

(1992) 01 KAR CK 0057

In the Karnataka High Court

Case No : Regular Second Appeal No. 793 of 1980

Karibasappa Sivalingappa Nalawadad

APPELLANT

Vs

Tirukappa Nagappa Sortur

RESPONDENT

Date of Decision : 21-01-1992

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 112 B, 24, 48 A

Citation : (1992) ILR (Kar) 2916 : (1992) 2 KarLJ 574

Hon'ble Judges : Mirdhe, J

Bench : Single Bench

Advocate : K.S. Savanur and M. Mahabaleswara Gowda, for the Appellant;
Shantha W. Joshi, for the Respondent

Judgement

Mirdhe, J.—This is a defendant's Regular Second Appeal filed u/s 100 C.P.C. against the judgment and decree dated 10-10-1980 passed by the Civil Judge, Gadag, in R.A.No. 64 of 1979 confirming the judgment and decree dated 7-7-1979 passed by the Principal Munsiff, Gadag, in O.S.No. 215 of 1974.

2. The respondent filed the suit against the appellant for a permanent injunction restraining the appellant from disturbing the possession of the respondent of R.S.No. 77/1 B+2 measuring 10 acres 20 guntas situate at Dombal Village in Dharwar District. The suit of the respondent was decreed by the Principal Munsiff, Gadag. The appellant challenged that decree and judgment in R.A.No. 64 of 1979 and the lower Appellate Court also dismissed the said appeal confirming the judgment and decree of the trial Court. Thereafter, this Appeal is filed.

3. This Appeal has been admitted for consideration of the following substantial question of law;

"Whether on facts and circumstances of the case, the Civil Courts have got jurisdiction to decide that the plaintiff is a tenant entitled to be in possession of the suit land, being the legal representative of the deceased Yellappa?"

4. It is an admitted fact in this case that the suit survey number belongs to the

appellant. It is also not disputed in this case that it was cultivated by one Yellappa, son of Seshappa, as a tenant and the said Yellappa died on 11-5-1974. The plaintiff claims to succeed to the tenancy rights of said Yellappa and, therefore, on the basis of this contention, he filed the suit for permanent injunction. The main contention taken up by the appellant is that the question of tenancy is required to be decided by the Land Tribunal concerned and not by the Civil Courts. It is also one of the contentions of the appellant that the question as to whether the plaintiff is the L.R. of admitted tenant Yellappa is also required to be decided by the Land Tribunal.

5. Section 24 of the Karnataka Land Reforms Act, 1961, lays down that when a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death. Section 44 of the Karnataka Land Reforms Act, 1961 (which will hereinafter be referred to as "the Act") lays down that 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. Section 133 of the Act lays down that no Civil or Criminal Court or Officer or Authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March 1974. It is an admitted position in this case that Yellappa, son of Seshappa, was the tenant of the suit land and he died on 11-5-1974. Therefore, on the appointed date, i.e., 1st March, 1974, Yellappa was in possession of the suit land as the tenant and by virtue of Section 44 of the Act, the land is deemed to have been vested in the Government on that date. It is the well settled question now that the question as to whether a particular person is a tenant or not cannot be decided by the Civil Court, but it will have to be decided by the concerned Land Tribunal. Prior to the coming into force of the Act, the Bombay Tenancy and Agricultural Lands Act, 1948, was governing the rights of the parties in this regard in respect of the suit land. Section 70 of the Bombay Tenancy and Agricultural Lands Act, 1948 (which will hereinafter be referred to as "the earlier Act") lays down the duties of the Mamlatdar to be performed under that Act and one of the duties of the Mamlatdar under the said Section is to decide whether a person is a tenant or a protected tenant etc. Section 85 of the earlier Act lays down that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Bombay Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control. Section 85A of the earlier Act lays down that if any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with

such issues under the Act, the Civil Court shall stay the suit and refer such issues to such competent authority for determination. It is pertinent to note at this stage that Sections 85 and 85A of the earlier Act are in pari materia with Sections 132 and 133 of the Act. Sections 85-A, 70 and 85 of the earlier Act came to be interpreted by the Supreme Court in *Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another*, and the Supreme Court has held as follows:

"With regard to suits and proceedings by a landowner for possession of agricultural lands the combined effect of Sections 29, 70, 85 and 85-A of the Act is as under: While Mamlatdar has exclusive jurisdiction to entertain an application by a landlord for possession of agricultural lands against a tenant, he has no jurisdiction to try a suit by a landowner for recovery of possession of agricultural lands from a trespasser or from a mortgage on redemption of a mortgage; and while the Civil Court has no jurisdiction to entertain and try a suit for possession of an agricultural land against a tenant, it has jurisdiction to entertain a suit by a landholder for recovery of possession of agricultural land from a trespasser or from a mortgagee on redemption of a mortgage. But if the defendant to the suit pleads that he is a tenant or a protected tenant or a permanent tenant and an issue arises whether he is such a tenant, the Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the light of the decision of the Mamlatdar.

