

(2007) 12 KAR CK 0039
In the Karnataka High Court
Case No : Writ Appeal No. 1810 of 2006

Davalsab

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Karnataka Land Reforms Act, 1961 — Section 113, 48, 48 A, 48 A (1)

Citation : (2008) ILR (Kar) 280 : (2008) 3 KarLJ 35 : (2008) 1 KCCR 439

Hon'ble Judges : Manjula Chellur, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Umesh R. Malimath, for the Appellant; Mohd. Shafiullah, AGA for R-1 and R-2 and Ravi V. Hosmani for C/R4 to R-16, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—The appellant herein has claimed tenancy rights in respect of R.S. No. 1384/3 known as "Hallikeri Dari Gudi Hola" as a tenant. It is not in dispute that Mr. Husensab, father of the present appellant initially filed Form No. 7 on 14-8-1974 in respect of Sy. Nos. 1075 and 1077. Again on 21 -12-1976, he filed Form No. 7 for the second time in respect of the land in dispute i.e., R.S. No. 1384/3. On 26-12-1977, occupancy rights were granted by the Land Tribunal, Navalgund in respect of this land. The same was questioned in Writ Petition No. 2307/78. The Writ Petition was allowed and the matter was remanded back to consider the reasons if any given for filing delayed Form No. 7 i.e., the second application. On 19-6-1981, the Tribunal rejected the application holding that he was not a tenant of the said land. Again Writ Petition No. 17298/81 came to be filed by the tenant and the Writ Petition was allowed quashing the orders dated 19-6-1981. The matter was remanded back to the Tribunal.

2. On 12-12-1984, deceased Husensab and the legal representatives in question entered into compromise admitting the tenancy of the land in question. On

29-12-1991 occupancy rights were granted to the appellants as majority opinion of the Land Tribunal. Respondent Nos. 3 to 12 raised objection with regard to filing of Form No. 7 for the second time. On 2-8-2006, a memo also came to be filed by the respondents along with the copies of two applications in Form No. 7 dated 14-8-1974 and 21-12-1976.

3. The learned Single Judge on 14-9-2006 dismissed the application only on the ground of maintainability. The said order of the learned Single Judge is under challenge before us.

4. According to the appellant, the rent receipts produced by him which are not in dispute along with the evidence of witnesses in support of his case ought to have compelled the learned Single Judge to opine in his favour. Even the compromise entered into between the parties was not considered by the learned Single Judge. The law relied upon by respondent Nos. 3 to 12 was not good law any more and the learned Single Judge was wrong in relying on the said judgment. When the landlords have waived their right to raise the controversy of filing second application in Form No. 7 for the first time after 29 years, the same ought not to have been entertained by the learned Single Judge.

5. Learned Counsel for the appellant relies upon the following judgments in support of his contentions:

- 1) Giryappa and Others Vs. State of Karnataka and Others,
- 2) Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation AIR 2000 SC 2103.
- 3) Parameshwar Timmayya Hegde and Others Vs. Venkataraman Manjappa Hegde (Deceased) by L.Rs and Others,
- 4) Vasantha Nanasaheb Pawar and Others Vs. Piraji Pandu Patil (since deceased by LR, Smt. Laxmi Bai, Baliram P. Patil and Vishnu P. Patil), The Land Tribunal, State of Karnataka and Anantha Nanasaheb Pawar,
- 5) V. Krishna Rao v. Sub-Divisional Mag. Mysore and Ors. 1980 (2) Kar.L.J. 71.

6. So far as the first argument of the learned Counsel that after a lapse of 29 years, for the first time, the respondents ought not to have challenged the second application in Form No. 7 as barred, we are of the opinion such contention of the learned Counsel is not palatable for the simple reason that so far as legal issue or legal question, it can be raised at any stage of the proceedings.

7. The only question for our consideration before this Court is whether the second application in Form No. 7 in respect of Sy. No. 1384/3 dated 21-12-1976 filed by Husensab is maintainable?

8. For better understanding of the matter, it would be necessary to reproduce the important provisions of the Karnataka Land Reforms Act and Rules that are

applicable to the facts of the present case:

Rule 19: Form of application and notice:-

(1) The application under Sub-section (1) of Section 48-A shall be in Form-7. The application shall furnish particulars of all the lands held under each separate tenancy in one or more than one Taluk in respect of which the applicant claims to be entitled to be registered as an occupant.

Definition of "Tenancy" in Section 2(33):

"tenancy" means the relationship of landlord and tenant

Definition of "Tenant" in Section 2(34):

"tenant" means an agriculturist who cultivates personally the land he holds on lease from landlord and includes,

Section 113: Application of the Code of Civil Procedure:

(1) Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall be applicable in respect of all applications and proceedings under this Act before the Court.

