

(1979) 04 KAR CK 0002
In the Karnataka High Court
Case No : WP 4004/76

Mallappa Bhimanna

APPELLANT

Vs

Land Tribunal, Sindagi and Others

RESPONDENT

Date of Decision : 06-04-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a
Transfer of Property Act, 1882 — Section 54

Citation : (1979) 2 KarLJ 218

Hon'ble Judges : Chandrashekhar, C.J.;Puttaswamy, J

Judgement

Puttaswamy, J.-On a reference made by Venkatesh, J. this writ petition is posted before us for disposal.

2. On 21-8-1974, the petitioner filed an application under S. 48A(1) of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the LR. Act") in Form No. 7 before the Land Tribunal, Sindgi, (hereinafter referred to as "the Tribunal" , praying for conferment of occupancy rights in the land bearing S. No 512, measuring 9 acres and 15 guntas, situated in Devanagaon village, Sindgi Taluk, Bijapur District. In his application, the petitioner asserted that he was cultivating the land from 1964-65 as a tenant of respondent No. 2. As required by Rule 19 of the Karnataka Land Reforms Rules, 1974, the Tahsildar, on verification of the particulars mentioned in the application with reference to the entries in the Record of Rights, stated that the petitioner was cultivating the land from 1964-65 and was therefore entitled for grant of occupancy rights over the land. On the overleaf of the application, the Tahsildar has appended a Note as under:

x x x x

3. The Tribunal, by its order dated 22-4-1976, rejected the application of the petitioner principally on the ground that in view of the agreement to sell, the leasehold or tenancy rights stood extinguished or merged and therefore he was not entitled for conferment of occupancy rights. In this petition under Art. 226 of

the Constitution, the petitioner has challenged the above order of the Tribunal (Ext. C).

4. Apart from alluding to the above facts, the petitioner has asserted that he entered possession of the land under a lease deed dated 24-3-1964 and that even after the expiry of the period of lease specified in that deed, he also continued to be in possession of the same as a tenant of respondent No. 2. He has averred that on 6-6-1966 respondent No. 2 under a written agreement to sell of that date, agreed to sell the land for a sum of Rs. 10,200 land has received the amounts specified therein and has not executed a sale deed in his favour, but, has executed a sale deed in favour of respondent No. 3. He has referred to the suit filed by him in O.S. No. 9 of 1968 on the file of the Civil Judge for specific performance of the agreement to sell and for an injunction. Respondent Nos. 1 and 2 despite service of notice, have not entered appearance and have not denied the allegations made by the petitioner. But respondent No. 3 has resisted the claim of the petitioner. In his statement of objections, respondent No. 3 has averred that the petitioner has not been cultivating the land as a tenant of respondent No. 2 either under the lease deed dated 24-3-1964 or thereafter. He has pleaded that the petitioner is in possession of the land under the agreement to sell (Ext. R 2) and has therefore supported the view taken by the Tribunal.

5. Shri J.S. Antin, learned counsel for the petitioner, contended that the view taken by the Tribunal that the leasehold rights or the tenancy rights of the petitioner over the land, stood extinguished or merged on the execution of the agreement to sell and therefore he was not entitled for conferment of occupancy rights is illegal.

6. Shri V.T. Raya Reddy, learned counsel for respondent No. 3, sought to support the order of the Tribunal. He strongly relied on the ruling of the Madras High Court in Annamalai Goundan v. Venkatasami Naidu, AIR 1959 Mad. 354.

7. Before examining the legal contention, it is useful to notice the findings of fact recorded by the Tribunal in the case. On a consideration of the oral and documentary evidence, the Tribunal has held that the petitioner was in possession and had been cultivating the land from 1964-65 onwards and also on the material date viz., 1-3-1974. The Tribunal has also accepted the case of the petitioner that he had entered the land under the lease deed dated 24-3-1964 executed by respondent No. 2 who was the owner of the land. According to the Tribunal, on the execution of the agreement to sell dated 6-6-1966 (Ext. R 2), the leasehold rights or tenancy rights had merged in the sale effected in his favour and therefore he could not be considered as a tenant cultivating the land on 1-3-1974.

8. Sec. 54 of the Transfer of Property Act defines "Sale" as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. That section also defines "contract for sale of immoveable property"

as a contract that a sale of such property shall take place on terms settled between the parties. Thus there is a clear distinction between a sale and a contract for sale. While a sale brings about a transfer of ownership of the property, a contract for sale does not of itself do so, nor does it create any interest in, or charge on, such property.

