

(2019) 02 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 27773, 25938 Of 2010 C Of W

K.T.Venkatappa

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 24, 38, 48A

Karnataka Land Reforms Act, 2017 — Section 2(17), 2(12), 2(24), 2(34)

Code Of Civil Procedure, 1908 — Order 2 Rule 2

Citation : (2019) 02 KAR CK 0043

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : Jayakumar S Patil, P.B. Raju, M.Shivappa, K. Sree Rangarajan

Final Decision : Allowed

Judgement

1. These petitions involving similar and akin issues, have been considered together and disposed of by this common order.

2. The petitioners have assailed the order dated 13.04.2010 passed by the Land Tribunal, Bangalore South Taluk in proceedings LRF No.3972/1976-77 so far as it relates to granting of tenancy rights to respondent Nos.3 and 4.

3. The facts of the case are:

The petitioners are claiming to be the owners of the lands totally measuring 1 acre 29 guntas in Sy.No.72/1A of Devasandra village, K.R.Puram Taluk, Bangalore District. For better understanding of the dispute, marshalling of the facts is necessary. One Sri. Thimmaiah had three sons namely Sri.Munikenchappa, Sri.Appanna and Sri.Erappa. Under a deed of partition the three sons of Thimmaiah acquired lands to the extent of 1 acre 29 guntas each. It is apt to refer to the family tree of Thimmaiah which is as under:

THIMMAIAH

Sri.Munikenchappa Sri.Appanna Sri.Erappa
Son Son Son

Sri.D.M.Chandrashekar Sri.D.A.Chandrashekaraiah Sri.Ramakrishnappa
(his application rejected) (joint applicants)

4. The present petitioners' father K.T.Venkatappa purchased 1 acre 29 guntas from the branch of Sri.Munikenchappa through registered sale deed dated 9.8.1954. Munikenchappa sold 1 acre 29 guntas in favour of Chowdappa on 12.8.1948 who in turn had sold the same to Thimmaiah Shetty on 8.11.1950 from whom the petitioners' father had purchased the said land. Munikenchappa who sold the land never claimed to be tenant thereto. Appanna and Erappa also did not claim to be tenants in respect of the said land after the purchase of the property from K.T.Venkatappa. Respondent Nos.3 and 4 have filed Form No.7 on 29.6.1979 claiming occupancy rights in respect of the land in question measuring 1 acre 29 guntas in Sy.No.72/1A owned by K.T.Venkatappa, the father of the petitioners. The application filed by the respondent Nos.3 and 4 is said to have been sent through post on 29.6.1979. D.M. Chandrashekar @ Chandrappa s/o Munikenchappa had also filed Form No.7 seeking occupancy rights relating to the property in question. The Land Tribunal vide order dated 06.05.1997 dismissing the claim of Chandrappa allowed the case of respondent Nos.3 and 4 conferring occupancy rights to an extent of 1 acre and 29 guntas. Aggrieved by the same, W.P.No.2597/98 was filed by K.T.Venkatappa whereas W.P.No.12850/97 was filed by Chandrappa challenging the order of the Land Tribunal dated 6.5.1997. Writ Petition filed by Chandrappa was dismissed whereas writ petition filed by the L.Rs of K.T.Venkatappa was allowed and the matter was remanded to the Land Tribunal. The L.Rs of Venkatappa filed W.A.No.2561/2001 and the unsuccessful applicant Chandrappa filed W.A.No.7590/2001 against the order of the learned Single Judge. Writ appeal filed by the L.Rs of Venkatappa was dismissed. Writ Appeal filed by Chandrappa was dismissed as withdrawn. Hence claim of Chandrappa has attained finality. Consequent upon remand, 2nd respondent has once again allowed the claim of respondent Nos.3 and 4 by order dated 13.4.2010. Aggrieved by the said order of the 2nd respondent, these writ petitions are filed.