9. It is not in dispute that this matter pertains to the second Form No. 7 application filed by the father of the present appellant.

10. The first decision relied upon by the learned Counsel for the appellant was discussed by the learned Single Judge in his judgment. In this case, what the learned Judge has said is though the CPC is not made applicable to the proceedings before the Land Tribunal, in the backdrop of the provisions contained in Section 48-A & Rule 19, the principle underlying Order II Rule 2 of the CPC can be applied, otherwise it will lead to multiplicity of proceedings.

The second judgment relied upon by the Counsel for the appellant does not apply to the facts of the present case.

11. In the next judgment relied upon by the Counsel for the appellant, the learned Single Judge has held Form No. 7 can be filed only once and there is no provision under Land Reforms Act to entertain another Form No. 7 filed subsequently.

12. In the next judgment *Vasanth Nanasaheb Pawar and Others Vs. Piraji Pandu Patil* (since deceased by LRs, Smt. Laxmi Bai, Baliram P. Patil and Vishnu P. Patil), The Land Tribunal, State of Karnataka and *Anantha Nanasaheb Pawar*, the facts are different from the earlier two decisions of the learned Single Judge of this Court. In this case, there were two different landlords under whom the tenant claimed tenancy rights. The learned Single Judges having regard to the format of application under Rule 19 and also the definition of "tenancy" and the "tenant" in the Act, held if a tenant claims separate tenancy under two different landlords, there could be two applications in respect of two different landlords as they

constitute two separate tenancies. In other words, as the tenant was required to establish tenancy separately under two different landlords, the learned Judge said such tenant is not precluded from filing two applications in Form No. 7.

13. The situation is altogether different in the present. Under the same landlord, the tenant is claiming tenancy rights by filing two Form No. 7 applications, one in the year 1974 and the other in 1976. Apparently, the tenant has not restricted his claim to one of the applications. He has claimed tenancy rights in respect of all the three lands comprised under two applications in Form No. 7. We are concerned with the second application filed during the year 1976 only.

14. Having regard to Rule 19, it is noticed applicant has to furnish details of all the lands held under each separate tenancy and after filing of the same, the Tahsildar concerned would collect the information from the concerned revenue officials regarding the details. But one Tribunal would decide the matter. As a matter of fact, reading of Rule 19 and Section 2(33) and 2(34) of the Act, provides filing of one Form No. 7 application only in respect of all the tenancies claimed by a tenant even under different landlords. In other words, it would be well within the procedure if a tenant files one application in Form No. 7 in respect of different tenancies belonging to different landlords.

15. The question is whether the policy underlying Order II Rule 2, is applicable? Reading of Section 113 of the Act would mean in respect of such provisions where no express procedure is provided under the Land Reforms Act, provisions of CPC would apply to the proceedings before the Court. The question is whether the word "Court" here means the "Civil Court" or the "Tribunal" as well. When we go through the definition of Section 2, Sub-section 9A of the Act, originally "Court" means Court of Munsiff within the local limits of whose jurisdiction the land was situated. This came to be inserted by Act 6 of 1970 with effect from 15-1-1970. Again Sub-section 34 refers to "Court" which was in existence prior to 1-3-1974. By Act 1 of 1974 in the place of Court". "Tribunal" came to be inserted. "Tribunal" means the Tribunal constituted u/s 48 of the Act. Subsequent to 1-3-1974, we do not find any change so far as Section 113 of the Act is concerned except that Sub-sections 2 & 3 were deleted. Sub-section (1) of 113 was left unchanged where the word "court" remained as it is. Subsequent to 1-3-1974, we do not come across any proceedings pertaining to Land Reforms Act before a Civil Court.

16. In that view of the matter, the procedure under Karnataka Land Reforms Act of 1974 refers to the procedure before the Land Tribunal, Appellate Authority only. On the other hand, the Civil Court is barred from entertaining any matter pertaining to tenancy of agricultural land between the landlord and the tenant. If such situation arises, the Civil Court directs the parties to approach the Tribunal to get the declaration of their tenancy rights. In that view of the matter, the word "Court" which occurs at Section 113(1) of the Act has to be read as "Tribunal" also.

17. When we look at the practical difficulties, if tenants are allowed to file more than one Form No. 7 application in respect of the lands claimed by them as tenants pertaining to the very same landlord, it would only lead to multiplicity of proceedings and both the landlord and tenant would end up in litigations throughout their lives. Therefore, in view of the provisions of Section 48-A and Rule 19 of the Act, we hold that the principle underlying Order II Rule 2 of CPC is applicable as there is no such express provisions under the Land Reforms Act. In that view of the matter, we completely agree with the opinion of the learned Single Judge on the question of controversy. Accordingly, the appeal is dismissed as not maintainable.