

(1999) 07 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 15089 of 1993

Giriappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2 (1)
Karnataka Land Reforms Act, 1961 — Section 48
Karnataka Land Reforms Rules, 1974 — Rule 19

Citation : (2000) ILR (Kar) 1166 : (2000) 3 KarLJ 70

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri Yoganarasimha, for the Appellant; Sri S.N. Aswathanarayana, Additional Government Advocate, Sri V.V. Gunjal and Sri K. Hanumantharajappa, for the Respondent

Judgement

1. The petitioners are the children of one Venkatappa. In this petition, they have called in question the correctness of the order dated 6th January, 1989 passed by the Land Tribunal, Madhugiri, rejecting their claim for grant of occupancy right in respect of land measuring 32 guntas in Sy. No. 11/1 of Lakshmipura Village, Madhugiri Taluk, Tumkur District.

2. The undisputed facts that may be relevant for the disposal of this petition may be set out as hereunder:

The father of the petitioners aforesaid Venkatappa had filed Form 7 claiming occupancy right in respect of the land measuring 16 guntas in Sy. No. 10/2, land measuring 5 acres and 31 guntas in Sy. No. 1 of Lakshmipura Village respectively and land measuring 6 acres and 31 guntas in Sy. No. 35, situated at Appanhalli Village, Dodderi Hobli. The Tribunal after conducting necessary enquiry as prescribed under law conferred occupancy right in favour of the said Venkatappa in respect of the said lands by its order dated 3rd November, 1976. The said order is found in the records, On the same day, the application in Form 7 filed by

one Giryappa S/o Annegowda, claiming occupancy right in respect of land measuring 34 guntas in Sy. No. 11/1 of Lakshmipura Village came to be rejected by the Tribunal. The order passed by the Tribunal conferring occupancy right in favour of the said Venkatappa in respect of the lands referred to above and also the order passed rejecting the claim of Giryappa have become final. Thereafter, the 1st petitioner again made an application in Form 7 on 21st February, 1977 claiming occupancy right in respect of the land measuring 34 guntas in Sy. No. 11/1 of Lakshmipura village which is the subject-matter of dispute in this petition. The claim of the 1st petitioner was rejected by the Tribunal on the ground that the case of the petitioners that the father of the petitioners had sold the land referred to above to the deceased-3rd respondent is not supported by any documentary evidence and therefore the petitioners have failed to establish that they are the tenants in respect of the land in question; and secondly, on the ground that the entry in the record of rights and pahani shows that they are the owners in occupation as per Column 12 of the record of rights and pahani.

3. Sri Yoganarasimha, learned Counsel appearing for the petitioners while challenging the order passed by the Tribunal seriously submitted that the finding recorded by the Tribunal that there is no document to show that the land in question came to be sold by the father of the petitioners to the 3rd respondent is contrary to the evidence on record. In this connection, he drew my attention to the registered sale deed dated 12th July, 1956 found in the file which shows that the father of the petitioners had sold the land in question by means of a registered sale deed to the 3rd respondent. Therefore, he submits that the conclusion reached by the Tribunal that there is no document is totally incorrect. He further submitted that the entry in the record of rights and pahani shows the name of the 1st petitioner as the person in possession of the lands in question as a tenant and as such the Tribunal has erred in law in passing the impugned order.

4. However, Sri Gunjal, learned Counsel appearing for respondents 3(a) to 3(c) while unable to support the finding of the Tribunal that the petitioners have failed to show that their father has sold the land in question to the deceased 3rd respondent submitted that since the materials on record clearly show that the petitioners are not entitled for conferment of occupancy right, there is absolutely no justification to interfere against the impugned order. According to him, the application filed by the 1st petitioner for conferment of occupancy right in respect of the land in question is not maintainable. Elaborating this submission he pointed out that since the petitioners are claiming tenancy right in respect of the lands in question through their father one Venkatappa and the Tribunal by means of its order dated 3rd November, 1976 after considering the claim made by the said Venkatappa and the Tribunal by means of its order dated 3rd November, 1976 after considering the claim made by the said Venkatappa in respect of the various items of land in respect of which he had made a claim having granted occupancy right in respect of the said land, the 1st petitioner was not entitled to file Form 7 claiming occupancy right in respect of the land in question. He pointed out that the petitioners are only trying to take advantage of

