

(2000) 07 KAR CK 0063
In the Karnataka High Court
Case No : Civil Petition No. 21 of 1997

Gudda Shetty (Deceased) by L.Rs

APPELLANT

Vs

Sumithra Hegde and Others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A

Citation : (2000) 7 KarLJ 500

Hon'ble Judges : M. F. Saldanha, J

Judgement

M.F. Saldanha, J.-I have heard the learned Advocates who represent the parties as also the learned Government Advocate for respondent 3 on merits.

2. Though this is a civil petition whereby the petitioners have contended that by virtue of the abolition of the Appellate Authority under the Karnataka Land Reforms Act, 1961, the proceeding should be retransferred to this Court and registered once again as a writ petition which is almost a matter of routine, there are some distinguishing features in this case which need to be stated. The original order in favour of the petitioners was passed by the Tribunal on 27-11-1980 but the grievance of the original petitioner-Gudda Shetty was that one piece of land admeasuring approximately 6 acres had been wrongly excluded by the Tribunal without granting occupancy rights. It was to this limited extent that the original petitioner filed a Writ Petition No. 23078 of 1982 before this Court on 22-6-1982 which in turn was transferred to the Appellate Authority on 22-7-1986. In the meanwhile, since Gudda Shetty had expired, an application for bringing the legal representatives on record and condonation of delay was filed on 21-10-1986. Petitioners' learned Counsel points out to me that to the prejudice of the petitioners the appeal was transferred originally to the Appellate Authority at Mangalore by this Court and thereafter transferred to the Appellate Authority at Kundapur without any specific notice to the petitioners. Once again, the appeal was transferred from the Appellate Authority at Kundapur to the Appellate Authority at Karkala again without notice to the petitioners. There is no dispute with regard to whether notice was at all served on the petitioners. The

respondents" learned Counsel points out that if the original tenant had died and the legal representatives had not been formally brought on record, there could possibly be some problems in the way of either locating or serving the legal representatives. Whatever be the position, we come to the year 1990 at which time the application for bringing on record the legal representatives and condonation of delay was still not heard and allowed and, the Appellate Authority itself came to be abolished. There is some controversy with regard to whether at all the LR application was filed on 21-10-1986 before the Appellate Authority. Mr. Bhat, learned Counsel who represents the petitioners has with him an office copy of the same and he maintains that this had been filed whereas the respondents" Counsel states that a perusal of the case records indicates that on 8-8-1989 there is an endorsement in the order-sheet mentioning that Gudda Shetty had died and that the LR application should be filed. His submission is that this very clearly indicates that no LR application had been filed in the year 1986. It is unnecessary for me to go into this controversy because the fact remains that whether the application had been filed or not, there is nothing on record to indicate that the same had been allowed. The only problem that arises is that on the state of the record, if Gudda Shetty had died at some time during the pendency of the proceedings before the Appellate Authority and if ultimately the legal representatives have not been brought on record at any time during the pendency of that appeal, the consequences would be that the appeal has abated. That is a circumstance which this Court has to take into consideration because through the civil petition, only a pending proceeding could be transferred and if the proceeding has abated, then the problem in the petitioners" way is that there is no proceeding that can be transferred to this Court neither is there any proceeding that can be converted into a writ petition.

3. The difficulty does not end there because the present civil petition has been filed by the petitioners on 16-2-1997 which is virtually seven years after the abolition of the Appellate Authority and the respondents have opposed the condonation of delay on the ground that there is gross delay and they have also stated something with regard to the merits.

4. Mr. Bhat who appears on behalf of the petitioners points out to me that with the history and background of this case, the petitioners were left virtually groping in the dark because after July 1986 when the case was transferred to the Appellate Authority it was shunted between Mangalore, Kundapur and Karkala and that through this period of time, it was virtually impossible for the petitioners or their learned Advocate to even keep track of the matter. His submission is that in this background even after 1990 though the petitioners were serious about prosecuting the litigation that there is virtually nothing they could do as they were still under the impression that the proceeding was pending somewhere. It was only in or about the year 1997 that they finally took steps to file the present civil petition. Out of abundant caution they have also filed I.A. I for bringing on record the legal heirs of the deceased tenant Gudda Shetty.

5. As far as I.A. I is concerned, I do not see how at all it is maintainable because on the present record there can be no doubt about the fact that Gudda Shetty had expired during the pendency of the appellate proceedings and irrespective of when exactly this event took place, one needs to take note of the fact that if within reasonable time the legal representatives have been not been brought on record that the proceeding has abated. If the petitioners contend that they made application for the legal representatives to be brought on record on 21-10-1986 the position only gets worsened because they were obliged to have been followed up that application. Secondly, if for four years thereafter no orders are passed on that application then it is as clear as day light that the proceeding had abated and if it has been a dead litigation there is no sanction for this Court to allow an interlocutory application to bring on record the legal representatives in a litigation that has already become extinct.

6. On the question of whether this Court should entertain the civil petition after a delay of seven years, though the petitioners' learned Counsel has pointed out the unholy mess and confusion that were prevalent before the Tribunals and the Appellate Authorities causing very serious problems to the litigants and to the learned Advocates with which I am generally in agreement, it is still not a good enough ground to bridge the gap of seven years. This Court has always made allowance, and liberal allowances in favour of the litigants and the learned Advocates even if delays or lapses have occurred, but on this instance, if this Court were to entertain the civil petition after a delay of seven years without there being any really valid explanations for the condonation of delay, it would be flying on the face of the settled law on the point wherein the Courts have invariably said that the delay can only be condoned if there is good and valid ground and if every part of the delay is adequately explained. This is not the case in the proceeding before me and consequently, it would be impermissible in law for this Court to entertain the civil petition in question. The respondents have filed their reply and they have inter alia contended that the petitioners have been granted occupancy rights in respect of substantial areas of land for which the landlords have consented and therefore it is their submission that even on merits, the petitioners are litigating for the sake of litigating. One of the statements made in the reply is that some of the respondents are resident in different parts of the world and that they are extremely well to do. This is not a ground on which if they are entitled to occupancy rights that the Court can disqualify them, but what I need to record here is that on a reperusal of the order where it is seen that the petitioners have been granted occupancy rights in respect of substantial areas of land, by refusing to condone the delay I do not see even the slightest injustice being done to the petitioners.

7. On an overall complexion of the case, I see no ground on which the civil petition can be entertained. The civil petition accordingly fails and stands dismissed. I.A. I is also dismissed. Under the circumstances of the case, there shall be no order as to costs.