case. Sub-sec. (2) of S. 3 does not state that the Tribunal has jurisdiction to decide such a question notwithstanding any judgment and decree of the civil court made prior to 1-3-1974. The said provision applies to all decrees made at any time prior or after 1-3-1974. In the face of the clear and emphatic language of sub-sec. (2) of S. 133 of the Act it is impossible to accept the contention urged for the petitioners, which leads to absurd results, viz., that civil court orders and decrees, deciding the issue of tenancy made prior to 1-3-1974 only are not binding, but such orders and decrees made after 1-3-1974 are binding on the Tribunal unless the civil court itself decides to reopen the case on an application made by the party. The section does not make any distinction between judgments and decrees made before and after 1-3-1974. Therefore on the language of this sub-section it is difficult to hold that sub-sec. (2) of S. 3 of Act 31 of 1974 does not govern the judgments and decrees made after 1-3-1974, negating the claim of tenancy raised by any person.

6. Now let me examine whether the interpretation of sub-sec. (2) of S. 3 of Act 31 of 1974 as covering the orders and decrees made by the civil courts both

before and after 1-3-1974 in accordance with the clear language of that provision renders sub-sec. (1) notice as is sought to be made out for the petitioners and consequently calls for a restricted interpretation. In my opinion, sub-sec. (1) of S. 3 is made entirely to serve a different purpose and will not be rendered useless by holding that sub-sec. (2) covers civil court decrees made even after 1-3-1974. As can be seen from the language of sub-sec. (1) of S. 3 of the Act 31 of 1974, it is made applicable to all proceedings instituted in a civil court before 22-9-1974 on which date the said Act came into force and it covers the following types of cases in which question tenancy is or was involved:

- (1) Original suits pending before the civil court.
- (2) Appeals or revisions against the judgments or orders made by the Civil Courts in a suit which are still pending.
- (3) Suits which have been disposed of by such civil courts in exercise of original or appellate jurisdiction as the case may be after 1-3-1974.

The provision made in sub-sec. (1) of S. 3 in respect of the above matters is that sub-sec. (2) of S. 133 as amended by Act 31 of 1974 must be deemed to be in force on the dates when interim or final orders were passed in the aforesaid proceedings and it is further provided that every such court should deal with the proceedings as if sub-section (2) of section 133 as amended by Act 31 of 1974 was in force. In other words, the civil court must refer the question of tenancy to the Land Tribunal and only after the receipt of the finding of the Land Tribunal on the said question, the civil court should proceed to dispose of the case or appeal as the case may be. This is in so far it relates to suits or appeals which were still pending. In so far It relates to final orders already passed by the civil courts, either in original suits or in appeals, which involved the question of tenancy or any interim order passed in original suits or appeals, against the persons claiming to be tenants, sub-section (1) of section 3 specifically provides that such order shall be reopened by the concerned court and, thereafter, the court shall proceed in accordance with section 133(2) of the Act. Thus it may be seen that under sub section (1) of section 3 of Act 31 of 1974 it is open for the concerned parties to apply for reopening the case and when such an application is made it is obligatory for the civil Court to reopen the matter if the case involved a question of tenancy. Similarly in a case where the case of the party is that he did not raise the plea of tenancy or having raised such a plea, he withdrew the same, on account of ignorance or of fraud played on him by the land owner or that the decree was obtained by taking his consent by misrepresentation or fraud, the party can also have recourse to sub-section (1) of section 3 of Act 31 of 1974 to have the matter reopened and the civil court can order the re opening of the case. These are the purposes for which sub-section (1) of section 3 was incorporated. Hence it would not be rendered otiose by giving full effect to sub-section. (2) of that section.

