

(1983) 01 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 4937 of 1977

Ganapati Devaru Bhat

APPELLANT

Vs

The Land Tribunal, Sirsi and Others

RESPONDENT

Date of Decision : 25-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka. Land Revenue Act, 1964 — Section 34

Citation : AIR 1984 Kar 60 : (1983) 1 KarLJ 469

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; B.V. Krishnaswamy Rao, for the Respondent

Judgement

1. The petitioner-owner of lands bearing survey Nos. 10 measuring 2 acres 10 guntas, 11-B/1 measuring 6 guntas, 19 measuring 10 guntas of Dasanagadde village, Sirsi Taluk, has prayed that the order dated 19-2-1977, passed by the Land Tribunal, Sirsi, in Case No. LRM-SR 1078/ 1974, conferring occupancy right over these lands in favour of respondent No. 3, be quashed.

2. Respondent No. 3 filed form No. 7 claiming occupancy right over these lands contending that he had cultivated these lands as tenant of the petitioner since the year 1960-61. The petitioner objected to the claim of respondent No. 3.

Exhibit D, the certified copy of the impugned order, narrates the cases of respondent No. 3 and the petitioner. Respondent No. 3 made out that originally he had been given possession for cultivation of an area of 7 acres 15 guntas in lands bearing survey Nos. 10, 10-B/3 and 19 of Dasanagadde village, and out of the said area, he was cultivating an area of 3 acres 35 guntas as the archak of Ganapati devaru, the family deity of the petitioner, but in the year 1960 he had surrendered these lands to the petitioner and the petitioner inducted him as a tenant on the lands in dispute and since then he has been cultivating these lands as a tenant. The petitioner's case was that after respondent No. 3 surrendered

the lands in the year 1960 and gave up working as an archak of the Ganapati deity in the year 1962, he has been cultivating personally all the lands that were in the pos. session of respondent No. 3 earlier to that and that respondent No. 3 was never in possession and cultivation of these lands from the year 1962.

3. The undisputed facts as found narrated in the impugned order and not challenged in the writ petition, are that the petitioner and respondent No. 3 gave a joint wardi to the Village Accountant requesting him to enter them as the persons in possession and cultivation of the lands in question. The petitioner objected to the wardi later, and" as such a R. T. S. proceeding commenced and ultimately, the Deputy Commissioner held in favour of respondent No. 3 and the name of respondent No. 3 came to be entered in the record of rights. Respondent No. 3 filed a suit for injunction but it related to his right to worship Ganapati deity. The petitioner filed an original suit praying for possession of the lands from respondent No. 3 on the ground that respondent No. 3 was not a tenant and also for the recovery of income derived by respondent No. 3 from these lands from the year 1970 to 1973. It is also seen from Exhibit D that the petitioner has admitted in his cross-examination to the effect that he had, in the Civil Court, stated about his having given wardi for entering the name of respondent No. 3 and the proceedings that transpired thereupon; that respondent No. 3 had paid levy paddy to the Government in respect of these lands and that he had stated in the Civil Court and also before the Circle Inspector to the effect that the name of respondent No. 3 was to be entered in the record of rights as tenant.

4. The reasoning of the Tribunal is substantially two-fold. The first reasoning is that the Deputy Commissioner had already recorded a finding to the effect that the same of respondent No. 3 was to be entered in the record of rights as a tenant and therefore, respondent No. 3 was entitled to be registered as an occupant. The second reasoning is that the entries in the record of rights, particularly the pahani columns, showed the name of respondent No. 3 has having personally cultivated the lands and those entries give rise to legal presumption and therefore. it was to be held in favour of respondent No. 3. Though the Tribunal has not specifically reasoned on the basis of the admission of the Petitioner in the Civil Court as well as before the Circle Inspector to the effect that the name of respondent No. 3 was to be 4atered in the record of rights as a tenant, it is plain that this also has been taken into consideration by the Tribunal in support of its conclusion.