the entry in the record of rights and pahani where the name of one Giriyappa who is not the 1st petitioner is shown in Column 12 of the record of rights and pahani. He further submitted that the Tribunal by means of its order dated 3rd November, 1976, i.e., the date on which the occupancy right in respect of various other items of lands came to be granted by the Tribunal in favour of the father of the petitioners, had rejected the claim of the said Giriyappa in respect of the land in question. Therefore, it is his submission that if the claim of the petitioners that the father of the petitioners and these petitioners were tenants in respect of the land in question is correct, the father of the petitioners who had filed Form 7 claiming occupancy right in respect of various other items of lands would also have made a claim in respect of the land in question in Form 7 earlier filed by him. Therefore, he submits the fact that there was no claim made-by the father of the petitioners through whom the petitioners are claiming occupancy right in respect of the lands in question, clearly shows that there is no truth in the claim made by the petitioners that they are the tenants in respect of the lands in question. He also drew my attention to the statement made by the 1st petitioner at paragraphs 1 and 2 of the objections filed by him before the Tahsildar to the application filed by the deceased 3rd respondent seeking correction of entries in the revenue records, wherein he has asserted that the father of the petitioners and the petitioners continued to be in possession of the lands in question as its owners. Sri Gunjal further submitted that since the Form 7 filed by the father of the petitioners was disposed of by the Tribunal granting occupancy right in respect of land measuring 12 acres and 13 guntas referred to in the said order, the second application filed by the 1st petitioner claiming occupancy right in respect of the land in question is not maintainable. In support of this submission, he referred to me Order 2, Rule 2 of the CPC and also to Rule 19 of the Karnataka Land Reforms Rules (hereinafter referred to as the "Rules") and Section 48-A of the Karnataka Land Reforms Act (hereinafter referred to as "the Act"). He also relied upon the decision of this Court in the case of Naikara Gadirappa v State of Karnataka and Others made in Writ Petition No. 31 of 1989 disposed of on 18th July, 1989 by this Court (Shivshankar Bhat, J.), wherein this Court has taken the view that it is not permissible for a person to file Form 7 for the second time.

5. Sri Yoganarasimha in response to the submission of Sri Gunjal contended that the provisions in the Act should be considered as directory and not mandatory and if so considered, there is no bar for a second application being filed in Form 7 claiming occupancy right in respect of the lands in respect of which a claim was not made earlier. He submits that the legislation in question is a beneficial legislation; and if the object of the legislation is kept in mind, the view taken by this Court in the case of Naikara Gadirappa, supra, requires reconsideration. He further submitted that the amendment of the Act from time to time extending the time to file Form 7 also indicates that the Act in question is not a rigid legislation and therefore, this clearly shows that the second application in Form 7 is maintainable.

6. In the light of the rival submissions made by the learned Counsel appearing for the parties, the three questions that would arise for my consideration are:

(i) Whether the finding recorded by the Tribunal that the petitioners are the owners of the lands in question and as such the application for grant of occupancy right is not maintainable is correct in law?

(ii) Whether the petitioners' claim that they are in possession of the land in question as tenants as on 1st March, 1974 is correct?

(iii) Whether the second application filed by the 1st petitioner in Form 7 is not maintainable in law?

Regarding the first question:

7. So far as the first question is concerned, as noticed by me earlier, Sri Gunjal is unable to support the finding of the Tribunal that the petitioners have not placed any material before the Tribunal to show that the land in question was sold by the father of the petitioners to the deceased 3rd respondent. Further, the registered sale deed dated 12th July, 1956 which is available in the file clearly shows that the land in question was sold by the father of the petitioners to the deceased 3rd respondent on 12th July, 1956. Therefore, I have no hesitation to come to the conclusion that the order passed by the Tribunal is illegal.

