

(1986) 07 KAR CK 0041
In the Karnataka High Court
Case No : Writ Appeal No. 149 of 1982

Laxminarayana Venkataraman Hegde

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 17, 48 A

Citation : AIR 1987 Kar 12 : (1986) ILR (Kar) 3163

Hon'ble Judges : M. Ramakrishna, J; M. Rama Jois, J

Bench : Division Bench

Advocate : R.G. Hegde, for the Appellant; S.V. Jagannath, Government Advocate, for the Respondent

Judgement

Jois, J.—This is typical of the cases arising from a proceeding under the Karnataka Land Reforms Act before a Land Tribunal which shows how an ignorant and illiterate individual has been deprived of his valuable rights to an agricultural land by clever manipulation and which has caused considerable anxiety for us.

2. The facts of the case in brief are as follows: 1acre and 30 guntas of land in survey No. 212 of Devise Village, Sorab Taluk belonged to one Ganapathi Hegde. According to the 3rd respondent Goori Bangarappa, he was a tenant of this land for more than 15 years prior to 1-3-1974. He purchased the land from his landlord under a registered Sale Deed dated 7-6-1973. In view of this purchase though it was not necessary for him to -seek occupancy rights, before the Land Tribunal, Sorab, he made an application in form No. 7 under S. 48-A of the Karnataka Land Reforms Act (for short Act). Claiming occupancy rights in respect of the aforesaid, land At the time of hearing of the case it was disclosed before the Land Tribunal that the third respondent had purchased this land from Ganpathy Hegde for a sum of Rs.500/- by a Registered Sale Deed dated 7-6-1973 i.e., about nine months before Revolutionary amendments to the Land Reforms Act came into force. It was further disclosed before the Land Tribunal that by another registered Sale Deed of the same date third respondent sold the

said property in favor of the appellant. Both the sale Deeds were dated 7-6-1973 and appear to have been registered before the Sub-Registrar on 5-7-1973. The statement made by the third respondent before the Land Tribunal reads.

It is seen from the Sale Deed in favor of the appellant copy of which is produced along with the appeal that the third respondent is an illiterate person and he had put his Left Thumb mark on the Sale Deed. According to the deposition, the third respondent knows only about his purchase of the land by him from Ganpathy Hegde the original owner. He does not know anything about the Sale Deed said to have been executed by him in favor of the appellant. Before the Land Tribunal he stated that his left Thumb Mark had been obtained in the second Sale Deed by playing fraud. He also stated that 4 years before the date on which he gave his deposition in Aug. 1981 he was forcibly dispossessed. After considering his statement and the documents the Tribunal made the following order:

3. On consideration of the oral and documentary evidence the Tribunal found that though the land was a tenanted land there had been sale of the very land to the tenant and resale by the tenant to the landlord, on the very day and it was clear that these transactions have been brought about by taking advantage of the illiteracy and ignorance of the tenant. However, the Tribunal took the view that the sale transaction was contrary to the provisions of the Land Reforms Act and therefore the land should stand vested in the Government.

4. Aggrieved, by the said order the appellant presented, the writ petition. In the Writ Petition the third respondent was not made a party. The writ petition was however dismissed at the stage of preliminary hearing. The learned single Judge in the course of the order observed that the original owner of the land and the present purchaser viz., the appellant who purchased the land from the third respondent have played fraud on the tenant third respondent. The learned single Judge however rejected the Writ Petition stating that as the third respondent also committed breach of the Land Reforms Law he was not entitled for grant of occupancy rights.

