

(2011) 03 KAR CK 0237
In the Karnataka High Court
Case No : Writ Appeal No. 2102 of 2006

Chikkakunnappa, since deceased by his LR's. (Sri. Muniraju and Others), Ashwath C. since dead by his LR's (Smt. Kalavati, Smt. Manjula, Sri. Srinivas A. and Smt. Chaitanya and Ashwathanarayana	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Revenue Recovery Act, 1890 — Section 34
Revenue Rules — Rule 17

Citation : (2011) 03 KAR CK 0237

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : Crest Law Partners and K. Arun Kumar, for the Appellant; K.R. Lakshminarayan Rao, Laxminarayan, B. Srinivas, T.L. Patil, Kumar and Kumar for R5 and T.S. Venkatesh, R3 to 5, for the Respondent

Final Decision : Allowed

Judgement

1. Appellants are the Petitioners in W.P. No. 15603/2006 being aggrieved by the order dated 08-11-2006 passed by the learned Single Judge dismissing the writ petition filed by them have preferred this writ appeal.

2. The Petitioners are the legal heirs of deceased Chikkakunnappa who has filed an application in Form No. 7 for grant of occupancy rights in respect of various items of land, including the land bearing Sy. No. 28/5 measuring 1 acre 12 guntas situated at Doddakallasandra village, Bangalore South Taluk inter alia contending that he has been in possession and cultivating the land in dispute as on 1-3-1974 and immediately prior to the said date on the basis of the lease deed executed on 1-5-1963 by its owner one B.N. Sadashiva Rao. The record of rights and other revenue records stand in the name of the said Chikkakunnappa. Hence, he is entitled to be registered as an occupant in respect of the aforesaid land. However, the Land Tribunal by its order dated 16-12-1992 rejected the

application of the said Chikkakunnappa for grant of occupancy rights in respect of aforesaid land and granted the same in favour of the rival tenants. Being aggrieved by the said order, the said Chikkakunnappa filed a writ petition W.P. No. 39671/1992 and other connected writ petitions. This Court by its order dated 8-1-2001 allowed the said writ petitions and quashed the order dated 16-12-1992 and remanded the matter to the Land Tribunal for fresh enquiry. Meanwhile, the said Chikkakunnappa died in the year 1996, the Petitioners have come on record as legal representatives and contested the matter and have also produced necessary documents to show that they have been in possession and cultivating the land. However the Land Tribunal without considering the documents produced by the Petitioners solely on the ground that the record of rights for the year 1972-73 and 1973-74 do not stand in the name of the Petitioners/tenants. Accordingly, the Petitioners are not in possession of the land in dispute and rejected the application by its order dated 18-8-2006.

3. Being aggrieved by the order passed by the Land Tribunal, the Petitioners have filed W.P. No. 15603/2006 challenging the order passed by the Land Tribunal on various grounds. The learned Single Judge by an order impugned in this writ appeal dismissed the writ petition holding that the documents produced by the Petitioners could not substantiate that they are tenants and cultivating the said land as on 1-3-1974. Further, the lease agreement cannot be accepted although the landlord has consented for grant of occupancy rights, as it is not in accordance with the Act. The learned Single Judge held that the contention of the Petitioner that the order passed by the Land Tribunal is not a speaking order cannot be accepted and dismissed the writ petition. Being aggrieved by the order passed by the learned Single Judge, the Petitioner preferred this appeal.

4. Sri. K. Arun Kumar, learned Counsel appearing for the Appellants contended that the order passed by the learned Single Judge is contrary to law. The Land Tribunal without, considering the documents produced by the Appellants and without appreciating the statement of the 3rd Appellant, rejected the application solely on the ground that the mutation entry is not in the name of tenants for the year 1972-73 and 1973-74. Hence the Appellants are not cultivating the said land, learned Counsel further submitted that the order passed by the Land Tribunal is not a speaking order and the lease agreement entered into between Chikkakunnappa and B.N. Sadashiva Rao was not considered by the Land Tribunal. He has further contended that the landlord has filed an affidavit before the Land Tribunal conceding that the Appellants are the tenants in respect of the land in question. Further, KEB Bills. RTC entries for the year 1974-75 onwards and some of documents regarding the loan obtained by the Appellants in the State Bank of Mysore have not at all been considered by the Land Tribunal. Though the land owner has not disputed the execution of the lease deed in the year 1963, the learned Single Judge has expressed a doubt regarding the lease deed and also statement of the landlord conceding the tenancy of the Appellants on the ground that the statement is not in accordance with law and the same cannot be accepted. The learned Single Judge further observed that no document

has been produced with regard to the resumption proceedings initiated by the landlord. The mutation entry is also not in the name of the tenants as on the appointed date and hence they cannot be treated as tenants. Accordingly dismissed the writ petition even though the landlord has conceded the Appellants as tenants. The Appellants have further contended that order passed by the Land Tribunal is not a speaking order and the reasons assigned to reject the claim of Appellants are contrary to law. This aspect of the matter was not considered by the learned Single Judge and dismissed the writ petition, which is contrary to law and sought for setting aside the same.