5. Submissions of the petitioners:

Learned Senior Counsel Sri.Jayakumar S. Patil submitted that the last date for filing Form No.7 after the period of extension was 30.6.1979. Both Sri.Appanna and Sri.Erappa's father had not filed any application in Form No.7. The joint application filed by respondent Nos.3 and 4 is not in conformity with Section 48-A of the Karnataka Land Reforms Act, 1961 ('Act' for short). The extent of lands allegedly to be in cultivation of respondent No.3 is mentioned as 1 acre and by

respondent No.4 as 29 guntas. The boundaries of the property is not shown. There is discrepancy in the age mentioned and the period shown. Learned counsel pointing out these defects in Form No.7 submitted that Section 48-A of the Act does not contemplate joint application and the same ought not have been considered by the Tribunal. Inviting the attention of the Court to section 2(24) of the Act, it was submitted that originally the phrase 'person' was defined and the same has been deleted with effect from 1.3.1974 and therefore, application in Form No.7 is required to be filed only by an individual who is cultivator as on the relevant date. It was further argued that the application in Form No.7 is a belated claim. The Tribunal failed to appreciate that alleged tenancy claim of respondent Nos.3 and 4 was fictitious and based on the documents created only for the purpose of claiming tenancy rights. The Tribunal committed a serious error of law in throwing the burden of proof of possession and cultivation of the land in question on the land owner rather than the alleged tenants. The entries in the RTC as on the relevant date i.e., for the years 1973-1974 do not show the name of the claimants. The respective fathers of the respondent Nos.3 and 4 not having opted to claim the tenancy rights, no right is vested with the respondent Nos.3 and 4 to claim the tenancy rights belatedly. The Tribunal while appreciating the evidence of the two witnesses, having regard to the age of the witnesses, 85 and 72 years, held that the testimony of such witnesses is presumed to be true and correct which does not stand to reason and is legally impermissible. Accepting the evidence of the said witnesses, the Tribunal ignored the material elicited in the cross examination of the rival claimant Sri.Chandrappa. Tribunal relying upon certain evidence which is suitable and discarding the other part which goes against the claimants is wholly unsustainable. It was submitted that the reasoning of the Tribunal is tailor made to suit the case of the respondent Nos.3 and 4, not based on proper appreciation of evidence.

6. Submissions of the respondent Nos.3 & 4: Learned Senior counsel Sri.M. Shivappa appearing on behalf of the learned counsel for the respondent Nos.3 and 4 submitted that the question of belated claim does not arise at this stage in view of the finding recorded by this court in the earlier proceedings in remanding the matter to the Land Tribunal holding the application in Form No.7 filed by respondent Nos.3 and 4 is within the time prescribed under the provisions of the Act and Rules. The ground of maintainability of application was not raised either before the Tribunal or before this court while challenging the grant in the earlier round of litigation. Hence, the same cannot be entertained. The members of a joint family filing joint application relating to the very same survey number, owned by a single landlord is not prohibited. Even in cases of different applications filed by the tenants relating to the same survey number owned by the same landlord, this court in catena of cases has directed the Land Tribunal to club such applications and decide the tenancy rights of the claimants. No discrepancy or inconsistency is found in the application in Form No.7. What was mentioned is the cultivation of the lands in question by their respective fathers since 30 years. There is no inhibition for filing of application in Form No.7 by any

member of the family. The revenue records depicts the name of the respondent Nos.3 and 4 in the cultivators column. The testimony of the witnesses examined by the respondent Nos.3 and 4 shows that the respondents were in actual cultivation of the land in question at the relevant date.

The said witnesses were not cross examined even after remand. No credential value can be given to the evidence of rival claimant who has lost the legal battle. Hence, appreciation of evidence by the Land Tribunal cannot be held to be untenable or beyond the material evidence available on record. This court exercising the writ jurisdiction cannot re- appreciate the evidence, the same being not irregular or illegal. In the circumstances, no interference is warranted by this court.

7. The questions that arise for consideration in these petitions are:

1. Whether the joint application in Form No.7 filed by the respondent Nos.3 and 4 seeking conferment of occupancy rights with regard to different extent of land in the same survey number is maintainable?

2. Whether the application in Form No.7 filed by the respondent Nos.3 and 4 is within the period of limitation prescribed under the Act?

3. Whether the Tribunal is right in placing reliance on the evidence of the witnesses discarding the cross examination portion of the rival claimant?

4. Whether the Tribunal is justified in conferring occupancy rights to the respondent Nos.3 and 4 relating to the properties in question?

8. To advert to the arguments advanced by the learned counsel for the parties with reference to the questions formulated above, it is beneficial to collate the legal position on the subject involved herein referring to the judgments relied upon by the learned counsel for the respondent Nos.3 and 4.