5. We agree with the findings of the Land Tribunal in so far it held that the third respondent was a tenant and that the sale and resale had been done on the very day, taking undue advantage of the illiterate and ignorant respondent No. 3 and that the plea of the third respondent that the second sale deed was secured by fraud, appears to be true. The first sale was only with the view to secure the resale, and the signature (left thumb mark) of the third respondent has been taken without he being made known that he was signing such a sale deed. This was also the view of the learned single Judge. However we are unable to agree that respondent No. 3 had committed any breach of the Act because the purchase of the land by a tenant from his landlord was not prohibited under the provisions of the Land Reforms Act or any other law. On the other hand the tenancy law then in force and earlier gave right of preemption to the tenant. However, we agree that Tribunal could not deal with his application for occupancy right because in view of the two Sale Deeds, the land was not under the

cultivation of tenant on 1-3-1974 and, therefore, the provisions of the Land Reforms Act were not attracted to the case.

6. The only contention of the appellant which we have to accept is that the Land Tribunal could not have directed that the lands should vest in the Government for, in view of the first Sale Deed executed by Ganapathy Hegde in favor of 3rd respondent which is not in any way unlawful, the third respondent became the owner of the property and therefore, if the second sale had not been executed the third respondent would have become the owner and continued as such on the appointed date i.e., 1-3-1974 and, therefore, the provisions of the Act would not be attracted as it had ceased to be the tenanted land. Therefore, the only course open to the third respondent, when he was dispossessed on the basis of the subsequent Sale Deed to which according to third respondent his left thumb mark had been taken by fraud, was to file a Civil Suit for a decree for possession and also for a declaration that notwithstanding the 2nd Sale Deed he was entitled to recover possession on the ground that it had been secured on the basis of the Sale Deed to which his LT. was taken by playing fraud on him. But unfortunately for him he has not done so. Obviously owing to ignorance and poverty the third respondent, was kept in dark at every stage including about the proceedings before this Court. The 3rd respondent had not even been imp leaded as respondent to the Writ Petition. At the instance, of the Court respondent-3 has been imp leaded as respondent in the appeal. But on the ground, neither the cover nor postal acknowledgment of the notice sent to him by registered Post Acknowledgment due, had not been received by the Registry of this Court, an order is made to the effect that the notice is deemed to have been served on him relying on O.V, R. 19(A) of the Code of Civil Procedure.

7. In view of the facts and the circumstances of the case, we direct that a copy of the order shall be sent to the Karnataka Legal Aid Board to find out as to whether any efficient legal aid can be given to the poor individual and secure justice to him. We also feel that if the appellant in the light of this order gives back the land to respondent-3, gracefully it would be a virtuous act notwithstanding the earlier blameworthy resale.

8. We have come across a few cases of this type in which before the date on which the Land Reforms Amendment Act were sought to be given effect to, the Sale Deeds came to be executed in favor of the tenant in the first Instance, obviously, for the reason that such transaction was lawful and their on the same day" or immediately thereafter sale deeds have been executed, by the tenant who purchased the land, in favor but the, landlord. In the present case though it is the appellant who is said to have purchased tab land and not the original landlord the Tribunal has recorded a finding that it was the original" owner who was the respondent before the Tribunal who was in possession of the land. It is a matter for consideration"s the State as to how relief should be given job such helpless individuals, who have suffered as a result of clever manipulation or fraud. Such transactions have taken place since the bringing into force of the

Revolution"17 Amendments of the Land Reform Act had been known to the landlords. Therefore, the Government may consider whether, appropriate legislative action to nullify such transaction is called for after collecting information about such transactions.

9. In the result, we make the following, order.

(i) The Writ Appeal is allowed.

(ii) In reversal of the order made in writ petition No. 25021/81 the writ petition is allowed.

(iii) The order of the Land Tribunal, Sorab annexure-C is set aside, but without prejudice to the right of the third respondent take to appropriate civil action for the recovery, of the possession of the land and for a declaration that the Sale Deed said to have been executed by him in favor of the Appellant was null and void on the ground that it was secured by fraud and to seek for any other relief to which he is entitled to in law.

Prepare three carbon copies of this order. OM shall be dispatched by registered post to respondent No. 3 and the other shall be sent to the Karnataka Legal Aid Board and the third to the Government Advocate.

10. Appeal allowed.