

---

**(1983) 03 KAR CK 0019**  
**In the Karnataka High Court**  
**Case No : RSA 702, 717, 795 & 984/75**

Mahabaleswara Bhat and Others

APPELLANT

Vs

Thirumaleswara and Others

RESPONDENT

---

**Date of Decision :** 15-03-1983

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 42

**Citation :** (1983) 2 KarLJ 81

**Hon'ble Judges :** G. N. Sabhahit, J

---

## Judgement

1. Plaintiffs instituted a suit for recovery of arrears of rental arising out of a lease of immovable properties in favour of the defendants for three years ending with 31.3.1965 at Rs. 12,770 along with interest being the principal due from the date of the suit till payment at 51/2% per annum on charge of lease-hold properties, shown in "A" and "B" Schedule properties, on which charge was created for arrears of rental in the lease deed, along with costs of the suit and other incidental reliefs.

2. The suit was resisted by the defendants. The trial Court decreed the suit as prayed for on the charge of "A" and "B" Schedule properties. It gave a preliminary decree on 17.8.1970. The defendants, however, went up in appeal in RA. No. 17 of 1970. In the meanwhile, I.A. No. V was instituted before the trial Court for passing a final decree and the same was passed and against the final decree, the defendants went up in appeal in RA. No. 23 of 1972. These two appeals were heard together and were disposed of by the District Judge, Mangalore, modifying the judgment and decree of the trial Court with regard to the charge. He deleted the charge with regard to "A" schedule properties as these properties, in the meanwhile, vested in the Government free from charge as a result of the Amending Act No. 1 of 1974 to the Karnataka Land Reforms Act. Aggrieved by the said judgment and decree, the defendants have filed RSA. Nos. 795 and 984 of 1975 and the plaintiffs have filed RSA. Nos. 702 and 717 of 1975 against the preliminary decree and the final decree.

3. The learned Counsel appearing for the defendants tenants, strenuously urged before me that in view of Sec. 91 of the Amending Act No.1 of 1974, all pending proceedings for recovery of rental should have been transferred to the Tahsildar, reading that section along with S. 42 of the Amended Karnataka Land Reforms Act and, as such, he submitted that the decree passed by the trial Court and confirmed by the first appellate Court should be set aside and the matter sent to the Tahsildar, if at all, for hearing.

4. As against that the learned counsel appearing for the landlord, while arguing supporting the judgments and decrees of the Courts below for arrears of rental, submitted that the Court below was not justified in deleting "A" schedule properties from the operation of charge.

5. The points, therefore, that arise for my consideration in this appeal are:

(1) Whether the Civil Court had jurisdiction to try and decree the suit for arrears of rental for three years ending with 31.3.1965?

(2) Whether the Court below was justified in deleting the charge for arrears of rental on "A" schedule properties?

6. In order to appreciate the contentions raised before me, it would be necessary to read S. 91 of Amending Act No.1 of 1974, as substituted by Act No. 31 of 1974.

7. S. 91 of Amending Act No. 1 of 1974 as substituted by Act No 31 of 1974, reads:

"Disposal of pending proceedings: (1) Notwithstanding anything contained in the Principal Act or in the Mysore General Clauses Act, 1899, the provisions of the principal Act as amended by this Act shall be applicable to all proceedings commenced before the date of commencement of this Act and pending before any court, Tribunal, or other authority as if the principal Act as amended by this Act was In force when the right accrued or liability was incurred and every court, Tribunal or other authority shall deal with the proceedings accordingly.

(2) All applications, statements and proceedings (including execution proceedings and proceedings in appeal) under the principal Act relating to resumption of land and matters connected therewith pending before any Court immediately before the date of commencement of this Act shall not have any effect and shall abate:

Provided that applications or proceedings in respect of leases permitted by section 5 of the principal Act as amended by this Act shall not so abate but shall stand transferred to the Tahsildar or the concerned appellate authority, as the case may be, and shall be disposed of by the Tahsildar or the appellate Authority as if they had been instituted or commenced before him or it.

(3) All applications or proceedings other than those referred to in sub-section (2) which are required to be decided or disposed of by the Tahsildar or the Tribunal

specified in the principal Act as amended by this Act, (a) pending before any Munsiff Court immediately before the date of commencement of this Act shall with effect from that date stand transferred to the Tahsildar or the Tribunal, as the case may be and shall be disposed of by him or it as if they had been instituted or commenced before him or it;

(b) having been disposed of by the Munsiff Court, or pending in appeal or revision, such appeal or revision shall abate without prejudice to the question involved in the applications or proceedings giving rise to such appeal or revision, being commenced afresh before the Tahsildar or the Tribunal as the case may be, as if the amendments made by this Act to the principal Act were in force at the time the right for making such applications or commencing such proceedings accrued.

8. Thus, by reading S. 91 of the Amending Act No.1 of 1974, as substituted by Act No. 31 of 1974, as a whole, it becomes clear that the subject-matter of the present suit attracts sub-clause (3) of S. 91. That subclause specifically states that all applications or proceedings which are required to be decided or disposed of by the Tahsildar or the Tribunal specified in the principal Act, as amended by this Act and pending before any Munsiff Court, immediately before the date of commencement of this Act shall with effect from that date stand transferred to the Tahsildar or the Tribunal, as the case may be. Therefore, two ingredients have to be satisfied before pending proceedings shall stand transferred to the Tahsildar or the Tribunal, as the case may be. They are: (i) that the proceeding is such as is required to be decided or disposed of by the Tahsildar or the Tribunal and (ii) that they are pending before any Munsiff Court immediately before the date of commencement of the Act in question.

