

(2016) 01 KAR CK 0242
In the Karnataka High Court
Case No : Writ Petition No. 11611 of 2003 (LR)

M. Kempaiah and Others

APPELLANT

Vs

Muddamma and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 4
Transfer of Property Act, 1882 — Section 111(g), Section 44

Citation : (2016) 01 KAR CK 0242

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : C.M. Nagabhushana, Advocate, for the Appellant; M.R. Rajagopal, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Anand Byrareddy, J.—1. Heard the learned counsel for the petitioners and the learned counsel for the legal representatives of Respondent No. 1.

The petitioner is no more and is represented by his legal representatives. The petitioners question the legality and validity of the order passed by the Land Tribunal, Bangalore North Taluk, Bangalore.

2. The facts as narrated by the petitioner are, that the petitioner had purchased agricultural land bearing Sy. No. 92 measuring 1 acre 33 guntas of Dasarahalli Village, Devanahalli Taluk from one Lakkamma and others under a sale deed dated 22.06.1958. The khatha of the land was also made in the name of the petitioner and the Index of the land and the RTC depicted the same. The petitioner contends that Respondent No. 1 who claimed as a tenant of the land, filed Form No. 7 under the provisions of the Land Reforms Act, 1961 (hereinafter referred to as "the LR Act" for brevity), with the Land Reforms Act having come into force. The Tribunal had adjudicated the same and had initially rejected the claim of Respondent No. 1, against which Respondent No. 1 had filed a writ petition and this court had allowed the petition and remitted the matter to the

Tribunal for a fresh disposal in W.P.2933/1996 by an order dated 13.10.2000. On such remand, the legal representatives of Respondent No. 1 who was dead by then and one Kempe Gowda, had examined themselves as witnesses. The petitioner had examined himself. Though the petitioner wanted to examine two other witnesses of adjoining land owners, the Chairman of the Tribunal had, by a strange order, held that no more witnesses were required to be examined and passed an order holding that occupancy rights had been granted in favour of the legal representatives of the first respondent.

It is pointed out that the Tribunal could not have granted occupancy rights in favour of Respondent No. 1 having regard to the significant circumstance that Respondent No. 1 had denounced the title of the petitioner to the land in question and had set up title of the land in third persons, as a result of which if the tenancy existed between the petitioner and Respondent No. 1, on such a stand taken by the respondent, the right of tenancy was forfeited insofar as the petitioner was concerned in terms of Section 111(g) of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act", for brevity). Therefore, the Tribunal had no jurisdiction to adjudicate Form No. 7 in the face of the admitted circumstance that the ownership of the petitioner was denounced by Respondent No. 1.

It is further elaborated that under the provisions of the LR Act, particularly Section 44, the primary requirement is that the person in occupation of the land must be a tenant and it is only on such tenancy being evident that the land could vest in the State. But, if the Respondent No. 1 had sought to denounce the character of the petitioner as the landlord, then she was no longer the tenant and it was not tenanted land and the land could not have vested in the State.

The respondent No. 1 having named the petitioner as the landlord and thereafter having sought to assert that the title of the land was set up under the sons of Pilladevappa, the Land Tribunal could not have proceeded on the basis of the said Form No. 7 and could not have assumed jurisdiction in the absence of Respondent No. 1 naming the actual owner in Form No. 7. Such an inconsistent approach on the part of Respondent No. 1 has been completely overlooked by the Tribunal in assuming jurisdiction in adjudicating Form No. 7.

It is further pointed out that though the entire extent of land measuring 1 acre 33 guntas was purchased by the petitioner, it is also claimed that two sons of Pilladevappa had sold an extent of 16 guntas in favour of Respondent No. 1. The Respondent No. 1 has not stated the extent of 16 guntas and the boundaries thereof which could be identified in Form No. 7 and it is the settled legal position that in the absence of an accurate description of the sub-division of the tenanted land, the same not being identified by boundaries, would render the application seeking occupancy rights invalid and the occupancy rights could not have been conferred in respect of the entire extent when a portion of it is claimed to be purchased and held as owner, the boundaries of which are not specified.