8. Now, in the light of the said conclusion, the question that would arise is as to whether it is desirable to remit the matter for fresh consideration to the Tribunal as contended by Sri Yoganarasimha or this Court should proceed to decide the matter on merits. Having regard to the facts and circumstances of the case, I am of the view that it is not desirable to remit the matter for fresh consideration. As pointed out by Sri Gunjal, the parties are before this Court for the second time. The evidence of the parties have been recorded. It is not the case of the petitioners that they have been deprived of any opportunity to lead evidence before the Tribunal and the enquiry was not properly held by the Tribunal. Therefore, it would be in the interest of justice to examine the material on record and adjudicate upon the rights of the parties once for all.

Regarding the second question:

9. Now, the next question is as to whether the petitioners have established their claim that they and their father were in possession of the land in question as agricultural tenants as on 1st March, 1974. The material on record shows that one Sri Giryappa s/o Annegowda had earlier filed an application in Form 7 claiming occupancy right in respect of the land in question and the said application came to be rejected by the Tribunal on 3rd November, 1976 in LRF No. 238/74-75. Further, on the same day, pursuant to the application filed by the father of the petitioners for grant of the occupancy right in respect of various other items of land, the Tribunal had granted occupancy right in his favour to an extent of 12 acres and 23 guntas. The material on record further shows that it is only after the order passed by the Tribunal rejecting the application of the said

Giriappa s/o Annegowda and also the order passed by the Tribunal conferring occupancy right in favour of the father of the petitioners in respect of various other items of land, the 1st petitioner filed Form 7 seeking grant of occupancy right in respect of the land in question only on 21st February, 1977. It is the case of the petitioners that the father of the petitioners was originally the owner of the land in question and he had sold it by means of registered sale deed dated 12th July, 1956 to the 3rd respondent. Therefore, the question is, if the father of the petitioners and the petitioners were actually tenants of the land in question as claimed by them, when the father of the petitioners had taken care to file Form 7 claiming occupancy right in respect of several items of land in all measuring 12 acres and 23 guntas, would he not have made a claim for grant of occupancy right in respect of the land in question in Form 7 filed by him? Further, in the course of the proceedings before the Tribunal, he has not stated that he is a tenant in respect of the land in question. There is no explanation offered by the father of the petitioners at any stage of the proceedings before the Tribunal, when his application in Form 7 came to be disposed of as to why he had not made a claim in respect of the land in question. The order passed by the Tribunal dated 3rd November, 1976 granting occupancy right in favour of the father of the petitioners in respect of various items of land referred to in the said order clearly shows that he limited his claim of tenancy only in respect of the lands referred to in the said order and in respect of which he had filed Form 7. There is also no explanation offered by the petitioners in the course of the proceedings before the Tribunal as to why either their father or the 1st petitioner did not make a claim for conferment of occupancy right in respect of the land in question earlier. On the other hand, the statement made by the 1st petitioner in the course of the proceedings before the Tahsildar initiated pursuant to the application filed by the deceased 3rd respondent for correction of entries in the record of rights and pahani, in my view is sufficient to disentitle the petitioners for any relief at the hands of this Court. It is useful to extract paragraphs 1 and 2 of the said objection statement found at page 125 of the records which reads as hereunder:

"1. The land bearing Sy.No. 11/1 measuring about 32 guntas of Lakshmipura Village, Dodderi Hohli, Madhugiri Taluk originally belong to this objector's father late Venkatappa of Lakshmipura Taluk. The said land was being cultivated jointly by late Venkatappa and his sons namely Giriappa who is the eldest member of the family and also cultivating the lands along with his other undivided brothers jointly.

2. During the life time of Venkatappa he had executed a nominal sale deed about 20 years back in favour of Sree Bandiveerappa, son of Chikkeerappa of Banagarahalli Village as a security for his loan advanced to him. The possession of the land still remained with the family of Venkatappa and his sons namely Giriappa and Others".