Section 85-A proceeds upon the assumption that though the Civil Court has otherwise jurisdiction to try a suit, it will have no jurisdiction to try an issue arising in the suit, if the issue is required to be settled, decided or dealt with by the Mamlatdar or other competent authority under the Tenancy Act. On that assumption, suitable machinery for reference of the issue to the Mamlatdar for his decision, is provided by Section 85-A. AIR 1954 Bombay 100 approved: ILR (1959) Mys 420 distinguished."

6. In *Gundaji Satwaji Shinde Vs. Ramchandra Bhikaji Joshi*, the Supreme Court has held as follows:

"Here from a reading of Sections 85, 85A and 70, when in the suit properly constituted and cognizable by the Civil Court upon a contest an issue arises which is required to be settled, decided or dealt with by a competent authority under the Tenancy Act, the jurisdiction of the Civil Court to settle, decide or deal with the same is not only ousted but the Civil Court is under a statutory obligation to refer the issue to the competent authority, herein the Mamlatdar, to decide the same and upon the reference being answered back, bound to dispose of the suit in accordance with his decision.

If a person intending to purchase agricultural land files a suit for enforcing a contract entered into by him and if the suit is resisted on the ground that the plaintiff is ineligible to buy agricultural land not for any other reason except that

it is prohibited by Section 63 of the Tenancy Act, an issue whether the plaintiff is an agriculturist would directly and substantially arise in view of the provisions of the Tenancy Act. Such an issue would indisputably arise under the Tenancy Act though not in a proceeding under the Tenancy Act. in such a case it would be no answer to the provisions of Section 85 and 85-A to say that the issue is an incidental issue. In a civil suit nomenclature of the issue as principal or subsidiary or substantial or incidental issue is hardly helpful because each case, if it arises has to be determined to mould the final relief."

7. In BASANGOUDA RAYANGOUDA PATIL v. BHAIRAPPA GURULINGAPPA SHIVAPUR AND ORS. 1969(2) Mys.LJ. 440 this Court while interpreting Section 132 of the Karnataka Land Reforms Act has held as follows:

"Where the plaintiffs sought for restoration of possession of the suit land from defendants on the allegation that they were tenants of the land and that they were dispossessed therefrom before the commencement of the Land Reforms Act and for mesne profits.

Held the claim for restoration of possession fell within the ambit of the Mysore Land Reforms Act and as the question whether the land should be restored to the plaintiffs as tenants was a question which the Land Tribunal was required to decide u/s 7, the jurisdiction of the Civil Court to decide or deal with that question barred by Section 132 of the Act. (1963) 2 Mys. L.J. 47 and 1962 Mys.LJ. 792 FB. are not good law in view of the decision of the Supreme Court in Bhimaji Shanker Kulkarni Vs. Dundappa Vithappa Udupudi and Another, and CANo. 168 of 1966."

8. In MAUAYYA MURIGAYYA v. PUTTAPPA SHIVAPPA 1976(1) KLJ 369 this Court while dealing with Section 133 of the Act has held as follows:

"Section 133 as amended in 1976 provides that when the question before the Civil Court is whether the person claiming to be in possession is or is not a tenant of the suit land from prior to 1-3-1974, then the Court shall stay such suit in so far as such question is concerned and refer the same for decision by the Tribunal. Section 133 applies to all such cases irrespective of the fact that the person who claims to be the tenant is plaintiff or defendant.

Thus, in a case where the plaintiff claiming to be tenant of the land in question, while admitting that the defendant is the owner, prays for an injunction, restraining the defendant from interfering with his possession, the question whether the plaintiff is a tenant or not would arise for decision and has to be referred to the Tribunal. (1974) 2 Kar.L.J. 34 ret on (1972) 1 Mys, LJ. 216 WP 2042/69 and (1975) 1 Kar.L.J. 167 ref to."

