

(2015) 03 KAR CK 0078
In the Karnataka High Court
Case No : Writ Appeal No. 4558/2013 (LR)

Jaku Poojarthy and Others

APPELLANT

Vs

Madana Kumari and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0078

Hon'ble Judges : Raghvendra S. Chauhan, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : Farah Fathima, Advocate for Shetty and Hegde, Assts., for the Appellant; N. Sukumar Jain, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Heard the counsel for the parties.

2. The legality and correctness of the order passed by the learned Single Judge in Writ Petition No. 30093/2004 dated 1.7.2013, wherein the learned Single Judge has confirmed the order passed by the Land Tribunal, Moodabidri, dated 18.6.2003 passed in TRL:1437/79-80 has been questioned by the appellants.

3. The facts leading to this appeal are as hereunder:

"One Babu Poojary, the deceased respondent filed an application before the Land Tribunal, Moodabidri claiming occupancy rights under the first respondent Madana Kumari in respect of 7 items of lands. The application was filed in Form No. 7 on 31.7.1974 stating that earlier his elders were cultivating the lands and thereafter for the last 32 years he has been cultivating the lands as a tenant." 4. The application filed by Babu Poojary the brother of the present appellant was allowed on 12.10.1981. Challenging the same, the land lady Madana Kumari filed writ petition before this Court in Writ Petition No. 12964/1997, which petition came to be allowed on 15.6.2002. The learned Single Judge set aside the order of the Land Tribunal and remanded the matter to the Tribunal for fresh consideration in accordance with law. After remand, the matter was once again

considered by the Land Tribunal and by its order dated 18.6.2003, 5 items of lands were granted to the brother of the petitioner Babu Poojary, however, 2 acres of land in Sy. No. 132/1 and 6 cents of land in Sy. No. 118/1 was rejected on the ground that these two items of lands were punja lands and uncultivable lands situated on the hilly area.

5. The order of the Land Tribunal was questioned by the appellants herein before the learned Single Judge. The learned Single Judge has confirmed the order of the Tribunal by rejecting the claim of the appellants. Therefore, the present appeal is filed.

6. We have heard the counsel for both the parties.

7. The submissions of the learned counsel for the appellants are as hereunder:

"According to the learned counsel for the appellants, the learned Single Judge in the earlier round of litigation had committed an error in entertaining the writ petition 16 years after the order passed by the Land Tribunal. According to her, the order was passed on 12.10.1981 by the Tribunal. Therefore, the learned Single Judge was not justified in passing an order on 15.6.2002. According to her, the appellants were not parties in the earlier writ petition and they were not heard in the earlier writ petition." 8. It is also the specific case of the appellants that there was a partition between the appellants and Babu Poojary and suit came to be filed by the appellants herein in O.S. No. 491/1987 and final decree was passed pursuant to a compromise entered into between the appellants and Babu Poojary and by virtue of the compromise decree dated 6.09.1988, 1 acre of land in Sy. No. 132/1B had fallen to the share of the appellants. Therefore, the appellants were required to be heard by the Tribunal before passing the order and on the ground that the appellants were not made as a party before the Tribunal, she contends that the order passed by the Tribunal was required to be set aside by the learned Single Judge. She also contends that, though Sy. No. 132/1B and other survey number measuring 6 cents were cultivable lands, the Tribunal has given a finding as if these two lands are punja lands. Therefore, she requests the Court to allow the appeal.

9. Learned counsel for the respondents supporting the order of the learned Single Judge requests the Court to dismiss the appeal.

10. Having heard the counsel for the parties, we do not see any error committed by the learned Single Judge in rejecting the writ petition for the following reasons:

"As a matter of fact, there was no delay in filing the writ petition by the land lady in Writ Petition No. 12964/1997. As a matter of fact, the land lady had filed a writ petition before this Court. Later, on account of the amendment of the Karnataka Land Reforms Act, the writ petition had been transferred to Land Reforms Appellate Authority and the same came to be numbered as LRAA 428/1988 and after abolition of the Appellate Authority due to further

amendment of the Karnataka Land Reforms act, the matters which were pending before the Appellate Authority stood transferred to this Court and numbered as Civil Petition and later assigned as writ petition. Therefore, this Court is of the view that the contention of the appellants that there is delay of 16 years in filing the writ petition by the land lady challenging the earlier order of the Tribunal is incorrect. Even otherwise, when such a contention was not raised by Babu Poojary, the brother of the petitioner who had filed an application in Form No. 7, such a contention cannot be permitted to be raised by the appellants herein who were not parties before the Land Tribunal and before the learned Single Judge. Accordingly, the first point urged by the counsel for the appellants has to be rejected." 11. So far as the remaining point is concerned, it is not in dispute that even after the compromise the appellants herein for the reasons best known to them did not make an application before the Land Tribunal to come on record and it is not the case of the appellants that the partition effected between the appellants and Babu Poojary had been brought to the notice of the Land Tribunal or to the land lady. In the absence of such notice to the Land Tribunal and the land lady, no Court can expect the Land Tribunal to issue notice to the appellants. The partition between the appellants and the Babu Poojary is their personal affair. It is no way concerned to the Land Tribunal or land lady. Therefore, the contention that the appellants were not heard in the matter cannot be considered.

12. So far as the nature of land is concerned, in Form No. 7, Babu Poojary has claimed these lands as punja land situated on a hilly area. When these lands are not brought into cultivation and when Babu Poojary has given up his claim over these two lands before the Land Tribunal, the appellants cannot find fault with the order of the Land Tribunal. Even otherwise, Sy. No. 132/1B has been divided into two portions, out of which, 1 acre has been allotted to the appellants, remaining 1 acre has been allotted to Babu Poojary. When the lands are on hilly area and punja, even the prayer of appellants that Babu Poojary has lost right over the remaining extent of lands, in these circumstances, it cannot be contended that there was a collusion between Babu Poojary and the land lady.

13. Viewed from any angle, we do not see any reasons to interfere with the order of the Tribunal. Accordingly, the appeal is dismissed.