From the statement made by the 1st petitioner extracted above, it is clear that as back as on 25th September, 1977, the petitioners did not claim that they are

tenants in respect of the land in question. From the tenor of the objections, I find it is clear that the 1st petitioner was asserting that the father of the petitioners and the petitioners were cultivating the land as its owners and the sale deed executed by the father of the petitioners conveying his right, title and interest in respect of the land in question is only a nominal sale deed which was executed as a security for the loan advanced by the 3rd respondent who is a money lender. Therefore, it is clear that it is not the case of the petitioners even in the month of September 1977 that either the father of the petitioners and the petitioners were in possession and cultivating the land in question as tenants. As rightly pointed out by Sri Gunjal, if the father of the petitioners was a tenant in respect of the land in question, when he had taken care to claim occupancy right in respect of 12 acres and 13 guntas of land belonging to others, he would not have failed to claim occupancy right in respect of the land in question. Therefore, I am of the view that there is no merit in the claim of the petitioners that the father of the petitioners and the petitioners were cultivating the land in question as agricultural tenants as on 1-3-1974. It appears to me that they are only trying to take undue advantage of the entry made in the revenue records at Column 12. However, so far as the said entry is concerned, there is a serious dispute with regard to the identity of the person whose name, is entered in the record of rights and pahani. When the petitioners claim that it is the name of the 1st petitioner that is reflected in the record of rights and pahani at Column 12, the contesting respondents would submit that it is the name of one Giriyappa, S/o of Annegowda which was wrongly recorded in the record of rights and pahani. No doubt, the Giriyappa referred to in the revenue records and pahani is not described with reference to the name of his father as pointed out by Sri Yoganarasimha. In my view this would not make any difference. Under these circumstances, I am of the view that no value can be attached to the entries in the record of rights and pahani to support the case of the petitioners. Further, it appears to me, as rightly pointed out by Sri Gunjal that taking advantage of the name of Giriyappa in the record of rights and pahani, the 1st petitioner has filed Form 7 subsequent to the order passed by the Tribunal rejecting the application of Giriyappa who is the son of Annegowda. One other aspect of the matter that also has a bearing with regard to the claim made by the petitioners is with regard to the facts found by the Tribunal at the time of spot inspection. The material on record shows that the Tribunal had held spot inspection of the land in question on 20th September, 1977 and the spot inspection disclose that the 3rd respondent was in actual possession and cultivation of the land in question. No doubt, the question of tenancy is required to be decided with reference to the question as to whether the tenant was in possession and cultivation of the land in question as on 1st March, 1974. But the fact that the 3rd respondent was in possession of the land in question on 20th September, 1977 when the Tribunal conducted spot inspection of the land in question is considered along with the other surrounding circumstances, in my view, it would clearly support the case of the contesting respondents that the petitioners were not in possession and cultivation of the land in question as on 1st March, 1974. Therefore, on careful

examination of the materials on record, I am fully satisfied that the claim made by the petitioners that they were in possession and cultivation of the lands in question as on 1st March, 1974 is not genuine and true and the same is liable to be rejected. The second question is answered accordingly.

Regarding the third question:

10. Though the conclusion reached above would be sufficient for me to reject this petition, since Sri Gunjal has seriously urged that Form 7 filed by the 1st petitioner is not maintainable, I find it is desirable to examine the said question. Admittedly, as observed by me earlier, the father of the petitioners had filed Form 7 and the said application came to be disposed of by the Tribunal by means of its order dated 3rd November, 1976 granting occupancy right in favour of their father to an extent of 12 acres and 31 guntas of land. The said order has become final. The petitioners are claiming tenancy right in respect of the land in question through their father. It is their case that they were in possession and cultivation of the land in question along with their father as on 1-3-1974. Under these circumstances, the question is whether after passing of the order by the Tribunal concerning Form 7 filed by the father of the petitioners, whether the Form 7 filed by the 1st petitioner in respect of the land in question is maintainable?