3. It is also contended that the claim of the first respondent as a deemed tenant would also not be relevant, as it is necessary for a tenant to be inducted lawfully. Though it may be the claim of Respondent No. 1 that she was lawfully inducted by Pilladevappa as a tenant, there are no pleadings or there is no evidence as to the manner in which Respondent No. 1 was inducted as a tenant and to claim as a deemed tenant, it was necessary for Respondent No. 1 to accept the petitioner as the landlord and when she has specifically denounced that the petitioner was the owner of the land, there cannot be any deemed tenancy under the petitioner and in the absence of the Respondent No. 1 naming the true owner or the actual owner according to her under whom she was claiming such tenancy, it is not open for Respondent No. 1 to contend that the petitioner had admitted her tenancy and therefore was precluded from denying the tenancy.

It is pointed out that when the sale deed was executed in favour of the petitioner, the vendor had specifically indicated that Respondent No. 1 was occupying the land and it was for the petitioner to obtain possession of the land. It is in that background that he had initiated proceedings for recovery of the land and in which proceeding before the Civil Court, Respondent No. 1 had taken a contention that it was tenanted land and in view of such a contention, the matter had been referred to the Land Tribunal. It is not on the admission of the petitioner that Respondent No. 1 was the tenant under him. It was for Respondent No. 1 to establish that she had been inducted lawfully as a tenant and that unless Respondent No. 1 at least admitted and accepted the petitioner as a landlord, she could not claim in the capacity of a deemed tenant and certainly not as a lawful tenant and therefore, he would submit that on these above grounds, the Tribunal was not justified in granting occupancy rights in favour of Respondent No. 1.

The learned counsel places reliance on the following decisions in support of his contentions:

1. Shiddappa Kariyappa & Anr. Vs. Land Tribunal, Ranebennur , 1978 (1) KLJ 83
2. Narayanagouda M.S. vs. Girijamma & Anr, , 1976 (2) KLJ 254

4. On the other hand, the learned counsel for the respondent would assert that there is no dispute of the Respondent No. 1 being in occupation of the land, as admittedly the sale deed in favour of the petitioner itself indicates that Respondent No. 1 was a tenant. The sale deed was of the year 1958 and there was no proceeding to resume possession from the petitioner prior to the Land Reforms Act having come into force. The provisions of the Mysore Protection of Tenancy Act, 1952 adequately protected the possession of the tenant before the coming into force of the Land Reforms Act. In the absence of any proceedings initiated to resume possession, the Respondent No. 1 having continued in possession, was certainly in a position to claim as a deemed tenant. In this regard, reliance is placed on a decision of the Supreme Court in the case of Honnamma and Others vs. Nanjundaiah (Dead) by L.Rs. , 2008 (4) KLJ 385, to

contend that if as on 1.3.1974 the person is shown as occupying the land in question and had been lawfully inducted into the land, any subsequent transaction in respect of the land in favour of a third party, even if such possession is continued without payment of rent to third party, it is immaterial and protection as a tenant is contemplated in law and occupancy rights could be allowed if as on 1.3.1974, which is the relevant date on which the Respondent No. 1 is in a position to establish such possession.

5. In the present case on hand, there is no denial that Respondent No. 1 was very much in occupation of the land as on 1.3.1974. The contention that Respondent No. 1 has denounced the ownership of the land by the petitioner, is not wholly correct. The tenancy was not attorned in favour of the petitioner by Pilladevappa or his legal heirs and therefore, the question of Respondent No. 1 accepting the petitioner as the landlord or paying rent to him did not arise. The question of deemed tenancy is by operation of law and Section 4 of the Karnataka Land Reforms Act would clearly apply insofar as the claim of Respondent No. 1 as a deemed tenant is concerned. The contention that unless and until Respondent No. 1 accepts the petitioner as the landlord, the question of deemed tenancy does not arise, would run counter to the nomenclature and the description that is adopted in law. One is a deemed tenant only when there is no relationship between the landlord and tenant. It is by operation of law that Respondent No. 1 is considered as a deemed tenant of the owner of the land as on the relevant date. Insofar as the allegation that the Respondent No. 1 had purchased 16 guntas of land out of the entire extent and if the said 16 guntas of land was not specified by boundaries, it emerges that occupancy rights could not be granted in respect of the whole extent in the absence of any such boundaries, is a technical objection. And if and when occupancy rights are granted, the revenue authorities would certainly work out the extent that was purchased under the sale deed and the extent which could be claimed as a tenant by Respondent No. 1