5. The impugned order also narrates that on the date of the enquiry viz. 27-12-1976, the petitioner and respondent No. 3 were present; their statements were recorded; the petitioner had signed the order, sheet or the proceeding - sheet for that day. But, when the Tribunal proceeded to consider the evidence, examine the documents and decide the matter by passing an order, it is narrated in the impugned order that the Tribunal found that due to oversight, the signature of 4he petitioner had not been got affixed below his statement

recorded by it. Therefore, it issued notice to the petitioner to appear before it on 10-2-1977 and subsequently on 17-2-1977 also. The petitioner failed to appear before the Tribunal. The Tribunal has further reasoned in this behalf that it was not necessary in law that the signature of the Petitioner was to be got affixed to the statement made by him and recorded by the Tribunal, and therefore that lacuna, which is due to oversight, would not be of any avail to the petitioner.

6. Now, the question is whether the statement of the petitioner as it now finds a place before the Tribunal (i.e. without his signature) can, in law, be considered as evidence as contemplated u/s 34 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as the Act), because the claim of respondent No. 3 has been objected to by the petitioner. Section 34 of the Act lays down what is evidence and also how it has to be recorded. The word used is "evidence". That word is not defined in the Act. Therefore, it will have to be taken into consideration as evidence provided by the Indian Evidence Act. The mode of recording evidence is specifically and mandatorily laid down by S. 34 of the Act. In criminal cases and civil cases, the mode of recording evidence is a procedural matter governed by the concerned procedural Codes. The Evidence Act does not make a provision regarding the mode of recording evidence. In none of these provisions laying down the procedure regarding the mode of recording evidence, has it been made legally requisite that the signature of the witness or the party must be taken below the evidence or statement so recorded. Section 34 of the Act also does not make such a provision. Therefore, when the Tribunal has certified that the evidence of the petitioner was in the manner recorded by it and the Chairman and the members of the Tribunal, as is seen from the copy of the statement produced before me for perusal, have affixed their signatures below it and the Tribunal has also applied its mind to this question and held that it was not a requisite in law that the statement ought to have been signed by the petitioner, I hold that the statement of the petitioner as recorded by the Tribunal is "evidence" within the meaning of Section 34 of the Act.

7. The case of the petitioner was that star respondent No. 3 gave up possession he never dealt with any transaction with respondent No. 3 and respondent No. 3 did not continue to work as Archak from 1962 onwards. In other words, he contended that respondent No. 3 was not in possession of the lands, and if he is in possession, his possession is that of a trespasser. The record of rights particularly the pahan entries, the order of the Deputy Commissioner and the admission made by the petitioner in the Civil Court and also before the Circle Inspector, provide sufficient material to hold that respondent No. 3 has been in continuous possession and cultivation of the lands in question right from the year 1962 onwards. Therefore, the case of the petitioner that he was in possession, has been rightly rejected by the Tribunal. Moreover, it is to be specifically noticed that it is not for this Court, in exercise of its jurisdiction under Art. 226 of the Constitution, to go into this question of fact on which the Tribunal has recorded a finding on evidence.

8. What remained for the Tribunal to decide was whether respondent No. 3 W cultivated the lands in question personally as tenant particularly before the appointed day viz. 1-3-1974. It has relied on the presumptive value of the record of rights entries and also has taken into consideration the failure of the petitioner to establish that he was in possession and cultivation of the lands right from the year 1963.

9. Sri T. S. Ramachandra, learned advocate appearing on behalf of the petitioner, argued that the petitioner, has produced some documents but the Tribunal has not even adverted to them in the course of its order. But, he was not able to point out that any of the documents produced by the petitioner had any bearing on the question regarding the nature of possession and cultivation by respondent No. 3 i.e. whether respondent No. 3 had cultivated the lands otherwise than as a tenant. Therefore, that material would be irrelevant for consideration. Hence, this argument cannot be accepted.

10. In view of the foregoing, I see no substance in this writ petition and dismiss it. No costs.

11. Petition dismissed.