

(2003) 01 KAR CK 0117
In the Karnataka High Court
Case No : Writ Petition No. 21840 of 1997

Channegowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 (11), 2 (12), 45
Karnataka Land Reforms Rules, 1974 — Rule 17

Citation : (2003) 1 KCCR 805

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

Bench : Single Bench

Advocate : M.C. Ranganna, for the Appellant; M. Rama Bhat, for Respondent 3;
M.E. Prabhu, A.G.A. for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In this Petition, the Petitioner is questioning the legality and validity of the impugned order passed by the 2nd Respondent-Land Tribunal, Mandya dated 18.6.1997 rejecting Form No. 7 filed by the Petitioner.

2. Brief facts of the case are as follows:

The Petitioner herein claiming to be the tenant has filed Form No. 7 for grant of occupancy rights in respect of Sy. No. 18/3 measuring 30 guntas of land situated Thangalagere village, which was gifted in favour of his wife Smt. Puttalingamma by her father Channegowda of Rajegowdana Doddi. The said Channegowda had two daughters by name Smt. Puttalingamma the wife of the Petitioner and Smt. Boramma. He had gifted 0.30 guntas of land each in favour of his two daughters by "gift deed" dated 12.11.1962. The case of the Petitioner is that he was cultivating the said land since from several years. After the marriage, the Petitioner and his wife were lived happily for bout 7 to 8 years. Thereafter, his wife Puttalingamma deserted him. The Petitioner has took 2nd wife and Smt. Puttalingamma began to live separately. But the Petitioner continued in possession and cultivating the land in question. When Puttalingamma attempted

to create a lease in favour of Petitioner's brother, a dispute arose between husband and the wife. At that time, panchayath was held and it was decided in the panchayath that the Petitioner should continue to be in possession of the land in question as tenant and he should pay four candies of paddy every year as guttige to his wife Puttalingamma. In addition to guttige, the Petitioner was also paying maintenance in terms of maintenance decree obtained by her.

3. In view of Sections 45 of the Karnataka Land Reforms Act, on the constitution of the Land Tribunal, Petitioner filed Form No. 7 seeking occupancy right and impleaded Smt. Puttalingamma and Bettegowda-3rd Respondent herein as parties. The Tribunal has rejected the claim of the Petitioner by order dated 29.5.1979. Against that order, the Petitioner had filed Writ Petition No. 8421 of 1979 before this Court. This Court has remanded the matter back to the Tribunal for fresh disposal in accordance with law. After remand, the Tribunal had recorded the statement of the Petitioner and his wife and also after considering the material on record, once again rejected the claim of the Petitioner by order dated 25.8.1981. Against the order dated 25.8.1981, the Petitioner again filed Writ Petition No. 32554 of 1981. This Court had set aside the order of the Tribunal and remitted back the matter to the Tribunal with a direction to decide the matter keeping in view the observation made in Writ Petition No. 64821 of 1979.

4. The principal submission canvassed by the learned Counsel for the Petitioner is that, the impugned order is liable to be rejected on more than one ground. To substantiate his case, the Petitioner has produced RTC extracts showing that he is cultivating the land in question as tenant and he was adduced evidence stating that in view of the dispute arose between him and his wife, there was a panchayath and in that panchayath, he was permitted to continue in possession of the said land as tenant. Accordingly, he was continued as tenant and filed Form No. 7 for grant of occupancy rights. Further the learned Counsel vehemently submitted that this Court set aside the earlier order of the Tribunal and directed it to conduct enquiry as enunciated under Rule 17 of the Karnataka Land Reforms Rules. The said direction has not been complied with by the Tribunal. Therefore, the impugned order is liable to be set aside. Further, it is submitted that during the pendency of the proceedings, Smt. Puttalingamma died and the Petitioner has stepped into the shoes of Puttalingamma as her sole legal representative.

5. Per contra, the learned Counsel for Respondents, inter alia, contended and submitted that the writ Petition is liable to be dismissed on the ground that the Petitioner has not made out good ground to interfere with the order passed by the Land Tribunal. The order is strictly in accordance with the relevant provisions of the karnataka Land Reforms Act and Rules. Further Counsel for Respondent-1 and Respondent-2 submitted that there is no relationship between the wife and the husband as tenant and owner in pursuance of Section 2 of Sub-clause (12) of the Act and therefore, the Tribunal has rightly rejected Form No. 7 filed by the

Petitioner. Therefore, he prayed that the Petition may be dismissed with exemplary costs.