9. It is no doubt true that the learned Counsel appearing for the appellants tenants submitted before me that under S. 42 of the Mysore Land Reforms Act, after amendment, the Tahsildar is given the jurisdiction to decide and decree all proceedings in regard to recovery of arrears of rental. Therefore, he submitted that S. 91 (3) is attracted to the facts of the case.

10. To appreciate the contention so raised, it is necessary to read S. 42 of the Amended Act. It reads:

"Procedure for recovery of rent. (1) Notwithstanding anything contained in any agreement or in any law for the time being in force, no suit or other proceeding shall lie in any Court or before any other authority for recovery of any rent payable by a tenant, except as provided in this section.

(2) A landlord claiming payment of rent by a tenant may apply to the Tahsildar in the prescribed form for an order directing the tenant to pay the rent due to the landlord.

(3) On receipt of an application under sub-section (2), the Tahsildar shall after holding an inquiry, pass such order thereon as he deems fit.

(4) An application under this Section shall be filed within one year from the date the rent fell due.

Explanation.-For purposes of this Section rent for any year shall be deemed to fall due on the last day of June of that year."

11. Thus, reading S. 42 as a whole, it becomes clear that the Tahsildar is given the power to enquire into the arrears of rent and decree the claim if the claim is instituted within one year from the date the rent fell due and, according to the section, the rent falls due at the end of June every year. Therefore, in order to attract the provision contained in S. 42 of the amended Act, it would be necessary that the arrears of rental claimed should be within one year of the due date and not arrears which are beyond that period of time and the cause of action should be alive when the amended Act came into force.

12. In the instant case, as stated above, the arrears claimed are for three years ending with 31.3.1965. In fact the Land Reforms Act came into force only on 2.10.1965. That being so, it is obvious that the arrears in question had nothing to do with the Land Reforms Act. Hence, it cannot be stated by any stretch of inference that the present claim falls within the purview of S. 42 of the Land Reforms Act as amended by the subsequent Acts, viz., Act No. 1 of 74 and Act No. 31 of 1974.

13. In fact, the view that I am taking finds support in *Seethamma v. SPL Tahsildar, LT., Shimoga*, (1979) 1 Kar.L.J. 342. His Lordship Justice Swami, J., who spoke for the High Court, has observed in the course of his judgment thus:

"But, he could not have filed a fresh application under S. 42 of the Act after the expiry of one year before the 1st respondent for recovery of the rent and further it was not open for the Tahsildar or Special Tahsildar to entertain an application after the expiry of one year.

Thus, it is clear that an application under S. 42 of the Act, for recovery of rent in respect of the period covered by the Act, as it stood prior to 1.3.1974 was required to be filed within one year from the date of the arrears of rent becoming due and in respect of the subsequent period as per the newly substituted sub-sec. (4) by Act. No.1 of 1974 within one year from the last day of June of that year. In the instant case, undisputedly the applications have been filed for the recovery of rent in respect of the years, 1963-64, 1964-65 and 1970-71 long after the expiry of the period of one year from the date of the arrears of rent became due. Thus, it is clear that the applications filed by the 2nd respondent, apart from the fact that the same were not maintainable, in view of the earlier orders passed with regard to the recovery of rent in respect of the very years in question, the said applications were also barred by time. In spite of this, the first respondent has entertained the applications under S. 42 of the Act and has determined the rent under S. 8 of the Act, and has further ordered for recovery of the same. Thus, the first respondent has acted without jurisdiction in entertaining the applications for recovery of rent and; further determining the

rent and further directing same to be paid by the petitioner to the 2nd respondent under S. 42 of the Act; consequently, the impugned orders are null and void and the same cannot at all be sustained and the same are hereby quashed".

14. Thus, I have no hesitation to hold that the proceeding in question in the suit is not such as is amenable for agitation before the Tahsildiar under S.42 of the amended Land Reforms Act and, as such it, cannot stand transferred to the Tahsildar under sub-sec. (3) of S. 91 of Act No. 1 of 1974, as amended by Act No.31 of 1974. The Civil Court did not lose its jurisdiction to decree the claim and the Civil Courts have rightly decreed the claim

15. The appeals by tenants, therefore, at RSA. Nos. 795 and 984 of 1975 are liable to be dismissed as devoid of merits and I dismiss the same. No costs of these appeals.

16. Adverting next to the appeals instituted by the landlord, it is the case of the landlord that under the lease deed, charge, had to be created on the lease-hold properties mentioned in "A" schedule to the plaint. It is no doubt true that when the decree came to be passed by the trial Court on 17.8.1970, charge was created against the leasehold properties also. But, when the appeals were pending before the learned Civil Judge, Act, No.1 of 1974 came into force and under S. 44 of the said Act, all lease-hold properties vested in the Government free from all encumbrances.

17. Sub-sec. (2) (a) of S. 44 of the Amended Act reads:

"all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State; Government free from all encumbrances;"

18. That being so, the learned District Judge, was perfectly justified in deleting the charge on "A" schedule properties, which by that time had already vested in the Government free from all encumbrances. Hence, the two appeals filed by the landlord are also liable to be dismissed as devoid of merits and I dismiss the same. They are RSA. Nos. 702 and 717 of 1975. There shall be no order as to costs of these appeals.