
(2014) 03 KAR CK 0288
In the Karnataka High Court
Case No : Writ Appeal No. 8734 of 2012 (LR)

C. Kempanna

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-03-2014

Acts Referred:

Citation : (2014) 3 KarLJ 337

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

Bench : Division Bench

Advocate : Sathish M. Doddamani, Advocate for the Appellant; B. Veerappa, Additional Government Advocate and K. Krishnaswamy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—This appeal is filed questioning the validity and legality of the order passed in Writ Petition No. 10218 of 2005, dated 31-7-2012 by the learned Single Judge of this Court. The appellants in the writ petition challenged the order dated 7-12-2004 passed by the Land Tribunal, Nanjangud, in case No. LR4757/743-75 thereby dismissing their application filed for grant of occupancy rights in respect of 2 acres 25 guntas of land in Sy. No. 447/1 and 1 acre 30 guntas in Sy. No. 436/3 of Chunchanahalli Village, Nanjangud Taluk. They are the legal heirs of one Kempanna, who had filed an application in Form 7 claiming occupancy rights in respect of the above lands under registered lease deeds executed by one Chikkalingappa, grandfather of third respondent-Gurupadaswamy. The writ petitioner expired during the pendency of the proceedings before the Tribunal and his Class-I legal heirs further prosecuted the case. The sixth respondent is the present owner of the property. This is the fourth round of litigation before this Court. Each time the Tribunal rejected the application Form 7 and order of rejection was challenged by way of writ petition. On all the thrice occasion, the matter was remanded to the Tribunal for fresh consideration only to be rejected again.

2. It is the submission of Sri Sathish M. Doddamani, learned Counsel for the appellants that, the order of the Land Tribunal is not a speaking order; the lease deeds are misread by the Tribunal to interpret that it is only with reference to collection of usufructs. The recitals in the lease deeds and also the statement given by Kempanna before the Land Tribunal will make out a case that said C. Kempanna, subsequently the appellants continued as the tenants of the lands in question. The nature of the occupancy of the appellants falls within the definition of "agriculture" as defined under Karnataka Land Reforms Act, 1961. The view taken by the learned Single Judge concurring with the findings recorded by the Tribunal is erroneous. It is a clear case of occupancy of agricultural land by the tenant. Wherefore, he prays for setting aside the order of the learned Single Judge and for quashing the impugned order of the Land Tribunal dated 7-12-2004.

3. In reply, Sri K. Krishnaswamy, learned Counsel appearing for respondents 3 and 4 submits that, the owner disputed the genuineness of rent receipts and lease agreement. Assuming for a while that there were any such documents, the intention of the parties to the document was only in respect of availment of yield of coconut and mango fruits. The applicant C. Kempanna himself was in possession of lands above the ceiling limit; he was not the resident of Junjanahalli where the properties in question are located; the Land Tribunal/the primary fact finding Authority has gone in detail, on the oral and documentary evidence before rejecting the application in Form 7. Absolutely there are no documents demonstrating C. Kempanna's tenancy rights over the properties. In the circumstance, the learned Single Judge has rightly distinguished this case from the judgment of Gurusiddiah Chandrashekharaiah v. Land Tribunal Bagalkot and Others 1979(2) Kar. L.J. 176 and applied the principles of Racha Naika Vs. State of Karnataka, and rejected reliefs. Since no substantial question of law arises for consideration in this appeal, same may be dismissed.

4. Learned Counsel for the appellants laid emphasis on the recitals of lease agreement/Annexure-A, Registered Lease Deeds/Annexures-B and C, which is to the effect that possession of land is handed over by lessor to lessee. But we are not impressed by use of word "Swadheena"/possession appearing in these documents, for the foregoing reasons. The Tribunal has rejected the Form 7 for more than one reason. Basically there was no documentary proof reflecting the properties in question as agricultural land. As per Revenue documents, it was a garden land with coconut and mango trees. C. Kempanna's name is not shown in any of the R.T.Cs in cultivator's column. Above said documents Annexures-A to C are not admitted documents. There was material discrepancy in Form 7 and no corroboration to the contents of Form 7. Further the applicant being a landlord by himself, why would he cultivate some other's land as a tenant that too when the lands are situate at a distance? We find the primary fact finding authority/Land Tribunal has done its best in analysis and appreciation of evidence. The learned Single Judge has rightly brought in Racha Naika's case to hold that the transaction was not lease between the parties but about gathering coconuts and

mangoes. The appellants were given full opportunity to prosecute their case before the Tribunal. When the finding of the Tribunal is neither perverse nor arbitrary, the learned Single Judge was justified in declining to interfere in exercise of writ jurisdiction.

Hence the appeal stands dismissed.