11. To consider the said question, it is useful to refer to Section 48-A of the Act and Rule 19 of the Rules. Sub-sections (1) and (3) of Section 48-A of the Act reads as follows:

"48-A. Enquiry by the Tribunal, etc.--(1) Every person entitled to be registered as an occupant u/s 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978.

(3) The form of the application, the form of the notices, the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. The Tribunal may for valid and sufficient reasons permit the tenant to amend the application".

Rule 19 of the Rules reads as follows:

"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. Where the lands are situated in more than one taluk, the application shall be filed before the Tribunal of the taluk where the greater part of the lands are situated. On receipt of the applications, the Tahsildar shall send extracts of the application to the Tribunals concerned. So far as the lands in his taluk are concerned, the Tahsildar shall verify the particulars mentioned in the application with reference to the revenue records including the record of rights wherever

they are prepared and also not the same on the application. The public notice and the individual notice referred to in sub-section (2) of the said section shall be in Form 8 and Form 9 respectively.

(2) Such notice in addition to being served in the manner laid down in Rule 42 shall also be published in the chavadi of the village concerned and in the offices of the village panchayat and the Tahsildar for a period of not less than thirty days".

12. From sub-section (1) of Section 48-A of the Act it is clear that every person who is entitled to be registered as an occupant u/s 45 of the Act is entitled to make an application seeking grant of occupancy right. Sub-section (2) of Section 48-A provides that after receipt of the application, the Tribunal should publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice etc. Sub-section (3) of Section 48 provides that form of the application and the form of the notices, the manner of publishing or serving the notices and all other matters connected therewith shall be such as may be prescribed. "Prescribed" means as prescribed under the rules. The same provision confers power on the Tribunal for valid and sufficient reasons to permit the applicant to amend the application. Rule 19 of the Rules provides that the application under sub-section (1) of Section 48-A of the Act shall be in Form 7. The said rule further provides that 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 an applicant claims to be entitled to be registered as an occupant; and where the lands are situated in more than one taluk, the application should be filed before the Tribunal of the taluk where the greater part of the lands are situated. The same rule further provides that on receipt of the applications, the Tahsildar is required to send the extract of the application to the Tribunal concerned. A duty is also cast by the said rule on the Tahsildar to verify the particulars mentioned in the application with reference to the revenue records and record of rights and also note the same on the application. As observed by me earlier, sub-section (3) of Section 48-A of the Act provides that the form of the application should be as prescribed under the rules. The language employed in Rule 19 of the rules which makes it obligatory on the part of an applicant to 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, in my view, clearly supports the contention of Sri Gunjal that under the provisions of the Act and the rules framed thereunder, only one application is contemplated. This is also clear from sub-section (3) of Section 48-A referred to earlier which confers power on the Tribunal to permit the applicant to amend the application for valid and sufficient reason. Therefore, I am of the view from the scheme of the Act and the rules framed thereunder it is not permissible when once an order is passed by the Tribunal disposing of an application filed by an applicant, for such an applicant or persons claiming through him to file another application claiming

occupancy right in respect of the land to which he has not made a claim in his earlier application. From this observation, I should not be understood as having stated that before the disposal of the application filed by a tenant by the Tribunal, the second application filed in order of time is not maintainable. It may be open to the tenant to confine his relief to any one of the applications filed by him before the Tribunal takes up the applications filed by him for disposal. But as observed by me earlier, once the application is disposed of by the Tribunal, on consideration of the claim made by the applicant, the second application filed after the order passed by the Tribunal is not maintainable. Therefore, in the instant case since the petitioners are claiming occupancy right in respect of the land in question through their father, in my view the application in Form 7 filed by the 1st petitioner is not maintainable. This question can be considered from another angle also. The interpretation placed by me on Rule 19 of the Rules and Section 48-A of the Act also gets support from the principle underlying Order 2, Rule 2 of the Code of Civil Procedure. It is useful to extract Order 2, Rule 2 of the CPC which reads as hereunder:

"Rule 2. Suit to include the whole claim.--(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.--Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished".

