
(2001) 07 KAR CK 0108
In the Karnataka High Court
Case No : Writ Appeal No. 7364 of 2000

Lawrance

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 26
Transfer of Property Act, 1882 — Section 111

Citation : (2001) 4 KCCR 2698

Hon'ble Judges : M.F. Saldanha, J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : S. Shivaram, for the Appellant; K. Nagaraj, A.G.A. for Respondents 1 and 2 and N. Shankaranarayana Bhat, for Respondent 3, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Counsel on both sides as also the learned Government Advocate on behalf of the Respondents 1 and 2. It was vehemently submitted by the appellant's learned Counsel that irrespective of the nature of the subsequent transactions that the Court must take the pre-1963 position and that for all intents and purposes, in the post-1969 period there is revival of tenancy. On this basis, it was vehemently submitted that irrespective of what the revenue entries may reflect during that period of time that the appellant is fully justified in pressing his claim for occupancy rights in respect of the disputed area of 131/2 guntas. The contesting Respondent's learned Advocate has submitted that this position is incorrect and he further points out to us that the solitary attempt made by the appellant by producing one so called Gutta Receipt in support of his plea of tenancy has been rejected and that this has rightly been done. As far as status is concerned, learned Advocate submits that irrespective of what the status was in 1962 that his client was the purchaser and that subsequently, a mortgage was executed and there can be no question of revival of the old status after 1969.

2. The learned Single Judge has carefully considered the record and he has

undoubtedly placed reliance on the entries of the year around the appointed date. We cannot find fault with this appraisal and we also need to hold that it is not permissible for the appellant at this late stage irrespective of the subsequent developments and in the face of an adverse record to contend that he was still eligible for the grant of occupancy rights in respect of the disputed area of 131/2 guntas. The contention raised on his behalf have been carefully appraised by us and we confirm the view recorded by the learned Single Judge that as far this disputed area of 131/2 guntas is concerned that the appellant is not entitled to claim occupancy rights. No interference is called for with the order under appeal. The appeal accordingly fails and stands disposed off. No order as to costs.

M.F. Saldanha and K.R. Prasad Rao, JJ Writ Appeal No. 18.7.2001

7364 of 2000

ORDER ON "FOR BEING SPOKEN TO"

This writ appeal was heard by the Division Bench and disposed of through a final order dated 13.7.2001. After the appeal was disposed of, a memo was filed by the appellant's learned Advocate stating the following:

The undersigned prays that the aforesaid writ appeal may kindly be posted for "Being Spoken To" on 17.7.2001, in the interest of justice and equity.

Sd/- Advocate for the Appellant.

2. Pursuant to this memo being circulated, we were required to relist this appeal ostensibly, for being spoken to and the same is listed today. We need to observe in passing, that once a proceeding of any nature is heard and disposed of by the High Court that there should be some sanctity to the doctrine of finality. Unfortunately, it has become the order of the day to indiscriminately file memos of the present type or to file review petitions sometimes by the same learned Advocate, or invariably through some other learned Advocate and the Court is expected to relist the case and go through the earlier record, go through the order passed, rehear whatever arguments are put forward and thereafter modify or confirm the earlier order. It is impossible to fathom under what provisions of law these applications are made. Since the number of such applications has just been increasing, it is necessary for us to once and for all indicate that the legal position is very well settled in so far as once a final order is passed that the Court becomes functus officio. There may be many dubious reasons why one or the other of the parties wants to extend the litigation through such applications but, the question is whether there is any legal sanction for it. As we understand the law, the scope for reopening or reconsidering a final order is extremely limited and the law in this regard is very well settled. The law postulates that if something of immense and considerable gravity which would radically and certainly alter the earlier decision was not placed before the Court, that it may provide a ground for review, provided the party concerned is able to further satisfy the Court that there are very valid and cogent reasons why this material