9. In CHANNEGOWDA v. M.N. THIMMAIAH AND ORS. 1979(1) KLJ 305 this Court has interpreted Sections 41 and 132 of the Act and it has held as follows;

"Where plaintiff instituted the suit for declaration of title as a tenant and for possession alleging dispossession after the institution of the suit held the civil

court would have jurisdiction to award possession of the suit land in case the Tribunal to whom the question of tenancy had to be referred comes to the conclusion that plaintiff was a tenant of the suit land.

Section 41 of the Land Reforms Act is only an enabling provision in favour of the tenant for a summary remedy and gives an additional remedy. Section 41 read with Section 132 does not take away the jurisdiction of the CM! Court in awarding possession to a tenant who is entitled to possession."

10. In SAGAWWA AND ORS. v. YAMNAPPA AND ANR. 1980(2) KLJ 445 again this Court while interpreting Section 133 of the Act has held as follows:

"Plaintiffs brought the action for permanent injunction against defendants who claimed to be owners of the land, on the basis of their possessory title rested on their alleged tenancy in respect of the land.

Held the question of tenancy was involved for decision of the Court and the question of tenancy had to be decided under the Land Reforms Act."

The Rulings of the Supreme Court and of our High Court above clearly lay down the law that the question as to whether a particular person is a tenant or not is not to be decided by the Civil Court but it is to be decided by the Land Tribunal concerned. It has been consistently held and now it is a well settled law that if an issue arises in any proceeding or suit as to whether a particular person is a tenant or not, that question is required to be referred by the Court to the concerned Land Tribunal for its decision and after the receipt of the decision by the Land Tribunal, the suit is to be disposed of in the light of the finding given by the Land Tribunal. There cannot be any dispute about this proposition of law.

11. There is another dimension to this question in this case. Here, the respondent is claiming as L.R. of deceased Yellappa who is admittedly the tenant of the land. In support of this contention, the respondent has relied on THUNGA BAI AND ORS. v. VISHALAKSHI HEGGADTHI AND ANR. 1974(2) KLJ 484. In that Ruling this Court has held that when the plaintiff's predecessors were admittedly tenants in possession of the lands upto 1971 when the Act was in force and when there has been no surrender with permission of Court, there is a presumption that the possession continued with the tenant, and when the tenants have shown that they have a legal right and that legal right is invaded by the act of the landlord, they are entitled to the relief of injunction. This Ruling is distinguishable from the facts of the case on the ground that in the case reported in the Ruling the plaintiff's predecessors were admittedly the tenants in possession of the lands when the Act was in force. But, in this case, the appellant is disputing about the respondent being the legal heir of the tenant and now the question is whether the Courts below were justified in giving a finding that the respondent is the legal heir of the tenant in question. Therefore, this Ruling that is relied upon by the learned Counsel for the respondent will not be of much assistance to him. In support of his contention, another Ruling relied upon by the learned Counsel for the respondent is DHAREPPA v. STATE OF KARNATAKA AND ORS. 1979(1) KLJ

18. The said Ruling reads as follows:

"A claim that the appellant was legal representative of the tenant, who died during the pendency of his application for occupancy, is not affected by the bar of limitation for making application for occupancy under the Act.

Section 21 of the Act does not prohibit testamentary succession; and it does not amount to an assignment of interest by a tenant. Hence a legatee can claim occupancy rights under the Act.

The Tribunal should not stop the proceedings on the death of a necessary party in a proceeding pending before it, but should proceed with the enquiry after bringing on record the LR's of the deceased. (1978) 2 Kar.L.J. 41 followed.

If the landlord does not appear in the proceedings, or if he dies during the pendency of the proceeding, and his LR's do not appear, or even if more than one appears each claiming himself to the exclusion of the others to be rightful heir, the enquiry will not be very much affected, for the reasons that the Tribunal is not called upon to resolve the rights inter se of the persons claiming to be landlords.

Where there are rival claims to tenancy, each claiming to be the tenant as defined in the Act, they can be decided by the Tribunal by finding out who amongst them was the tenant as defined in the Act.

But, where there are rival claims involving heirship, succession existence of a joint family and the like the issues that arise would not be issues of tenancy but complicated questions of personal and proprietary rights and any decision thereon may have far-reaching consequences involving properties other than the tenanted land. The scheme of the Act does not indicate that such issues should be decided by the Tribunal (vide Section 21). Mudakappa Vs. Rudrappa and Others, distinguished.

The only course open to the Tribunal is to choose one of the rival claimants for conferment of occupancy rights reserving liberty to the other claimants to establish their rights in a Civil Court."