13. No doubt, the CPC is not made applicable to the proceedings before the Tribunal, but while considering the question whether the second application in Form 7 is maintainable in the backdrop of the provisions contained in Section 48-A of the Act and also Rule 19 of the Rules, I am of the view, the principle underlying Order 2, Rule 2 of the Rules can be applied. Otherwise, it will lead to multiplicity of proceedings, which any Court or Tribunal as far as possible, should avoid.

14. As it can be seen from Form 7, it not only requires an applicant to set out the lands in respect of which he is a tenant, it also requires him to set out the lands held by him and his family as owner or in any other capacity. The said details are required to be furnished by a tenant because the Tribunal is also required to consider the total holding by a tenant while considering his claim for grant of occupancy right. If a person holds land in excess of the ceiling limit, he is not entitled to claim occupancy right in excess of the ceiling limits fixed. Therefore, I find considerable force in the submission of Sri Gunjal that the Form 7 filed by the 1st petitioner is not maintainable. In my view, I am also supported by the decision of this Court in the case of Naikara Gadirappa, *supra*, made in Writ Petition No. 31 of 1989, wherein this Court while disposing of I.A. II on 18th July, 1989, at Paragraph 2 has taken the view that the second application filed is not maintainable. At paragraph 2 of the said judgment, this Court (Shivshankar Bhat,

J.) has observed as follows:

"Form 7 will have to be read with this rule which also provides that every applicant should state in the said application the particulars of any other land held by him including the land held by any other member of his family, either as owner or tenant. Rule 19 extracted above also categorically lays down that 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. The requirement that an application should be exhaustive of all the lands claimed by an applicant obviously is based on certain purpose and to prevent piecemeal applications so that there may be a consolidated enquiry and hearing by a Tribunal competent to decide a particular application. This also will enable the Tribunal competent to decide a particular application. This also will enable the Tribunal to appreciate the objections if any, of the landlord as to the genuineness of the claim of the applicant by pointing out the impracticability of a person holding lands in different places. The principle behind the requirement of Rule 19 and Form 7 is not foreign to legal proceedings, which is almost similar to Order 2, Rule 2 of the Code of Civil Procedure. Mr. Hudlamane contended that this requirement should not be read as a mandatory requirement having regard to the fact that the applicants are generally poor, illiterate and ignorant villagers. I cannot accept this contention because the entire legislation is meant for the benefit of the agriculturists and the legislature was certainly aware of the fact that those who invoke the provisions of the Act will be mostly ignorant, illiterate and poor villagers. If the requirement of the law is not to be adhered to strictly, there would have been necessary power to relax the requirement. Having regard to the object behind this requirement of Rule 19 and Form 7, I am constrained to hold that these are mandatory requirements, failure to comply which will render the application defective".

15. Therefore, in the light of the discussion made above, I am of the view that the second application made by the 1st petitioner seeking conferment of occupancy right in respect of the land in question is not maintainable.

16. One other ground on which the petitioners should be denied relief is on the ground of estoppel. If either the father of the petitioners or the petitioners had failed to make a claim for grant of occupancy in respect of the lands in question and made the Tribunal to conduct an enquiry pursuant to the application filed by them in respect of large extent of lands; and on that basis their rights were adjudicated upon by the Tribunal, they cannot be permitted to again maintain one more application in respect of the land in question. In my view the conduct of the petitioners totally disentitles them from making a claim in respect of the land in question. The proceedings before the Court or a Tribunal and its decisions have sanctity. At any event of the matter, this Court which exercising its jurisdiction under Article 227 of the Constitution of India should deny the relief to such persons, especially when the petitioners are the beneficiaries of conferment

of occupancy right to a large extent of land in all measuring 12 acres and 23 guntas belonging to the deceased 3rd respondent.

17. In the light of the above conclusion, I am of the view that this petition is liable to be rejected. Accordingly, it is rejected with a cost of Rs. 3,000/- payable to respondents 3(a) to 3(c).

18. Sri Aswathanarayana, learned Additional Government Advocate is given four weeks" time to file his memo of appearance.