

(1985) 08 KAR CK 0010
In the Karnataka High Court
Case No : C.R.Ps 3818 and 3832 of 1982

Gajanan Mahadev Hegde

APPELLANT

Vs

Ramakrishna Jatti Naik

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 43, 44

Citation : (1985) ILR (Kar) 3490

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; C.N. Naik, for S.R. Naik, for Respondents 1, 2 and 5 and Vinod Prasad, for Respondent-6, for the Respondent

Final Decision : Allowed

Judgement

Kulkarni, J.—Civil Revision Petition 3818 of 1982 by the decree-holders is directed against the order dated 19-10-1982 passed by the Munsiff, Honavar, in Execution Case No. 4 of 1981 dismissing the same.

2. Civil Revision Petition 3832 of 1982 by the decree-holders is directed against the very same common order dated 19-10-1982 passed by the Munsiff, Honavar, in Execution Case No. 40 of 1982 dismissing the same.

3. The predecessors of the decree-holders were the owners and the landlords of Revision Survey Nos. 200/1, 200/2, 200/3, 200/4, 201/1, 202/2, and were the mulgenidars of Survey Nos. 214/8A and 214/8B. The deceased judgment-debtor Jatti Naik, Respondent No. 6 Narayan and Respondent No, 7 Devappa were the tenants in respect of the said eight lands.

4. An application was filed by the predecessors of the present decree-holders against the erstwhile tenants namely deceased Jatti and Respondents 6 and 7 before the Tenancy Mamlatdar, Honavar, under the provisions of the Bombay Tenancy Act, 1948 for possession on the ground that the said tenants had fallen in arrears of rent for more than Rs. 5,000/-. The Tenancy Mamlatdar-2 dismissed

the Petition. The decree-holders preferred an appeal against the said order to the Prant Officer. The Prant Officer allowed the appeal and passed an order for possession in favour of the decree-holders and directed deceased Jatti and Respondents 6 and 7 to handover possession of the said eight lands to the decree-holders. Deceased Jatti and Narayan-Respondent No. 6, being aggrieved by the said order, went in revision to the Bombay Appellate Tribunal. The Bombay Appellate Tribunal confirmed the order passed by the Prant Officer, by its order dated 30-6-1956. They approached the High Court of Bombay with a Writ Petition challenging the order passed by the Tribunal. That Writ Petition was also dismissed by the High Court on 18-9-1956. In pursuance of the said order, the Tahsildar put the decree-holders in possession of all the eight lands on 19-9-1956 except a small portion where the hut of judgment-debtors was situate.

5. Thereafter deceased Jatti and Respondents 6 and 7 again tried to interfere with the possession of the decree-holders, notwithstanding the fact the Tahsildar had put the decree-holders in possession of the property in pursuance of the tenancy order ultimately confirmed in the Writ Petition decided by the Bombay High Court. Therefore, the decree-holders filed a suit in O. S. 245 of 1957 against Jatti and Respondents 6 and 7 for permanent injunction. That suit was decreed against all the three persons on 6-8-1958. Respondents 6 and 7 were defendants 2 and 3 in the said suit. They did not prefer any appeal against the decree passed by the Munsiff's Court. Therefore, the said decree for permanent injunction became final.

6. Thereafter, the decree-holders filed another suit O. S. 70 of 1962 against Jatti for possession of the area, where the hut was situate and the possession of which had not been given to them by the Tahsildar.

7. As can be seen from written statement filed by defendant No. 1 Jatti in that suit, he admitted that the Tahsildar had delivered possession of all the eight lands to the decree-holders, as per the order passed in the tenancy case, except a bit of land where his house was situate. However, the said suit O. S. 70 of 1962 was also decreed for possession on 30-6-1970. By the said decree passed in O. S. 70 of 1962 defendant No. 1 Jatti was directed to remove the construction put up by him in that area and he was directed to deliver vacant possession of the space to the present decree-holders. The said hut, where defendant No. 1 Jatti was residing, is situate in Survey No. 214/8B.

8. In the meanwhile, the Karnataka Land Reforms Act came into force on 1-3-1974. Deceased Jatti and Respondents 6 and 7, who were defendants 1 to 3 in O.S. 245 of 1957 filed an application in Form No. 7 u/s 48A of the Land Reforms Act claiming occupancy rights in respect of all the eight lands, including the area where their hut was situate. The decree holders, as stated by the Learned Counsel Sri Ramachandra, had produced before the Tribunal all the documents and the certified copies of all the proceedings in the previous litigations. Notwithstanding it, the Land Tribunal has conferred the occupancy rights on defendants 1 to 3 in respect of all the eight lands by its order dated

13-7-1981. The present decree-holders, being dissatisfied by the order passed by the Tribunal, approached this Court in Writ Petitions 18216 and 18217 of 1981. Both the Writ Petitions were allowed on 14-10-1981 and the matters were remanded to the Tribunal for fresh disposal according to law.