7. The provision made in sub-section (1) of section 3 of Act 31 of 1974 for

reopening civil court's order or decree does not, however, mean that unless the matter is reopened, the civil court decree binds the concerned person in the proceeding before the Land Tribunal. Right to have the matter reopened is a specific remedy given to the aggrieved parties. For instance, there may be cases where along with the question of tenancy, there were other issues to be decided by the civil court and all the issues had been decided. In such a case, the aggrieved party may consider it necessary to ask the civil court to reopen the case and refer the question of tenancy to the Land Tribunal. But there may also be cases like the present one where the suit is for an injunction in which the only question to be decided was tenancy. In such a case the party is not bound to have the matter reopened and can have the matter adjudicated by the Tribunal. The provision for reopening is a safeguard incorporated by the Legislature in addition to sub-sec. (2) of S. 3 of Act 31 of 1974. Therefore, even if the concerned party fails to have recourse to sub-sec. (1) of S. 3 to have the matter reopened or even if the application made for reopening is rejected by the civil court, the Tribunal is not bound by any decree or order of the civil court and it can investigate the genuineness of any claim of tenancy as also the reasons and circumstances under which the plea of tenancy was not raised or given up before the civil court and can come to its own conclusions. The jurisdiction of the Tribunal is not hedged by any limitation. In fact in the present case. Rama Poojary who filed the application for reopening the decree had specifically pleaded that the compromise decree was secured by fraud by making it appear that he and the 2nd respondent had withdrawn their plea of tenancy and pointed out that the suit was filed only on 13-6-1974 and was hurriedly decided on 3-7-1974, but this application was rejected by the order of the Munsiff dated 17-9-1975 (Ext.-B). But in view of sub-sec. (2) of S. 3 of Act 31 of 1974 even though the decree or final order is not set aside and matter is not reopened, in spite of an application by the aggrieved party as it has happened in the case of Rama Poojary, or even if no application was made as is the case of the 2nd respondent, the only use to which such decree or order can be put into by the land owners is to rely on it as a piece of evidence before the Tribunal in support of their case, but they cannot plead bar of jurisdiction on that basis. It is for the Tribunal to accept the case of either party after considering the entire evidence adduced including such decree or order. If, however, the civil court reopens the matter, on an application made under sub-sec. (1) of S. 3 the landlord cannot even rely on any such decree or order made earlier as it no longer exists and as the question of tenancy would have to be referred to and decided by the Tribunal only. Acceptance of the contention urged for the petitioners, namely, that the Tribunal has no jurisdiction to decide the question of tenancy, if a decree or order made against a tenant after 1-3-1974 is not set aside by the civil court itself as provided in sub-sec. (1) of S. 3 leads to irrational and discriminatory results, because decrees and orders made against tenants by civil courts before the revolutionary amendments made on 1-3-1974 in favour of tenants would not be binding on the Land Tribunal and the Land Tribunal can have its final word in the matter, whereas decrees and orders made after that date would be binding on it,

unless reopened by the civil courts, which means the civil court's decision becomes final in such matters. Such an interpretation goes contrary to the very scheme and purpose of the Act under which the Land Tribunals are made the exclusive forums for deciding the question of tenancy notwithstanding the judgments and decrees made by the civil courts. For these reasons, I reject the first contention urged for the petitioners.

8. As regards the submission made on behalf of the petitioners that as the 2nd respondent failed to appeal to the District Judge under section 118 of the Act, the order of the Munsiff refusing to reopen the suit became final, it should only be pointed out that respondent-2 had not made any application under sub-section (1) of section 3 of Act. 31 of 1974 to the Civil Judge and an appeal provided under section 118 of the Act is not an appeal against the original decree passed in the Munsiff's court in O.S.No. 220/74. It is also doubtful whether the appeal which lies to the District Court under section 118 of the Act is against any judgment, decree or order made by the civil Court as such appeals are regulated by the Code of Civil Procedure and not under the Act. It appears to me that the Court against whose decision an appeal was provided to the District Court under section 118 of the Act was the Court exercising the jurisdiction under the Act itself until the same was transferred to the Land Tribunal and the Tahsildar by subsequent amendments. The word "court" is defined in section 2(3) in of the Act as the Court of Munsiff within the local limits of whose jurisdiction the land is situated. That court had the jurisdiction to decide the right of tenancy and other matters under the Act as it originally stood before the amendment of the Act providing for establishment of the Land Tribunals to decide all such claims. It is for this reason section 118(1) of the Act has also been deleted subsequently by Act 23 of 1977. Therefore, I am unable to agree with the submission made for the petitioners that the appeal provision contained in section 118 has any relevance to this case. The only short question that arises for consideration in this case is whether in view of the consent decree in O.S.No. 220/74 pursuant to which an injunction was issued against the 2nd respondent not to interfere with the lands in respect of which the 2nd respondent has claimed occupancy rights before the Land Tribunal, the Tribunal has jurisdiction to decide the said claim. As held by me earlier, in view of sub-section (2) of section 3 of Act 31 of 1974, the Tribunal has undoubted jurisdiction to decide the said question notwithstanding any judgment decree or order of the civil court.

9. As regards the second contention, the petitioners are right when the applications of the 2nd respondent and his brother related to the claim of registration of occupancy rights in respect of common lands belonging to the petitioners, it was obligatory for the Tribunal to have clubbed both the applications and decided together. The Tribunal committed a patent error in not acceding to the request of the parties to club both the applications together and decide the matter. The learned counsel for the 2nd respondent also could not controvert this contention.

10. In the result, I reject the first contention urged for the petitioners and hold that the Tribunal has jurisdiction to decide the occupancy rights claimed by the 2nd respondent on the basis that he was a tenant of the lands in question on 1.3.1974 and I accept the second contention of the petitioners that the impugned order, is liable to be a quashed on the ground that the applications of the 2nd respondent and his brother Rama Pujari ought to have been clubbed together and in not doing so, the Tribunal committed a patent error of law.

11. For the reasons aforesaid, I make the following order:

(1) Rule made absolute.

(2) The impugned order of the Land Tribunal, Udupi, dated 19.5.1976 (Exhibit F) is quashed. The case is remanded to the Land Tribunal for fresh disposal of the case in accordance with law by clubbing the application of the 2nd respondent along with the application of Rama Pujari and after giving opportunity to all the concerned parties to adduce evidence in support of their case.

(3) No costs.