9. The learned counsel for respondent No. 3 strongly relied on the decision in Annamalai Goundan's case, AIR 1959 Mad. 354. There the first respondent who was the owner of certain lands, had leased them to the petitioner under a lease deed dated 19-11-1952. According to the terms of that deed, the lease expired on 18-11-1954. The 1st respondent made an application for eviction of the petitioner on the ground that the latter was in arrears of rent. The defence set up by petitioner was that in May, 1955 i.e., some time after the expiry of the lease period, a registered agreement was entered into between the parties whereby the 1st respondent agreed to sell leased properties to the petitioner. It was not disputed that a part of the consideration for the sale, had been paid by the petitioner and that he had also tendered the balance price due to the 1st respondent who improperly refused to accept it and to execute the sale deed. Before the Assistant Collector, the petitioner pleaded that he no longer remained in possession as a tenant and therefore the application for eviction was not maintainable. The Assistant Collector rejected that contention on the ground that the registered agreement for conveyance did not create an interest in the lands which entitled the petitioner to remain in possession. The Assistant Collector held that the petitioner continued to be a tenant of the lands even though the term of the lease had expired and therefore it was not competent for him to resist the application for eviction on the ground that he had acquired a new right for possession of the lands under an agreement for conveyance. While reversing the decision of the Assistant Collector, Ganapatia Pillai, J. observed:

"... It is obvious that, till the contract of sale was entered into, the petitioner only occupied the position of lessee. But, after the date of the contract and after it was performed in part by consideration being paid for the contract and the landlord allowing the tenant to remain in possession by reason of the new status created under the contract, it was no longer open to the landlord to contend that the right of possession claimed by the petitioner was referable to the contract of lease. There can be no doubt in this case that the conditions laid down in S. 53-A of the Transfer of Property Act are fulfilled even though a contract to sell alone was obtained..... the moment possession is taken or continued under the contract of sale, the original relationship of landlord and tenant ceases to exist.

10. While we are in respectful agreement with the ultimate conclusion reached by his Lordship, namely, that the petitioner therein could not be evicted as he could retain possession under S. 53-A of the Transfer of Property Act, we find it difficult to agree with the view taken by his Lordship that the moment possession is taken or continued under a contract of sale, the relationship of landlord and tenant ceased to exist.

11. In *Chambala v. Sumitramma*, (1972) 2 Mys.L.J. 242 Venkataswami, J. was inclined to agree with the view taken by Ganapatia Pillai, J. But, his Lordship did not permit the appellant-tenant there to raise a contention that he could continue to be in possession of the land in dispute though he did not complete the transaction of sale thereof by paying the balance of the consideration for the sale in pursuance of the agreement to sell. Thus, there was no final expression of opinion by his Lordship on this question.

12. In *Ranga Rao Rama Rao Deshpande v. Channappa Basappa*, (1974) 2 Kar.LJ. 208, Sadanandaswamy, J. (as he then was), said that if during the continuance of a lease the lessee enters into an agreement with the lessor for purchase of the demised premises, the right of the lessee under the lease does not merge with the right that he may have acquired under such agreement of sale. The same view was taken by Lodha, J. (as he then was), in *Banshilal v. Noor Mohamad*, AIR. 1970 Raj. 244. His Lordship observed that a lease cannot be said to have been determined merely by execution of an agreement to sell as it is well known that by mere execution of an agreement to sell, there is no transfer of interest in the property. We are in agreement with the views expressed in these cases.

13. In the present case, the lease executed by respondent No. 2 in favour of the petitioner on 24-3-1964 was a valid lease. By a series of enactments made by the Legislature commencing from the Karnataka Tenants Temporary Protection from Eviction Act, 1961 culminating in the L.R. Act, the rights of the tenants to continue in occupation of the leasehold agricultural lands have been protected and therefore the petitioner has continued to be in possession of the land as a tenant of respondent No. 2 as on 1-3-1974 which is also the finding of fact recorded by the Tribunal. Before the Tribunal, the only legal contention that was urged by respondent Nos. 2 and 3 was that the leasehold rights or tenancy rights had merged on the execution of the agreement to sell dated 6-6-1966 which we have found to be not legally sustainable. Except for this, respondents Nos. 2 and 3 did not raise any other objection that requires to be investigated and decided by the Land Tribunal for granting occupancy rights to the petitioner. For these reasons, we are of the opinion, rejection by the Tribunal of the claim of the petitioner for being registered as occupant was manifestly erroneous. We, therefore, allow the petition, quash the order dated 22-4-1976 of the Land Tribunal in Case No. KLR. SR. 19, and remit the case to the Land Tribunal to decide it afresh in accordance with law and in the light of our above observations.

14. The rule issued is made absolute.

15. In the circumstances of the case, we direct the parties to bear their own costs.