9. In the case of Basavaraj Vs.State of Karnataka 1982 (2) KLJ 531, the cognate bench of this court while examining the applications filed by the son during the life time of his father claiming conferment of occupancy rights, held that a son is the member of the joint family, the question to be considered is what is the interest of a son in the lease hold right and placed reliance on the judgment of the Hon'ble Apex Court in Municipal Corporation of Greater Bombay Vs. Lallapunchani & others wherein it is held that the lease hold right in an agricultural land, if it constitutes joint family property/joint property, is partible just like any other property of the joint family.

10. In H.R.Rama Singh Vs. D.Nagesh Rao & another 1977 (2) KLJ 329, referred to therein, it is observed that an employee of a Bank cultivating the lands with the assistance of his brother is entitled to conferment of occupancy rights.

11. Considering the said legal principles, it is observed that son as a member of the joint Hindu family is entitled to claim conferment of occupancy rights by filing an application in the prescribed form.

12. The Hon'ble Apex Court in the case of Mohan Balaku Patil & another Vs. Krishnoji Bhaurao Hundre (Dead) by L.Rs (2000) 1 SCC 518, has held that when a finding of fact has been recorded that the claimants have been in possession, it will be startling to hold that the land-owner was himself cultivating the land. The rent paid by the claimant to the land-owner and the partition in their family has no bearing on the question of possession on the land and cultivation thereof. It was thus observed that the finding of the Tribunal as to possession and cultivation of the land by a party will prevail over entry to the contrary in record of rights.

13. In the case of Ram Vs. State of Karnataka Laws (SC) 2004 982, the Division bench of the court has referred to the earlier decision of this court in Writ Appeal No.4310/1998 wherein it is observed that, this court exercising jurisdiction under Articles 226 and 227 of the Constitution of India normally cannot re-appreciate the evidence on record which has already been appreciated by the Land Tribunal. The finding of the Tribunal that it is the joint tenancy which is a finding of fact can not be upset by this court sitting under its jurisdiction by re-appreciating the evidence.

14. Having regard to the facts found, looking to close relationship between the parties and considering the spot inspection and the local enquiries made with the adjacent land owners, the order passed by the Tribunal therein holding that all the four applicants were entitled for grant of occupancy rights is held to be justifiable, more particularly taking note of the fact that the Tribunal consequently found that the all four applicants were cultivating their respective share of their land.

15. In the case of Vasantha Nanasaheb & others Vs. Piraji Pandu Patil & others ILR 2006 Kar 2061, in support of the case, the tenant had examined two independent neighbouring witnesses apart from examining himself. Both the witnesses have deposed in categorical terms that 1st respondent therein was cultivating the property in question as tenant. Nothing worth was elicited in their cross-examination to discard their evidence. In that context it was observed that the presumption arising out of the revenue records stand rebutted in view of consistent, cogent and clinching evidence relating to the party's possession over the property in question as a tenant.

16. In the case of Mudakappa Vs. Rudrappa & others 1978(1) KLJ 459, it is held that when one person applies for registration of lands as an occupant in his individual name and three others apply for registration of the said lands in their name along with the other applicant as joint occupants, it becomes the duty of the Tribunal to decide whether only one of them was sole tenant of the lands in question before the appointed day or whether all of them were jointly in possession of the lands as tenants. It was observed that without deciding the said question, it would not be possible for the Tribunal to make an effective order under Section 48- A of the Act. What was necessary for the Tribunal to decide is whether the tenancy in question was held by one of them exclusively or by all of

them jointly.

17. In the case of Sundara Mesta Bin Thimmappa Mesta Vs. Land Tribunal ILR 2005 Kar 4513, right course to be adopted by the Tribunal was discussed where applications are filed by different persons in respect of the same land under Sections 48-A and 38 of the Act. It was held that the applications are in respect of the same land, both the applications are required to be considered together, if necessary, by setting aside an earlier order either granting occupancy right or directing registration of an agricultural labourer as an owner thereof.

18. Division Bench of this court in the case of Davalsab Vs. The State of Karnataka ILR 2008 Kar 280, has observed that when we look at the practical difficulties, if tenants are allowed to file more than one Form No.7, application in respect of the lands claimed by them as tenants pertaining to the very same landlord, it would only lead to multiplicity of proceedings and both the landlord and tenant would end up in litigations throughout their lives. Therefore, in view of the provisions of Section 48-A and Rule 19 of the Act, the principle underlying Order II Rule 2 of CPC is applicable as there is no such express provisions under the Land Reforms Act. It was the situation where the tenant claimed tenancy rights under the same landlord by filing two Form No.7 applications one in the year 1974 and the other in 1976.

