

(1981) 12 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition 7435/76

Chokkannagari Naravanappa

APPELLANT

Vs

Land Tribunal Chintamani and Another

RESPONDENT

Date of Decision : 17-12-1981

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 2 (34), 5, 5 (1), 5 (3)

Citation : (1981) 12 KAR CK 0008

Hon'ble Judges : S.G. Doddakale Gowda, J

Bench : Single Bench

Advocate : K. Subha Rao, for the Appellant; V. Tarakaram, for R2, for the Respondent

Final Decision : Dismissed

Judgement

S.G. Doddakale Gowda, J.—The petitioner, in this writ petition, has challenged the order dated 25-6-1976 made in No. LRM 2/74-75 end 936/74-75 by the Land Tribunal, Chintamani, rejecting his claim for registration of occupancy right.

2. In WA No. 458 of 1976 the order dated 27-8-1976 by which writ petition was rejected, has been set aside and remitted to consider the question whether the petitioner could be a "deemed tenant" u/s 4 of the Karnataka Land Revenue Act, 1964.

3. The facts of the case may be briefly stated thus:

The petitioner was the owner of S. Nos. 27/2, 133/3 and 184/3 situate, at Anoor village, Chintamani Taluk. By a registered deed dated 13-1-1969, he conveyed his right, title and interest in favour of the second respondent for a consideration of Rs. 1,000. The second respondent-owner in OS No. 301 of 1974 on the file of the Munsiff, Chintamani, sought for temporary injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the property. The Civil Court has appointed the second respondent and two others who have purchased two other survey numbers for him as receivers.

4. The Tribunal after holding an enquiry has rejected the application filed in Form No. 7 claiming occupancy right as a tenant in occupation as on 1-3-1974 in respect of the property which he conveyed under the deed referred to above. The petitioner has examined four witnesses. So also the respondent has examined four witnesses. One Pyaru Sab, who according to the parties, was present at the time of execution of the sale deed was summoned and examined by the Tribunal for the purpose of ascertaining the nature of the transaction.

Sri K. Subba Rao, learned Counsel for the petitioner, contended that the sale deed dated 31-1-1969 was only an ostensible sale for mortgage and never intended to convey right, title and interest in the property. He submitted that the properties in question were offered as security for a sum of Rs. 1,000 borrowed from the respondent to meet certain exigencies. The deed was executed in that form on account of trust. Despite the execution of the sale deed dated 31-1-1969 he continued to be in possession of the property in dispute by paying half the produce. It was submitted that taking into consideration the nature of the property and consideration paid under the deed when compared with the market value of the property, it must be held respondent 2 had not derived any absolute interest in the property. The relevant portion of the averments made in para 19 of the petition reads thus:

Since the sale deed was purely a nominal one and since only a nominal amount was passed under the said deed, as against valuable lands, and since the second respondent had promised the petitioner to reconvey the lands, the second respondent was silent.

Thus it is clear, the plea of the petitioner that the sale deed dated 31-1-1969 is either nominal or a mortgage. If it is a nominal sale deed, the petitioner continues to be a real owner and he cannot be a tenant unto himself. The plea advanced is more in consonance with the claim to treat the deed as a mortgage and not as a sale, in which case, it is only a Civil Court that can adjudicate the nature of the deed and not the Tribunal. The case put forward both before the Tribunal and this Court is on the horns of a dilemma. The petitioner is neither willing to admit the transfer in favour of respondent 2, nor willing to stake the claim as a tenant under him. It is necessary to extract the relevant portion of the evidence of the petitioner which reads thus:

x x x x The Tribunal on a consideration of the material placed before it has rightly come to the conclusion that the petitioner is not a tenant.

6. As per the remand order what is required to be considered is whether he could be a deemed tenant within the meaning of Section 4 of the Act. Sri K. Subba Rao submits that the decision of the Tribunal is erroneous because it has overlooked Section 4 of the Act. On a reading of Section 4 with the definition of "tenant" as defined in Section 2(34) of the Act, it was argued that he must be considered as a deemed tenant coupled with the other circumstantial evidence viz., entries in RTC, nature of the property and the consideration purported to have been paid

under the sale deed and the filing of OS No. 301 of 1974 seeking injunction against the petitioner. Respondent has refuted the contention that there is no foundation for the plea of deemed tenancy. Neither can he be a tenant nor a deemed tenant.

7. In the context of examining the probabilities of the lease in his favour, one of the grounds on which the Tribunal has declined to recognise him as a tenant is, that the lease is not evidenced by any deed.