was not placed before the Court earlier. The Courts have been very strict with regard to permitting reopening or review of the cases which would otherwise open the flood gates of mischief. To continue making applications and protracting the litigations at the expense of judicial time without there being any legal sanction for it, and since these applications have become a regular habit, it is necessary for us to lay down once and for all that they are impermissible unless they pass the legal scrutiny. The principles in this regard as enunciated by us very clearly indicate that not only has the escaped material to be of such consequence as will radically alter the earlier decision but more importantly that the party asking for a reopening has to satisfy the Court as to why this material could not be placed before the Court earlier. The case law even in this regard is very clear in so far as it in no uncertain terms lays down that if post-decisional a research is done or if there are some flashes of wisdom that emanate after the decision, or if due to change of Advocate some new ideas dawn that these are not situations in which reopening can be permitted. There is a considerable burden cast on the Court when such applications are made in so far as not only the entire record has to be reviewed but, the earlier orders have to be carefully checked in order to grasp as to what precisely is alleged to have gone wrong. Suffice it to say that there is absolutely no warrant in law for asking for reopening of the case on the basis of a memo of the present type, which does not satisfy any of the aforesaid ingredients. This is a wrong practice which has to be deprecated but, in any event, we would have been justified in dismissing the application which is in the form of a memo but, having regard to the fact that oral statements were made that the points involved are substantial, we also examine the submissions on merits.

3. The main contention that is now raised is that the appellant was a tenant since about the year 1962 and that as on the date when the mortgage was executed in the year 1963 he was a "tenant". Appellant's learned Advocate submits that the tenancy in question would remain dormant during the period of the mortgage and that the same would revive after the mortgage has been redeemed. Consequently, his submission was that in the year 1969 when this mortgage came to an end, that the appellants tenancy was restored and that consequently, his eligibility for grant of occupancy rights subsists as on the appointed date and he must be taken to have been a "tenant". In this context, the learned Advocate relied on a decision of the Bombay High Court, reported in 1962 Bombay Law Reporter 449 (Narayan Dogra Shetty v. Ramachandra Shivram Hingne) wherein, the learned Judge had occasion to consider the position that emerges in the light of the application of Section 111 of the Transfer of Property Act or in other words whether the lease and the mortgage could merge. On the facts of that case, the learned Judge held that there could not be any merger. Appellant's learned Advocate submitted that the legal position consequently would be that the tenancy would be deemed to have been suspended or that it was lying dormant while the mortgage was in force and in this regard he relied on an earlier Division Bench decision of this Court reported in 1978 (1) KLJ 155 (Melegowda v. Gaibu

Sab and Anr.) wherein the Division Bench of this Court relying on the provisions of Section 26 of the Land Reforms Act, upheld the plea on the facts of that particular case. In a given situation, and on a particular set of facts, this position is perfectly possible and the question that really raises is as to whether such a plea is tenable on the facts of the present case.

4. The present appellant in his evidence before the Tribunal clearly contended that according to him, the land was given to him for one year lease in the year 1962. He then contends that in the year 1969 the land was again given to him on tenancy basis, but, having regard to the fact of change of ownership etc., that was taking place, it is not indicated as to how and under what circumstance this could have happened. On the contrary, the mortgage deed which is on record clearly indicates that the land was mortgaged to the appellant in 1963 and that this mortgage came to an end in the year 1969. The Respondents' learned Advocate pointed out to us that the entire case sought to be now made out before the Court with regard to the pre-existing tenancy is factually unacceptable because, the documentary evidence namely, the mortgage deed itself indicates that the position was handed over to the appellant in his capacity as mortgagee only on the execution of that deed in the year 1963. Apart from the contradictory case made out in the evidence, we have also scrutinized the record to find out as to whether there is anything else that gave support to the appellant's contention and what we find is that the appellant himself has contended that the pahanis for some of the years starting from 1965 onwards have been produced by him, but, this is understandable because, admittedly he was a mortgagee in possession during that period. He was specifically asked about the post period in 1972, which is necessary for grant of occupancy rights and he admitted that there is no documentary evidence on record to support his case. The factual position that emerges further conclusively indicates that the entire case made out by the appellant that he was a tenant prior to the date of the execution of the mortgage is totally false. This being the position, there can be no question of his seeking to rely on the provisions of Section 26 of Land Reforms Act or the recent position that emerges as a result of the earlier Division Bench decision.

5. Having done a review of the record for the second time, we still find that the present application for reopening was totally and completely unjustified both on facts and in law. We do hope that the Bar will take note of the observations of this Court and refrain from making frivolous applications of this type in future. These observations to form part and parcel of the final order passed by this Court dated 13.7.2001.