His Lordship of this Court in the said Ruling has held that when there are rival claims involving heirship, succession existence of a joint family and the like the issues that arise would not be issues of tenancy but complicated questions of personal and proprietary rights, and any decision thereon may have far-reaching consequences involving properties other than the tenanted land and, therefore, his Lordship came to the conclusion that the scheme of the Act does not indicate that such issues should be decided by the Tribunal. In the light of this Ruling, if there are complicated questions of personal and proprietary rights and the result of the decision would affect the properties other than the tenanted land, then in that contingency His Lordship has held that the scheme of the Act does not indicate that such issue should be decided by the Tribunal. But, in the case on hand, there are no other properties other than the tenancy land which is the

subject matter of the suit and there are no rival claims regarding the heirship, succession existence of a joint family to be decided. Therefore, this Ruling can be distinguished from the facts of this case on these grounds.

12. Then another Ruling relied upon by the learned Counsel for the respondent is *MANJAPPA v. LAND TRIBUNAL, SHIMOGA AND ORS.* 1977 (2) KLJ 38. In that Ruling it is laid down as follows:

"The enquiry contemplated by Section 45A is for registration of occupancy rights as contemplated u/s 44 of the Act. This section deals with lands held by or in possession of the tenants immediately prior to the date of commencement of the Amendment Act.

The Tribunal has no jurisdiction to deal with and determine disputes relating to title to lands by rival owners, if Land Tribunal deals with the dispute between persons claiming to be owners and determine their rights, it will be without jurisdiction and amount to the exercise of lack of power.

Thus, where the 2nd respondent agitated his claim of tenancy in a litigation between him and the 4th respondent, and there was compromise under which the 4th respondent sold the land to 2nd respondent and 2nd respondent sold the land and thereafter made an application u/s 45A for grant for occupancy rights in his favour contending that he was a tenant of the land and that the sale deed was obtained from him under fraudulent circumstances.

Held, the Tribunal could not decide the question whether the sale deed was void,"

In that Ruling it is held that the Tribunal has no jurisdiction to deal with and determine disputes relating to title to lands by rival owners. When there are rival owners making claims in respect of the title to the lands, then certainly the Land Tribunal will have no jurisdiction to decide such an issue. It is made clear in the said Ruling by observing that if the Land Tribunal deals with the disputes between the persons claiming to be the owners and determine their rights, it will be without jurisdiction, and amount to the exercise of lack of power, in this case, there is no question of deciding between the rival owners claiming title to the lands. Therefore, this Ruling will not come to the aid of the learned Counsel for the respondent.

13. Another Ruling relied upon by the learned Counsel for the respondent is *APPI BELCHADTHI AND ORS. v. SESHU BELCHADTHI AND ORS.* 1982 (2) KLJ 565. In that Ruling, it is held as follows:

"The Civil Court has jurisdiction to determine the question whether the occupancy right granted by the Land Tribunal in respect of tenanted lands in favour of one member of a joint family belonged to the joint family."

Thus Ruling is consistent with the Ruling reported in *Dhareppa v. State of Karnataka and Others*⁸ wherein it is held that where there are rival claims involving heirship, succession existence of joint family and the like the issues

that arise would not be issues of tenancy but complicated questions of personal and proprietary rights which are required to be dealt with by the Civil Court. Even this Ruling does not lay down that the question whether a particular person is a legal representative is to be decided by the Civil Court and not by the Land Tribunal.

14. The next Ruling relied upon by the learned Counsel for the respondent is NAGAPPA DEVANNA v. VENKATARAMANA THIM-MANNA AND ANR. 1978(1) KLJ 70 wherein it has been held that if there was any dispossession after 1-3-1974 by the landlord or by the main tenant or a sub-tenant, it is wholly immaterial and will not affect the right of the tenant personally cultivating the land immediately prior to 1-3-1974. The facts of this case are altogether different from the facts of the case on hand. The issue that was dealt with by their Lordships in that case was what is the relevancy of the cultivation prior to and subsequent to 1-3-1974 and the issue involved in this case is whether the Civil Court can decide as to whether a particular person is the legal representative of the tenant or whether that issue is required to be dealt with by the concerned Land Tribunal itself. The Rulings that have been relied upon by the learned Counsel for the respondent do not lay down a proposition that the Civil Courts can decide the question as to whether a particular person is the legal representative of the tenant.

15. On the other hand, there is a Ruling reported in Item No. 20 of Short Notes of Cases reported in Rangabhat v. Bailawwa 1989, (1) KarLJ It reads as follows:

"20. Karnataka Land Reforms Act, 1961. Section 48A read with Sections 24 and 112B

(a) - Power of Tribunal to determine whether applicant before it is heir of the deceased tenant or not incidental to the right of legal heir to make an application as a tenant continued by operation of law u/s 24 - Explained.