8. u/s 5 of the Principal Act leases permitted subsequent to 2-10-1965 are required to be in writing. By Act 1 of 1974 a drastic change was brought about in Section 5 by which all leases subsequent to the Commencement of the Amendment Act were prohibited except the lease created or continued by a soldier or a seaman. The original Sub-section (2) requiring all permitted leases to be in writing has become new Sub-section (3) of Section 5. Consequential amendment is also made in the definition of "tenant" with retrospective effect including Clause (ii) (a) to the effect that lessee of a prohibited lease u/s 5 shall also be a deemed tenant.- Section 2 (34) reads:

"Tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes.

(i) a person who is deemed to be a tenant u/s 4;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961; (ii-a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

The Tribunal has not rejected the claim of the petitioner on the ground that the lease in his favour was prohibited. It has only Stated that the lease is not evidenced by a deed as required under Sub-section (2) of Section 5 of the Act. Requirement of a lease in a particular form is different from prohibiting creation of lease, Under Sub-section (1) of Section 5 of the Principal Act barring certain exceptions all leases were prohibited. Sub-section (2) only states that a lease must be in writing. Since the Tribunal has not declined to recognise the status of the petitioner as a tenant on the ground that the lease in his favour was prohibited, there is no force in the argument of Sri Subba Rao to the effect that the failure to consider his case in the light of retrospective amendment has resulted in prejudice.

9. Section 4 intends to protect the interest of persons lawfully cultivating the land. In Commissioner of Income Tax, Bombay v. Bombay Corporation AIR 1930 PC 55 it is held that when a person or thing is "deemed to be" something, the only meaning possible is that he or it is not in reality that something, the Act of

legislature requires him or it to be treated as if or it were. Thus the expression "deemed to be a tenant" intends to confer a status by legal fiction on persons other than those referred to Clauses (a) to (e) of Section 4 but for which a person could not be a tenant in law. The phrase "deemed to be" raises a presumption in favour of the person lawfully cultivating the land and it is a rebuttable presumption. To be a "deemed tenant" one must lawfully cultivate the land belonging to another person.

The word "lawfully" implies, possession has a rightful origin and is capable of being defended successfully. Relying on the decision of this Court in *Sri Muniyellappa Vs. B.M. Krishnamurthy and Others*, it was contended that he must be considered as a deemed tenant. But at page 402, this Court, after extracting the relevant portion of the judgment of the Supreme Court, has stated "It is unnecessary for the purpose of disposal of this appeal, to lay down as to who are the persons entitled to the status of 'deemed tenant'". However, Sri Subba Rao "relying on the portion extracted from the decision of the Supreme Court submitted that the consent of landlord was not necessary to consider his claim as a deemed tenant. It is true, if consent is there it becomes a contractual right. Though it is not possible to exhaust the list of persons as to who could be considered as deemed tenants, for the purpose of examining the rival contentions, a few illustrations which have a bearing on the point are set out. A vendee in possession of the property on deferred payment of consideration in instalment, cannot be considered as a 'deemed tenant'. Likewise, vendor remaining in possession of the property till the payment of entire consideration cannot be deemed to be a tenant. A vendor who continues to be in possession of the property even after the execution of the sale deed with an undemanding to harvest the crop standing on the date of the conveyance cannot be treated as a 'deemed tenant'. So also the vendor who has failed to deliver property cannot take advantage of his laches and claim to be a deemed tenant". It is only to overcome the situation like this, the Legislature has categorically stated that it must be a lawful cultivation. "Lawful" though not concomitant with the word "concurrence", in view of tenancy laws, the possession must still be capable of being defended successfully if action is taken.

10. "Tenancy" means the relationship of landlord and tenant. "Rent" means money paid or payable by a tenant on account of the use and occupation of the land held by him. Persons specified in Clauses (ii) to (iv) of Section 2(34) of the Act by virtue of their relationship, no doubt are required to pay rent. Likewise, the deemed tenant should also pay rent. A person lawfully cultivating the land belonging to another must necessarily pay the rent for use and occupation. Otherwise, there will be no distinction between a person in possession of the property without the concurrence of the land owner and a trespasser. There is no material regarding the payment of rent A person cultivating the land claiming it as his own is not lawfully cultivating the land belonging to another. It is a case of dispute relating to title. The finding regarding possession as on 1-3-1974 is against him. His case is, he never parted with possession. He claims to remain in

possession as owner. His plea cuts at the very root of deemed tenancy under the respondent. As rightly pointed out there is no basis for his claim.

11. The impugned order is a well considered order and I find no infirmity warranting interference. Accordingly, the writ petition is dismissed but without costs.