

(2009) 07 KAR CK 0060
In the Karnataka High Court
Case No : W.A. No. 1188 of 2008

B.R. Ganganna Gowda since dead by LRs. (Rangaswamy B.G., Ramakrishnegowda B.G., Narayana Gowda B.G. and Honnamma Gowda)

APPELLANT

Vs

The State of Karnataka, Smt. Parvathamma since dead by LR, Smt. Munigangamma, Sri H.P. Thandavachari husband of Munigangamma and The Land Tribunal

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Karnataka Land Reforms (Amendment) Act, 1974 — Section 3 (2)

Citation : (2010) ILR (Kar) 11 : (2010) 1 KarLJ 192

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : L.S. Chikkanagoudar and Associates, for the Appellant; Asha M. Kumbargerimath, HCGP for R1, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed in W.P. No. 26801/2000 dt. 13th June 2008 is questioned in this appeal.

2. This case has got a checkered career. In respect of 3 acres 3 guntas of land situated in Sy. No. 43 of Kothagere Amanikere Village in Kunigal Taluk is the subject matter of the litigation, which litigation was started between the parties in the year 1968 in O.S. No. 390/68 on the file of Munsiff at Tumkur, which suit was instituted by the deceased Ganganna Gowda claiming to be a tenant of the land for a perpetual injunction restraining the landlord from interfering with his lawful possession and enjoyment, which suit came to be dismissed on 17.12.1969 holding that he is not a tenant of the land in question. Against which he filed an appeal before the Civil Judge, Tumkur in R.A. 16/1970 which appeal came to be dismissed confirming the Judgment and decree of the Munsiff Court at Tumkur on 17.8.1973. Being aggrieved by the concurrent findings, the

deceased appellant filed a second appeal before this Court in RSA No. 107/1974 which appeal came to be dismissed on 18.1.1974. After the conclusion of the proceedings before the Civil Court, the deceased Ganganna Gowda filed an application before the Land Tribunal, Kunigal claiming to be the tenant of the very same land under the respondent. The Tribunal considering the Judgment and decree, held in the first round of litigation granted occupancy rights in favour of the tenant. Against which the landlord had taken the matter in Writ Petition No. 11989/1976 which Writ Petition came to be allowed and the matter was set aside and remanded to the Tribunal on 21.2.83. Again after remand, the Tribunal considering the evidence let in by the parties relying upon the Judgment and decree passed O.S. No. 390/68 which was confirmed in R.A. No. 16/1970 and (sic) confirmed in R.S.A. No. 107/1974, rejected the application filed by the appellant for grant of occupancy rights on 29.3.1984. Against which again the tenant filed a Writ Petition in W.P. No. 6884/84 and which Writ Petition came to be allowed and the matter again remanded to the Tribunal. The Tribunal in the 3rd round of litigation confirmed the earlier order and rejected the application filed in form No. 7 by its order dt.7.3.1989. Against which the tenant filed a L.R.A. before the Land Reforms Appellate Authority, and due to abolition of the appellate authority, the matter was referred to this Court in C.P. No. 8814/1993 and Civil Petition came to be converted into Writ Petition in W.P. No. 26801/2000. The Writ Petition came to be dismissed on merits by holding that the appellant herein was not a tenant of the land and concurring with the orders of the Tribunal, dismissed the Writ Petition on 13th June 2008. Challenging the legality and correctness of the order, the present appeal is filed by the unsuccessful appellant.

3. The learned Counsel for the appellant has raised the following points in support of his arguments:

The Tribunal as well as the learned Single Judge have committed an error in not considering the case of the appellant solely relying upon the Judgment and decree passed in O.S. No. 390/68. Relying upon a Judgment of this Court in Bhagirathi Amma and Ors. v. Land Tribunal, Udupi and Ors. reported in 1979(1) Kar LJ 307 contends that even if a decree passed against the appellant in a Civil Court considering the scope and object of the Karnataka Land Reforms Act, still the Tribunal had to consider whether the appellant was a tenant as on 1.3.1974 and it was imperative on the part of the Tribunal to grant a relief to the appellant. He alternatively contends since the revenue entries still continue in the name of the appellant even after 1.3.1974, the Tribunal should have considered the revenue entries and presumption attached thereto. Therefore, on these two grounds he requests this Court to set aside the order passed by the learned Single Judge and so also the order passed by the Land Tribunal, Kunigal.