M.P. Chandrakantharaj Urs, J.

Held:- Section 24 of the Act which is declaratory in character provides that tenancy is heritable and by fiction of law even on the death of a tenant the landlord is deemed to have continued the tenancy in favour of the heirs on the same terms and conditions on which such tenant was holding at the time of his death. In the instant case that Bailawwa made the application as the wife of the tenant is not disputed. If the legal heir has a right to make an application as a tenant continued by operation of law the Tribunal which has to determine the question of tenancy has the incidental power to determine whether the applicant is the heir of the tenant who is continued as a tenant by operation of law. It is explicit in the language employed in Section 112B(a) of the Act, which within its compass includes all powers incidental to the determination of tenancy. Therefore, whether the tenant is a deemed tenant in terms of Section 24 of the Act by operation of law is a question which the Land Tribunal is therefore authorised to determine as one of its duties u/s 112B of the Act. Therefore, the contention that Land Tribunal had no jurisdiction to determine the status or

relationship has no merit. Rangabhat v. Bailawwa, W.P.No. 2170/88, D.D: 6-4-1988."

In the said Ruling, has been held that the legal heir has a right to make an application as a tenant continued by operation of law and the Tribunal which has to determine the question of tenancy has the incidental power to determine whether the applicant is the heir of the tenant who is continued as a tenant by operation of law.

16. The sum and substance of the Rulings that are referred to above are as follows:

The question whether a particular person is a tenant or not is to be decided not by the Civil Court but by the Land Tribunal concerned. If a question arises as to whether a particular person is a tenant or not in any suit or a proceeding, the Court is required to refer that issue to the concerned Land Tribunal for its decision and stay the proceedings till it receives the finding of the Land Tribunal on that point and after the receipt of the finding of the Land Tribunal on that point to dispose of the suit in the light of that finding.

17. It is explicit in the language employed in Section 112B(a) of the Act, which within its compass includes all powers incidental to the determination of tenancy and, therefore, whether the tenant is a deemed tenant in terms of Section 24 of the Act by operation of law is a question which the Land Tribunal is, therefore, authorised to determine as one of its duties u/s 112B of the Act.

18. The question" of law raised in this Appeal is answered accordingly.

19. Now coming to the facts of the case, both the trial Court and the lower Appellate Court have held that the respondent is the legal representative of the tenant. But, in view of the position of law discussed above, the Civil Court has no jurisdiction to decide that point. At this juncture, I.A.No.VI filed by the appellant will have to be taken into consideration. It is an application filed under Order 41 Rule 27 C.P.C. praying for production of some additional evidence. It is supported by the affidavit of the applicant and what the appellant is seeking to produce is the order date 2-7-1987 in Application No. KIR.SR. 40/Dambal passed by the concerned Land Tribunal wherein it has been held that the respondent is not the legal heir of the tenant. The order of the Land Tribunal will have a bearing on the issues involved in this case and it is relevant also for consideration as to what would be the proper order to be passed in this case. Therefore, I.A.No.VI for production of additional evidence is allowed in this case.

20. In view of the order passed by the Land Tribunal which has the exclusive jurisdiction to decide the question as to whether a person can claim tenancy by virtue of the provisions of Section 24 of the Act as the legal representative of the tenant, the findings of the trial Court confirmed by the lower Appellate Court that the respondent is the legal heir of the tenant are vitiated as the Courts below have no jurisdiction to decide this point. It has been brought to my notice by the

learned Counsel for the appellant that this finding of the Land Tribunal is challenged by the respondent in Civil Petition No. 620 of 1991 in this Court and it is pending. In view of the filing of the Civil Petition by the respondent challenging the finding of the Land Tribunal holding that he is not the legal heir of the tenant, the judgment and decree of both the Courts below will have to be set aside and the matter will have to be remitted back to the trial Court with a direction to await the finding of this Court on the question whether the respondent is the legal heir of the tenant and after the receipt of the finding, dispose of the suit in the light of that finding in accordance with law.

21. Hence, I make the following order:

This Second Appeal is allowed. The judgment and decree of the Courts below are set aside and the matter is remitted back to the trial Court with a direction to the that Court to await the finding of this Court on the question whether the respondent is the legal heir of the tenant and after the receipt of that finding, dispose of the suit in the light of that finding in accordance with law.

In the circumstances of the case, I direct the parties to bear their own costs.