9. Notwithstanding this, defendants again started interfering with the decree-holder's possession of the suit lands. Hence, Execution Petition 4 of 1981 was filed under Order 21 Rule 22 of the CPC on 5-1-1981. Again in the next year also, as the judgment - debtors started interfering with the decree-holder's possession, they filed another execution petition in No. 40 of 1982 against defendants 1 to 3. The first execution 4 of 1981 was filed only against deceased Jatti, and Execution 40 of 1982 was filed against Jatti, Narayan and Devappa. As judgment -debtor Jatti died, his legal representatives I (a) to I (e) have been brought on record.

10. The legal representatives of Jatti and Respondents 6 and 7 resisted both the execution cases on the ground that ever-since their ancestors they have been in possession of the eight lands as tenants and that they were never dispossessed and they continued to be in possession of the said lands ever since the time of their ancestors till to-day. They denied about the Tahsildar putting the decree-holders in possession of the properties. They claim that they were in possession of the lands in question as tenants and that the present executing proceedings should be stayed. They filed IA. 3 for the stay of the execution proceedings. They state that they did not know about the permanent injunction decree passed in O.S. 245 of 1957. According to them, they have not violated the said decree at all.

11. The executing Court dismissed both the executions on the ground that they were not maintainable under the provisions of the Karnataka Land Reforms Act. Hence, these two revisions.

12. The Learned Counsel Sri Vinod Prasad and Sri C.N. Naik for the JDRs. submitted that u/s 43 of the Karnataka Land Reforms Act, the rights of the present judgment-debtors and their right, title and interest in these lands were not affected by the said permanent injunction decree passed in O.S. 245 of 1957. Section 43 of the Karnataka Land Reforms Act reads, as :

"Rights or privileges of tenant not to be affected - Save as provided in this Act, the rights and privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a Court shall not be limited or abridged."

Thus, it becomes clear that Section 43 of the Karnataka Land Reforms Act confers additional rights on the tenants in addition to the ones conferred on them by the other provisions of the Act. What Section 43 says is that if the tenants have got any right under any usage or law, or if any rights have been decreed in favour of the tenants under a decree passed by the Civil Court, they would also be entitled to those rights in addition to the other rights conferred on them by

the other provisions of the said Act. In this case, no rights have been conferred on the judgment debtors by the decree passed in O.S. 245 of 1957. On the other hand, their attempt to trespass into the suit lands, was curbed by the permanent injunction decree in O.S. 245 of 1957, and they were deterred from interfering with the plaintiffs' i.e., decree - holders' possession of the suit lands. Therefore, Section 43 of the Land Reforms Act, relied upon by both the advocates, will not come to the rescue of the judgment-debtors.

13. Then both the advocates Vinod Prasad and Sri C. N. Naik, appearing for the judgment-debtors, relied on Section 44 of the Land Reforms Act and contended that the lands had become vested in the State Government and thus the permanent injunction decree passed in O.S. 245 of 1957 had become ineffective, null and void and inexecutable and thus unenforceable. Section 44 of the Land Reforms Act reads, as :

"Vesting of land in the State Government.-(1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted u/s 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government.

(2) Notwithstanding anything in any decree or order or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely :
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(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances ;

(b) amounts in respect of such lands which become due on or after the date of vesting shall be payable to the State Government and not to the land owner, landlord, or any other person and any payment made in contravention of this clause shall not be valid :

(c) all arrears of the land revenue, cesses water rate or other dues remaining lawfully due on the date of vesting in respect of such lands shall after such date continue to be recoverable from the land-owner, landlord or other person by whom they were payable and may, without prejudice to any other mode of recovery, be realised by the deduction of the amount of such arrears from the amount payable to any person under this Chapter ;

(d) no such lands shall be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed before such date in respect of such lands

shall cease to be in force ;

(e) the State Government may, after removing any obstruction which may be offered, forthwith take possession of such lands ;

Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima facie entitled to be registered as an occupant under this Chapter;

(f) the land-owner, landlord and every person interested in the land whose rights have vested in the State Government under Clause (a), shall be entitled only to receive the amount from the State Government as pro-vided in this Chapter;

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government, be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act ; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government."

Therefore, a reading of the said Section makes it abundantly clear that if the tenants have continued to be in possession of the property notwithstanding the order for eviction or certificate for resumption having been issued, still the lands would vest in the State Government. If the tenant, by virtue of a decree or order for eviction or by virtue of a certificate for resumption, has been dispossessed and if the landlord has been put in possession of the property, prior to the coming into force of the Karnataka Land Reforms Act, Section 44 will not come into picture at all. Section 44 would come into picture only if the tenant, notwithstanding the decree or order for eviction or issue of a certificate for resumption, has continued to be in possession of the land in question. It is not even the case of the present judgment-debtors that they have become tenants of the properties after the decree-holders took possession of the lands through the Tahsildar in pursuance of the order in the tenancy case.