6. Perused the impugned order and the original records carefully. The Petitioner has filed Form No. 7 for grant of occupancy rights in respect of Sy. No. 18/3 measuring 30 guntas of land in question. He has stated in the said form that his family is consisted of himself and his wife Smt. Puttalingamma and another wife Duggamma. In the application, he has also stated that she is the owner of the land in question. The said statement in Form No. 7 is suffice for this Court to hold that Form No. 7 is not maintainable and it is liable to be rejected. He cannot show his own wife as owner in the relevant column. Further the plea taken by the Petitioner is contrary to the relevant provisions of the Act. Sections 2 of Sub-clause (11) reads as follows:

(11) to cultivate personally" means to cultivate land on ones own account-

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or ;

(iii) by hired labour or by servants on wages payable in cash or kind but not in crop share, under the personal supervision of oneself or by member of one's family.

Further the definition of the family defined u/s 2 of Sub-clause (12) reads as under:

(a) in the case of an individual who has a spouse or spouses, such Individual, the spouse or spouses and their minor sons and unmarried daughters, if any.

Therefore, as per the definition of the family, the wife is the member of the said family. Hence, Form No. 7 filed by the Petitioner itself is not maintainable. Further the Petitioner to substantiate his tenancy right in respect of the land in question, has relied on the entry found in column No. 12(2) of cultivation column, wherein it is stated that since from 1969-70 to 1981-82 agricultural years his name has been shown. It proves that he is cultivating the said land. The Tribunal has not at all considered this aspect of the matter. The entry in the RTC for the year 1969-70 to 1981-82 in the mode of cultivation column it is shown as self-cultivation. It means that the Petitioner is not cultivating the land as tenant. It is stated by the Petitioner that in the panchayath held in the village, he was permitted to cultivate the said land as tenant. The said submission is not at all sustainable because the Petitioner himself has admitted in the cross examination given on 21.8.1992 that there is no agreement or settlement in writing in respect of "guttige". The same reads as follows:

KANNADA MATTER

Further it is admitted that-

It is significant to note that in Form No. 7 the Petitioner has stated that he do not

own any land

In the examination-in-chief, he has stated that

This statement shows that the Petitioner intentionally and deliberately has stated in Form No. 7 that he do not own any land except the land in question. The said statement made by the Petitioner is false and contrary to the material available on record before this Court as well as before the Tribunal.

7. In the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Apex Court while setting aside the Judgment of Court has observed as follows:

There is legal duty cast upon the Plaintiff to come to Court with a true case and prove it by true evidence.

It is further observed that-

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

The above well settled principle is directly applicable to the facts and circumstances of the instant case. Therefore, the Petition is liable to be dismissed with exemplary costs.

8. Yet another reason the writ Petition filed by the Petitioner liable to be rejected. As rightly pointed by the learned Additional Government Advocate appearing for Respondent-1 and Respondent-2 that the Division Bench of this Court in the of case of Smt. A. Jalajakshi D. Alwa v. Meenaxi Naik [1987 (1) Kar. LJ 1] wherein it is held thus:

17. When a husband or a wife cultivates the land of his wife or husband or vice-versa under the artificial definitions of the Act, then such person does not cultivate the land of the other on his or her own account independently but cultivates the same for and on behalf of the other only. The tenancy of one spouse is treated as the tenancy of the other spouse also. So also, the cultivation of tenanted lands by one spouse is treated as the cultivation by the other spouse. The Act in its wisdom does not recognise a tenancy between a husband and wife and vice-versa, though the common law and other laws may so recognise the same with which we are not concerned. Whatever be the position in common law or other laws of the Country with which we are not concerned in these cases, the position under the Act is that there can be no tenancy between a husband and wife and vice-versa at any rate while that married status exists between them as in the present cases.

The said reliance placed by the learned Government Advocate is directly applicable to the facts and circumstances of the present case. On this ground also the writ Petition is liable to be rejected.

9. Having regard to the facts and circumstances of the case, having regard to the factual and legal aspect of the matter as enumerated above and taking into consideration the totality of the case, the interference in the impugned order passed by the Land Tribunal is unwarranted. The writ Petition filed by the Petitioner is frivolous and vexatious and the Petitioner has not made out any good grounds to interfere with the impugned order.

10. For the foregoing reasons, writ Petition filed by the Petitioner is dismissed with exemplary costs of Rs. 3,000/- The said amount shall be paid to the High Court Legal Services Authority within four weeks from the date of receipt of this order and receipt for having deposited the said amount shall be filed in the Registry.

The learned Government Advocate for Respondent-1 and Respondent-2 is permitted to file memo of appearance within four weeks from today.