19. In the case of Chennappa Moolya Vs. Seju Moolya Laws (Kar) 2012 458 10 ILR 2002 Kar 3417, tenants the brothers had jointly filed declaration in Form No.7 claiming occupancy rights on behalf of the Joint Hindu Family as held by this court.

20. In the case of Babu Madivala & others Vs. Kuddu Madivala & others¹⁰, the land Tribunal after conducting an enquiry granted occupancy rights while deciding the issue whether the grant of occupancy rights is for the benefit of the 'joint family' as defined under Section 2(17) of the Land Reforms Act or the 'family' as defined under Section 2(12) of the Land Reforms Act? In the light of these judgments, the questions formulated in para 7, are answered here under:

21. Question No.1: The undisputed facts are that respondent No.3 is the son of Appanna, whereas respondent No.4 is the son of Erappa both their fathers are the sons of Thimmaiah. An application under Section 48-A r/w rule 19(1) of the Rules could be filed by the applicant who shall be a member of a family. No material evidence is placed on record by respondent Nos.3 and 4 to establish that they belonged to the joint family. There is no dispute regarding the legal proposition canvassed by the learned counsel for the respondent Nos.3 and 4 that the family members of a joint family can file common application relating to the same extent and survey number belonging to the same landlord. "Joint family" as defined under the Act means in the case of persons governed by Hindu Law, an undivided Hindu Family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence.

22. In terms of Section 48-A of the Act every person entitled to be registered as

an occupant under Section 45 is required to make an application in Form No.7. Section 2 [24] which originally defined 'person' to include a person, body corporate, family etc., has been omitted with effect from 01.03.1974. Section 45 provides that the tenants to be registered as occupant of land on certain conditions. 'Tenant' as defined under Section 2[34] means an agriculturist who cultivates personally the land he holds on lease from a landlord.

23. Section 2 [17] of the Act defines joint family as under:

"[17] 'joint family' means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence"

Section 2 [12] of the Act defines family as under:

"[12] 'family' means, -

[a] in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and unmarried daughters, if any;

[b] in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried daughters;

[c] in the case of an individual who is a divorced person and who has not remarried, such individual and his minor sons and unmarried daughters, whether in his custody or not; and

[d] where an individual and his or her spouse are both dead, their minor sons and unmarried daughters"

24. Thus, no two members of different families could be treated as members of the same family and hence a joint application filed by two members of different families claiming separate extents of land in same survey number cannot be maintained.

25. Even otherwise, the burden lies on the respondent Nos.3 and 4 to establish that the branch of Sri.Appanna and Sri.Erappa formed an undivided Hindu family. Indisputably,

Sri.Appanna - father of respondent No.3 expired in the year 1985 and Sri.Erappa - father of respondent No.4 expired in the year 1980. Record of rights depicts 1 acre 29 guntas owned by father of respondent No.3, 1 acre 29 guntas owned by father of respondent No.4 and 1 acre 29 guntas owned by Sri.K.G.Venkatappa in Sy.No.72/1A, Devasandra Village. This shows that there was no joint family status of respondent Nos.3 and 4 to form a joint family in terms of Section 2(17) of the Act.

26. As aforesaid, clubbing of different applications relating to the same survey number and same landlord stands on a different footing with that of the application filed jointly by the claimants seeking for conferment of occupancy rights relating to different extent of land individually in the same survey number.

It is also pertinent to note that the description of the lands with the boundary of schedule have not been given in Form No.7. Indeed this fact was observed by this court while remanding the matter to the tribunal in the earlier round (W.P.No.12850/1997 c/w W.P.No.2597/1998). The judgments relied upon by the learned counsel for the respondent Nos.3 and 4 discussed above, on this aspect are distinguishable.

27. Question No.2: The said question has been considered in the petition filed by the respondent Nos.3 and 4 before this court in CRP No.2853/1988 and it is observed that the application filed by the respondent Nos. 3 and 4 was well within time and the relevant passage of the said order is extracted herein for ready reference.

"In the instant case, the application was sent on 29.6.1979 through post well within time, though it was received on 1.7.1979, and, as the law permits the sending of applications by post, no sooner it was posted it must be deemed to have been filed, and as such it must be held to have been filed on 29.6.1979. Hence, it was filed well before the last date i.e., 30.6.1979 fixed for filing the application, irrespective of the fact that it was received by the Land Tribunal on 1.7.1979. It is submitted by the learned counsel for the petitioner that 1.7.1979 was a Sunday and, therefore, in all probability the application must have been received on the previous day (30.6.1979) after office hours and therefore, the endorsement is made on the application as having been received on 1.7.1979. It is not necessary to consider this submission having regard to the legal position that in law the application must be deemed to have been filed on 29.6.1979. Accordingly, the point raised for determination is answered in the affirmative".