14. As already stated above, the Tahsildar, in pursuance of the eviction order passed by the Prant Officer in the tenancy case and by virtue of the same having been confirmed by the Bombay Appellate Tribunal and by virtue of the dismissal of the Writ Petitions by the judgment-debtors, has put the present decree-holders in possession of the suit lands on 19-9-1956 i.e., much prior to the coming into force of the Karnataka Land Reforms Act on 19-9-1956 even the States re-organization had also not taken place. Therefore, these so called tenants judgment-debtors have been dispossessed from the lands, except a small portion of land, where their house is situate, nearly eighteen years before the Karnataka Land Reforms Act came into force. That the present judgment-debtors, including the legal representatives of deceased Jatti, should still claim to be the tenants of the lands, would be a mockery of the tenancy provisions contained in the Land Reforms Act. If this contention of the JDRs. or the legal representatives is to be accepted, then nobody can be expected to have any

respect for the provisions of law. Their present contention only shows their utter disregard for even the provisions of the Land Reforms Act, leave aside the other provisions of law.

15. The Learned Advocates for the judgment-debtors contended that the judgment debtors, including the legal representatives of Jatti, are still contending that they are in possession of the lands as tenants. It is not their contention that would attract the provisions of the Land Reforms Act. The history narrated above would go to show that their present case of tenancy, tried to be pleaded by them is only a desperate attempt without any substance. Even Section 44 will not come to the rescue of the judgment-debtors in this case.

16. It is undisputed that O.S. 245 of 1957 filed by the present decree-holders against the deceased Jatti and Respondents 6 and 7 was decreed on 6-8-1958. That decree admittedly has become final and it is not set aside. Once a decree for permanent injunction has been passed, it would be binding on the defendants of that suit and also on the legal representatives of one of the defendants, if he happens to die thereafter. There is nothing in the provisions of the Land Reforms Act to make such decrees null and void, ineffective, illegal or unenforceable. So long as the decree for permanent injunction stands good and holds the floor, it would not be open for the judgment-debtors to contend that they are still in possession of the properties as tenants and that they are entitled to get occupancy rights under the provisions of the Karnataka Land Reforms Act. So long as that decree holds the floor, they are bound to obey it. Any attempt to disobey that decree would naturally attract the provisions of Order 21 Rule 32 of the Code of Civil Procedure. The very contention of the judgment-debtors including the legal representatives of deceased Jatti that they are still in possession of the property would clearly show that they have wilfully disobeyed the decree for injunction passed in O.S. No. 245 of 1957.

17. That a decree for permanent injunction will not become unenforceable, ineffective or null and void is laid down by this Court in Venkataiah and others - v.- Rangamma and others ILR 1980 Kar 693. Both the advocates for the judgment-debtors argued that it was a case where a decree had been obtained by the tenant. Whether the decree for permanent injunction is obtained by the tenants or by the landlord is immaterial. The ratio decided of the said case is that if any decree is passed for permanent injunction, before the coming into force of the Karnataka Land Reforms Amendment (Karnataka Act 1) Act of 1974, it cannot be said to be a nullity or inexecutable or unenforceable. The Court below has failed to realise the implication of the principle laid down in the said case. It has tried to distinguish the said case on the ground that it was a decree obtained by the tenant. Whether the decree was obtained by the tenant or by the landlord, it does not in any way tilt the balance or affect the principle laid down in the said case. The permanent injunction decree in O.S. 245 of 1957 was obtained by the decree-holders against deceased Jatti and Respondents 6 and 7 on the ground that they were persons not having any right. They were not sued

as tenants. They were sued only as persons having no right on the ground that in the tenancy case the decree-holders were put in possession of the lands by the Competent Authority. Therefore, this aspect also makes the present contention raised by the judgment-debtors ineffective and without substance.

18. Thus, the Trial Court erred in holding that the Execution Petitions were not maintainable or were not competent. It also erred in holding that the decree passed in O.S. 245 of 1957 had become ineffective or unenforceable. The very contention of the judgment-debtors that they are still in possession of the properties, would clearly show that they have wilfully disobeyed the decree for permanent injunction passed in O.S. 245 of 1957. Nothing more is required to prove that the judgment-debtors have wilfully disobeyed the decree.

19. How this wilful disobedience of the permanent injunction decree should be met by the executing Court, is a matter that must be left to the decision of the executing Court. Here in this case one of the judgment-debtors namely Jatti is dead. This Court has held in Hajaresab Vs. Udachappa deceased by L.Rs., since deceased by his L.Rs., and others.

" Therefore, under these circumstances, what emerges is that though the decree for injunction does not run with the land, still u/s 50 of the Code of Civil Procedure, the legal representatives of the deceased defendant, against whom the decree for injunction is passed, would be liable for violation of that decree. However, their liability, as held in Sakarlal's Case, would be limited to the attachment of the property of the deceased, which has come to their hands. The other penalty imposed by Order 21 Rule 32 of the Code of Civil Procedure, by arrest and detention in Civil prison cannot be enforced in the case of the legal representatives at all."

This aspect should be borne in mind by the Court below while considering the case against the legal representatives of deceased Jatti. So far as regards Respondents 6 and 7 are concerned, they were defendants 2 and 3 in the suit and therefore Order 21 Rule 32 would be fully applicable to them.

20. Therefore, under these circumstances, the common order passed by the Court below dismissing both the executions is set aside. Both the revisions are allowed. Both the execution cases are sent back to the Court below for fresh disposal according to law in the light of the directions given above.