5. On the other hand, the learned Counsel for the contesting Respondents have contended that there is no infirmity or irregularity either in the order passed by the Land Tribunal or by the learned Single Judge. The Appellants have not produced any documents to show that they are the tenants of the land in question as on 1-3-1974 and immediately prior to that date and sought for dismissal of the writ appeal.

6. We have carefully gone through the arguments addressed by the learned Counsel for the parties and the order impugned in the writ appeal.

7. It is not in dispute that the deceased Chikkakunnappa filed Form No. 7 for grant of occupancy rights in respect of various lands including the land bearing 28/5 measuring 1 acre 12 guntas situated at. Doddakallasandra village. Initially the Land Tribunal rejected the claim and granted the same to the rival tenants. In W.P. No. 39671/1992, this Court quashed the order passed by the Land Tribunal and remanded the matter for fresh enquiry. After remand, the third Appellant appeared before the Land Tribunal and contended that the land in question was taken on lease by their late father Chikkakunnappa on 5-1-1963 agreeing to pay Rs. 600/- and 25 pallas of paddy per year. Since then, Chikkakunnappa has been in possession and cultivating the land and paying Rs. 600/- and 25 pallas of paddy every year. Further, the landlord B.N. Sadashiva Rao appeared before the Land Tribunal in the year 1975 and conceded that the Appellants have been in possession and cultivating the said land from the year 1963. That the 4th Respondent also filed an affidavit before the Land Tribunal in the year 1992 stating that the land in question is a tenanted land and late Chikkakunnappa is cultivating the said land. The KEB Bills also mention the name of the landlord as well as Chikkakunnappa. The record of rights stand in the name of Chikkakunnappa and it was deleted at the instance of one Narayanaswamy. Hence, Chikkakunnappa filed R.A. No. 2/1973-74 and also miscellaneous No. 107/1974-75. From the year 1974-75 onwards, the RTC stands in the name of Chikkakunnappa. Further, resumption proceedings initiated by the landlord in the year 1967 clearly disclose that the land in dispute is a tenanted land. The Appellants have produced many documents to show that the land in question is a tenanted land and the Appellants were cultivating the said lands as agricultural tenants. The Land Tribunal without considering any of the documents by its non-speaking order rejected the application solely on the

ground that the mutation entry does not stand in the name of Chikkakunnappa hence, he is not in possession and cultivating the lands only on assumption and presumption. None of the documents produced by the tenants has been considered. The reading of the order passed by the Land Tribunal makes it clear that the order impugned is not a speaking order. The learned Single Judge agreeing with the order passed by the Land Tribunal dismissed the writ petition filed by the Appellants on the ground that the Appellants have not produced any documents except the lease deed and lease deed produced by the Appellant cannot be accepted. The learned Single Judge has not taken into consideration the statement made by the landlord on 14-4-1975 and also the affidavit filed before the Land Tribunal dated 4-12-1992 wherein the landlord conceded before the Land Tribunal that land in question was leased in favour of Chikkakunnappa. The reasoning of the learned Single Judge in not accepting the document produced by the Appellant resulted in miscarriage of justice. The Land Tribunal without considering the necessary documents produced by the Appellant by its non-speaking order rejected the application. Hence, the order passed by the Land Tribunal is not in accordance with Rule 17 of the Rules read with Section 34 of Revenue Rules. We feel that the Land Tribunal has to reconsider the matter afresh.

8. Accordingly, we pass the following:

ORDER

The writ appeal is allowed and the order dated 8.11.2006 passed by the learned Single Judge in W.P. No. 15603/2006 and also order dated 18-8-2006 passed by the Land Tribunal rejecting the application filed by the Appellants for grant of occupancy rights in respect of land bearing Sy. No. 28/5 measuring 1 acre 12 guntas are quashed and the matter is remanded to the Land Tribunal to hold fresh enquiry and pass appropriate order in accordance with law in so far as rejection of the claim of the Appellants within a period of 6 months from the date of receipt of a copy of the order.