6. By way of reply, the learned counsel for the petitioner would point out that the assertion that there were no proceedings initiated to resume possession in the first instance is an incorrect and misleading statement. It is the petitioner who had initiated resumption proceedings and it is in the course of which Respondent No. 1 had taken a contention that it was a tenanted land, had taken a contention that the petitioner was not at all owner of the land and was not the landlord. It is subsequently when the petitioner sought to recover possession of the land before the Civil Court, a contention was taken that it was tenanted. It is thereafter that the matter was referred to the Land Tribunal. Therefore, the assertion that the petitioner is a deemed tenant by operation of law would run counter to the petitioner's conduct and stand taken at different times and cannot be countenanced.

7. In the light of the above contentions, the fact of the petitioner having purchased the entire extent of 1 acre 33 guntas from the widow and sons of

Pilladevappa, is evidenced by a registered sale deed. The subsequent purchase of 16 guntas by the Respondent No. 1 and the effect of these transactions though were raised in civil suits under the Land Reforms Act, were never taken to their logical conclusion. In any event, these sale deeds are allowed to stand and would have to be reconciled.

Insofar the contention that the respondent was a lawful tenant in respect of the land in question is not evident from any concrete material produced except that the sale deed of the petitioner indicates that the vendor had categorically stated that the land in question is in the occupation of Respondent No. 1 and it is for the petitioner to recover possession. Therefore, he had sought resumption of the land by recourse to the law in force as on that date. The matter having been referred to the Land Tribunal before the amendment to 1.3.1974 as the Act provided for resumption proceedings, the petitioner having initiated such resumption proceedings, a stand had been taken by the Respondent No. 1 that she was not a tenant in respect of the land and denounced the ownership of the petitioner. If such a stand had been taken, the Respondent No. 1 is precluded from taking a contrary stand to the effect that the petitioner may have purchased the land from Pilladevappa's legal representatives and that she would be a deemed tenant under the petitioner.

Therefore, the subsequent application in Form No. 7 claiming that the petitioner was indeed the landlord of the land in question and during the course of the evidence before the Tribunal, again taking a stand that the petitioner was not the owner of the land in question, would certainly be a contradiction, which cannot be reconciled and the Tribunal would be denuded of jurisdiction if the petitioner's ownership of the land is denounced and the legal representatives of the true owner under whom Respondent No. 1 was claiming as a tenant were not named in those proceedings. Therefore, it is difficult to understand how the Tribunal has reconciled this position in assuming that Respondent No. 1 was a deemed tenant in respect of the land in question.

8. As pointed out by the learned counsel for the petitioner, if there is a contractual tenancy or even a deemed tenancy, if the tenant seeks to denounce the ownership of the landlord under Section 111(g) of the Transfer of Property Act, 1882, would lead to a forfeiture of the said relationship even if it was contractual. Therefore, the sine qua non of an application under Form No. 7 is the assertion to the particular person being a landlord under whom the applicant is a tenant and such tenancy is lawful and that as on 1.3.1974, such person continued to be in occupation. These ingredients are a must. If when Respondent No. 1 has taken vacillating stands as to the ownership of the petitioner as well as her relationship, the Tribunal could not have proceeded to reconcile such inconsistent stands in conferring occupancy rights in favour of the Respondent No. 1.

The other circumstance that the respondent No. 1 had purchased 16 guntas of the very land of which she was claiming tenancy, required Respondent No. 1 to

define the extent so purchased by metes and bounds and to furnish the boundaries of the said extent. It cannot be dismissed as being a technical objection insofar as the petitioner seeking to contend that in the absence of such description, the occupancy rights being granted in respect of the whole, is unlawful. This is a settled legal position as is found in at least two Division Bench judgments of this Court, which are referred to and relied upon by the learned counsel for the petitioner. Therefore, on more than one count, the Respondent No. 1 had not made out a case for grant of occupancy rights and the Tribunal was not justified in granting such occupancy rights.

