

(2006) 07 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 32607 of 1997

Mallappa and Ramesh

APPELLANT

Vs

State of Karnataka and Smt. Saidanabi

RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 133, 2 (11), 48 A

Citation : (2006) ILR (Kar) 3610 : (2007) 4 KarLJ 503

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Mahesh Wodeyar, for the Appellant; Ramesh B. Anneppannavar GA - for R-1 and 2 and G. Shannthappa for R3, for the Respondent

Judgement

Ram Mohad Reddy, J.—The Petitioners' father by name Basavanneppa Kabanur and the father of respondent No. 3 are said to be brothers. Father of respondent No. 3 filed a declaration in form No. 7 - Annexure A u/s 48-A of the Karnataka Land Reforms Act, 1961, (for short the Act) for being registered as an occupant of land measuring 2 acres in S.No. 42/3 of Kalkatte village, Shiggaon Taluk. Haveri District, being a member of the joint family consisting of himself and his brother Basavanneppa Kalappa Kabanur. During the pendency of the proceeding, before the Land Tribunal the declarant died and his son, the respondent No. 3, herein, the legal representative, was brought on record. The father of the petitioners, by way of abundant caution, filed a representation dated 8.10.97 Annexure - D, requesting the Land Tribunal to consider the grant of occupancy rights jointly in favour of the declarant as well as himself. It is alleged that the Land Tribunal without reference to either the statement made in column No. 8 of the declaration Annexure - A or the representation Annexure - D passed the order impugned granting occupancy rights in favour of the legal representative of the deceased Fakirappa Kabanur, the lather of respondent No. 3. Hence this Writ Petition.

2. The petition is opposed by filing statement of objections dated 5.12.1997 of

respondent No. 3, interalia contending that the father of the petitioners and the declarant, though brothers, had separated long before the filing of form No. 7 and that the mere mention in column 8 of the declaration is insufficient to establish joint tenancy. In addition, it is contended that the petitioners having instituted OS 177/94 (Old No. 78/91), for partition, which is suppressed, coupled with the fact that the Land Tribunal has no jurisdiction to try the issue, as to whether the tenancy was claimed on behalf of the joint family, the writ petition is not maintainable.

3. Learned Counsel for the petitioners contends that the Land Tribunal fell in error in not noticing the statement made in column No. 8 of the declaration that the declarant Fakirappa, as a member of the joint family and his brother by name Basavanneppa i.e, the father of the petitioners, had together cultivated the lands in question. According to the learned Counsel, the explanation 11 to Section 2(11) of the Act provides that "to cultivate personally" is deemed cultivation by a member of a joint family and the Tribunal ought to consider the question as to whether the cultivation of the land was done by the declarant or jointly along with his brother Basavanneppa, on the material placed on record. Learned Counsel would hasten to add that such a question is beyond the jurisdiction of the civil court and hence, the order impugned suffers from the vice of failure to exercise a jurisdiction vested in the Tribunal, tantamounting to denial of justice.

4. There is considerable force in the submission of Sri. Mahesh Wodeyar, learned Counsel for the petitioner. The term "to cultivate personally" is defined in Section 2(11) of the Act which means to cultivate land on one's own account -

(i) by one's own labour; or

(ii) by the labour of any member of one's family or,

(ii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family.

Explanation II to the said definition stipulates that in case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

5. The inference is, in order to confer occupancy rights in favour of the joint family, the law does not require that every member of the joint family should cultivate the lands personally. If one member of the joint family cultivates the land and if such cultivation is on behalf of his family, the said benefit should enure to all the members of the said family. The term "joint family" is defined under the Act to mean 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.

6. Having regard to the aforesaid statutory provisions, it is for the Land Tribunal

which is competent to enquire into the question as to whether the cultivation of the land by the declarant is as a member of a joint family on behalf of the family or exclusively by the declarant, on the basis of the material on record. The Land Tribunal is invested with the statutory duty to determine the disputed question which is ancillary and incidental to the main question which the Land Tribunal is called upon to decide ie. whether the declarant is a tenant of the land in question on the appointed date.

7. The order of the Land Tribunal makes no reference to the declaration Annexure - A more appropriately column No. 8, wherein Fakirappa stated that the land is jointly cultivated by himself and his brother Basavennappa i.e. the father of petitioners. In the admitted fact that the declarant and Basavennappa were brothers, the Land Tribunal was bound by law to determine the question as to whether the cultivation of the land was by both Fakirappa and his brother Basavennappa, as members belonging to the Hindu joint family. The petitioners are justified in contending that the Land Tribunal should have answered the question as to whether Basavennappa was also cultivating the lands along with his brother Fakirappa the declarant, The jurisdiction to decide the question as to who was the cultivator of the lands in question on the appointed date is that of the Land Tribunal and not the civil court, in a suit for partition, more so, when the 3rd respondent asserts that the declarant was the cultivator and not jointly with the father of the petitioners, or as a member of the joint family. The institution of the suit by the petitioners cannot denude the Tribunal of its statutory jurisdiction, nor invest a jurisdiction in the civil court It is needless to point out that u/s 133 of the Act, the civil court before which the question of tenancy is raised, has to refer the question to the Land Tribunal for adjudication. The contention of the 3rd respondent that it is for the civil court to decide the said question as the petitioners have instituted OS 177/94 (Old No. 78/91) on the file of the civil court, Shiggaon, is but a specious plea.

8. The order impugned does not animate consideration of the said question, hence suffers from the vice of failure to exercise a jurisdiction vested in the Tribunal, occasioning grave miscarriage of justice, calling for interference.

In the circumstances, the Writ Petition is allowed in part. The order dated 29.10.97 Annexure - F of the Land Tribunal in so far as it grants occupancy rights in favour of the Legal heirs of deceased declarant Fakirappa, is quashed and the proceeding remitted with a direction to consider and pass a considered order by discussing the evidence, assigning reasons, recording findings and conclusions over the question as to whether the lands were cultivated by the declarant in his individual capacity or as a member of the joint family or by both the declarant and his brother Basavennappa jointly, after extending reasonable opportunities to the parties to adduce evidence, and put forth their say.