28. Question No.3: The Tribunal has placed reliance on the evidence of two witnesses to arrive at a decision that the respondent Nos.3 and 4 were cultivating the lands in question as tenants on the relevant date, more particularly considering the age factor of the witnesses, the same cannot be countenanced for the following reasons:

(i) The Tribunal cannot pick and choose the part of the evidence, if to be considered, it has to be in its entirety but not in fragments.

(ii) The reasons assigned by the Tribunal for considering the evidence of the witnesses and declining to consider the cross examination part of the rival claimant appears to be untenable.

29. It is true that the litigation initiated by the rival claimant Sri.D.M.Chandrappa @ Chandrashekar has reached finality in view of the order of this court in Writ Appeal No.7590/2001. In such circumstances, the testimony of the witnesses either has to be accepted or rejected in its entirety. No evidence is let in by the parties subsequent to the order of remand by this court. Hence, deciding the matter merely choosing certain portion of the evidence which is favourable to respondent Nos.3 and 4 and ignoring the other evidence favourable to the land-lord cannot be sustained.

30. Question No.4: The entries in the record of rights standing in the name of K.T.Venkatappa during the years 1972-73 and 1973-74 has not been appreciated by the Tribunal. Reliance placed on the entries in the record of rights subsequent to the year 1974-75 is of no relevance. What is relevant is the entries during the relevant date i.e., on 01.03.1974. It is observed by the Tribunal that the entries in the Record of Rights relating to the cultivators columns relevant during period is left blank. The burden lies on the respondent Nos.3 and 4 to show that they were cultivating the lands in question as on 01.03.1974. No material evidence was placed on record by the respondent Nos.3 and 4 to show that, apart from their lands, they were also cultivating the lands of K.T.Venkatappa. The application in Form No.7 filed by respondent Nos.3 and 4 do not disclose the correct description of the property. The age of the respondent Nos.3 and 4 is shown as 30 and 25 years respectively whereas it is mentioned that they are the tenants since 30 years. Though the learned counsel for respondent Nos.3 and 4 made an endeavour to point out the period of tenancy reflected in the Form No.7, relates to the period of their respective fathers cultivating the lands and continued by them, the same is hard to accept. Series of discrepancies found in the application Form No.7 disentitles the respondent Nos.3 and 4 to claim the tenancy rights. Even the arguments of the learned counsel that personal cultivation of a tenant is not the mandatory requirement of section 48-A of the Act to enable them to claim occupancy rights but the lands could be cultivated engaging the labourers despite respondent Nos.3 and 4 were government employees cannot be countenanced as personal cultivation is sine-qua-non to come within the ambit of Section 2[34] of the Act to qualifying as a tenant. These material discrepancies cannot be eschewed while weighing the scale of balance to determine the veracity and genuineness of the claim made by the respondent Nos.3 and 4.

31. It is significant to note that the Tribunal advertent to the arguments advanced on these points has observed that the inconsistencies would not negate the claim of respondent Nos.3 and 4, the matter has to be examined on the merits and not on technicalities. As could be seen, the inconsistencies found in the application goes to the root of the matter and cannot be brushed aside as technicalities.

32. Tribunal again shifting the burden on the petitioners to establish that they were cultivating the land as on the relevant date is ex-facie perverse and illegal. In the earlier round, this court has categorically observed that the said reasoning of the tribunal is erroneous but the same error is repeated by the Tribunal. Both the parents of the respondent Nos.3 and 4 having not made any application, the rights under Section 24 of the Act as a successor would not devolve on the respondent Nos.3 and 4 and these vital aspects are not properly considered by the Tribunal.

Conclusion:

For the foregoing reasons, writ petitions are allowed. The order dated

13.04.2010 passed by the Land

Tribunal, Bangalore East Taluk, Bangalore in case No.LRF 3972/1976-77 in so far as it relates to granting tenancy rights to respondent Nos.3 and 4 is quashed.

The claim of the respondent Nos.3 and 4 seeking tenancy rights relating to the land in question is rejected.

No order as to costs.