Insofar as the Respondent No. 1's claim that she has purchased 16 guntas of land, was under a sale deed which was subsequent to the sale deed as set up by the petitioner and would not, on the face of it, assume any legality unless the sale deed of the petitioner is set aside. Therefore, it would not be possible for the Respondent No. 1 to even sustain the sale deed which has been executed subsequently in the face of the sale deed in favour of the petitioner which has not been cancelled or varied. In that view of the matter, the petition would have to be allowed.

Insofar as the several decisions that are cited, the first of these decisions cited by the learned counsel for Respondent No. 1 was in the case of Honnamma and others vs. Nanjundaiah (Dead) by L.Rs. and others , 2008 (4) KLJ 385, the Supreme Court was dealing with a case where one Nanjundegowda had filed an application in Form No. 7 in the year 1976 before the Land Tribunal claiming occupancy rights of land in specified survey numbers of his village. He had thereafter filed an application in the year 1981 seeking to amend Form No. 7 on the plea that some of the survey numbers given therein had not been correctly reproduced. That application was allowed by the Tribunal without notice to the opposite party and the necessary changes in Form No. 7 including some lands falling in the revenue estates of villages Mylanahalli and Honnenahalli were made. One K. Balalingaiah was the owner of the land in question. One Javarappa had also filed an application in Form No. 7 in the year 1975 for the same piece of land in respect of which Nanjundegowda had filed his application in the year 1981. Javarappa's application was dismissed by the Land Tribunal. He thereafter filed a writ petition before the High Court which was dismissed. After the rejection of the said application, Balalingaiah is said to have sold the land in dispute to the respondents. The purchasers were impleaded as parties before the Land Tribunal and they contested the claim of Nanjundegowda on various grounds. The Tribunal, after taking evidence, documentary as well as oral, concluded that the claim of tenancy rights made by Nanjundegowda was untenable and accordingly rejected the claim. That order was challenged by Nanjundegowda by way of a writ petition but on the constitution of the Land Reforms Appellate Authority by an amendment of the Act, the writ petition was remitted to the Appellate Authority for disposal. The Appellate Authority, after an elaborate discussion of the evidence, allowed the appeal with respect to the land except that covered by certain survey numbers of other villages, observing that

the land was agricultural in nature, that Nanjundegowda was indeed a tenant of the land mentioned in Form No. 7 etc. That was carried by way of a revision petition before the High Court. The revision petition was dismissed for non-prosecution. The matter ultimately was before the Apex Court. One of the issues was whether Nanjundegowda had been paying rent at the time when the application in Form No. 7 had been filed. The Supreme Court noticed that the High Court was deeply impressed by the fact that Nanjundegowda had not been paying rent and it is on this score that the Supreme Court has referred to *Dahya Lala and Others vs. Rasul Mahomed Abdul Rahim and Others* AIR 1964 SC 132 and has opined that for a person to claim the status of a deemed tenant, the possession must be lawful, but there is nothing which would necessitate the payment of rent as a condition precedent for the creation of a deemed tenancy.

It is this which is sought to be canvassed as supporting the case of the Respondent No. 1 herein.

9. Having regard to the factual context therein and the limited aspect on which the Supreme Court was answering the point that was canvassed, it cannot be said that it would support the case of Respondent No. 1 entirely and cannot be relied upon to that extent.

Insofar as the other decisions referred to and relied upon by the learned counsel for the petitioner, it is to support the contention that when a portion of land is occupied not as a tenant but in some other capacity, it is necessary to define the said extent by boundaries, for otherwise, it would be impermissible to grant occupancy rights in respect of the whole without such other portion demarcated by boundaries. This would clearly support the case of the petitioner on one of the points urged and which has been held in his favour. Therefore, the petition is allowed. The impugned order of the Land Tribunal is quashed.

Misc.W.1824/2010 and Misc.W.641/2011 stand disposed of, as they do not survive for consideration.