4. Having heard the Counsel for the appellant and the Government Advocate for the respondents, we are of the opinion that the learned Single Judge has not committed any error, in order to interfere with his order for the following reasons:

It is no doubt true that in *Bhagirathi Amma and Ors. v. Land Tribunal, Udupi and Ors.*, this Court while considering the provisions of Sub-section (2) of Section 3 of the Amendment Act No. 31/1974 has held even if a decree has been passed by the Civil Court before and after 1.3.1974, the interpretation of Sub-section (2) of Section 3 does not lose its importance and it is further held that such matter can be reopened by the Tribunal and can be considered independently. Subsequently, the learned Single Judge of this Court had an occasion to consider the case of *Bhagirathi Amma and Ors. v. Land Tribunal, Udupi* in the case of *Venkataiah and Ors. v. Rangamma and Ors.* reported in ILR 1980 Kar 693 wherein this Court has held that any decree passed prior to 1.3.1974 would be binding on the parties.

5. From the perusal of these two Judgments, we are of the opinion that even though there is no prohibition for the Land Tribunal to consider the tenancy rights as on 1.3.1974 irrespective of the decree passed by the Civil Court in *Venkataiah's* case, this Court has held that the decree passed prior to 1.3.1974 is binding on the parties. Therefore, it is clear that when the appellant has suffered a decree (sic) that he is not a tenant of the land in question prior to 1.3.1974 which Judgment has been affirmed by this Court in R.S.A. No. 107/74 dt. 18.1.1974, the same is binding on the appellant. We are also of the opinion that whenever a Judgment is rendered by a competent Civil Court prior to 1.3.1974, is binding on the parties. If there is a tenancy dispute as on 1.3.1974 and if such land is vested in the Government, then the question of considering the actual dispute between the parties would arise. In the instant case before the Land Reforms Act came into force, the competent Civil Court has negated the contention of the appellant that he is a tenant of the land in question. If he is not a tenant as on 1.3.1974, the question of vesting of the land in the Government does not arise at all. When the land has not been vested in the Government, the question of considering the alleged tenancy of the appellant by the Land Tribunal does not arise at all. Considering this point, we are of the opinion that if a Judgment has been passed by a competent Civil Court prior to 1.3.1974 the same is binding on the parties. If a competent civil Court has held that a person is not a tenant, the question of vesting the land in favour of the Government under the Land Reforms Act does not arise at all. In such circumstances, the Tribunal cannot entertain the application filed in form No. 7. Similarly, if a decree has been passed by a competent Civil Court declaring a person as a tenant of the land it goes without saying such land vests in the Government and in such circumstances, the Tribunal would get jurisdiction to consider form No. 7 filed by the applicant.

6. Therefore, we are of the opinion in the instant case since the competent Civil Court prior to 1.3.1974 has held that the appellant as not a tenant, the question of considering his application by the Tribunal again does not arise at all. Accordingly, ground No. 1 is answered against the appellant.

7. So far as the 2nd point is concerned, when the land has not been vested,

mere revenue entries in the records will not enure to the benefit of the appellant since he has already held to be not a tenant. Therefore, the presumption attached to the revenue entries will not come to the aid of the appellant to claim a tenancy right unless and until a case is made out by the appellant that the land has been granted to the appellant on lease by the land lord after the dismissal of his suit and before 1.3.1974. Therefore, point No. 2 is also held against the appellant.

8. At this stage, the learned Counsel for the appellant has further submitted that after the dismissal of RSA No. 107/1974 dt. 18.1.1974 the owner of the land has filed a suit for bare injunction restraining the appellant from interfering with his lawful possession and enjoyment of the property in O.S. No. 205/73 on the file of Munsiff at Tumkur and the said suit is pending. Even if the suit had been filed by the owner, in such a suit the right of the owner cannot be taken away by instituting such a suit against the appellant in view of the decree passed in O.S. No. 390/68.

9. In the result, the Appeal is dismissed.