

(2003) 08 KAR CK 0020

In the Karnataka High Court

Case No : L.R.R.P. No. 610 of 1990 & Land Reforms Revision Petition No. 1610 of 1990

Marinayaka

APPELLANT

Vs

Syed Badruddin and Others

RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 45

Citation : (2003) ILR (Kar) 3690 : (2003) 4 KCCR 2801

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant; Bychappa, HCGP for Respondents 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

Srinivasa Reddy, J.—This revision can be disposed of on a pure question of law without going into the merits of the matter.

2. For the sake of convenience, the parties are referred to in the course of this order with reference to their rank before the appellate authority.

3. Syed Badruddin and Syed Ibrahim, the appellants before the Land Reform Appellate Authority challenged the order of the Land Tribunal, Mysore in KLRM No. 2406/74-75 and 2401/74-75 dated 15.3.1984 under which the Tribunal had granted occupancy rights over an area of 1 acre and 11-1/2 cents each in Sy. No 39 of Veeranagere village in favour of Syed Asthak Peer and Kulle Gowda respectively u/s 45 of the Karnataka Land Reforms Act. Sy. No. 39 of Veeranagere village originally belonged to one Jainulla Sab, the great grandfather of the appellants and after his death the appellants have been enjoying the said land without dividing the same. The appellants learnt that respondents 6 and 7 had filed applications before the Land Tribunal claiming occupancy rights over the said survey number and later they learnt that the impugned order was

passed without the knowledge of the appellants. The lands were also the subject of acquisition by the first respondent - State and the award was passed on or about 6.11.1976 and the compensation amount was ordered to be paid to the eighth respondent - Bibijan for payment to the appellants and their cousins. But, the compensation amount is not being claimed by respondents 6 and 7 on the ground that they are the tenants of the lands in question. The conferment of occupancy rights in their favour was challenged by them on several grounds. During the pendency of the appeal before the Appellate Tribunal the second appellant Syed Ibrahim died. The L.Rs of Syed Ibrahim were not brought on record before the Appellate Tribunal but the Appellate Tribunal proceeded with the appeal and allowed it. Being aggrieved by the said order, Respondent No. 6 Marinayaka has presented this revision,

4. I have heard the learned Counsel for the petitioner and the learned Government Pleader, Though Court notices were served on the remaining respondent, they have remained absent.

5. The main contention of learned Counsel Sri M. Papanna is that the death of one of the appellants in a single appeal filed by them would result in abatement of the appeal and the Appellate Tribunal had no power to proceed with the appeal and decide it on merits when the appeal itself was presented by the appellants on a common ground.

6. The question that arises for consideration in this revision is whether the Appellate Tribunal was right in proceeding with the appeal and allowing it despite the death of one of the appellants.

7. The appellants filed a single appeal against the order of the Land Tribunal, Mysore granting occupancy rights in favour of the petitioner and seventh respondent Kulle Gowda on the common ground that they are the joint owners of the lands in question having inherited the same from their great grand-father Jainulla Sab and that they had no notice of the proceedings before Tribunal. The common issue before the Appellate Tribunal was whether the claim of the appellants before it for setting aside the order of the Tribunal on the basis of their ownership and non-receipt of notice was sustainable. The appellants claimed to be joint owners having undivided equal share in the petition lands. In determining this issue the Appellate Tribunal also took note of the death of the second appellant but still proceeded to allow the appeal and set aside the order of the Tribunal. This aspect of the death of the second appellant and its effect on the proceedings was dealt with by the Appellate Tribunal in paragraph 19 of its order in the following terms:

"No doubt, the Legal Representative of the second appellant was not brought on record, but on this ground alone we cannot reject the appeal since the 1st appellant is also a person interested over the land in dispute".

Order XXII, Rule 3 C.P.C. lays down the procedure to be followed by the Court in the event of death of one of several plaintiffs or of sole plaintiff. The Rule reads:

"3. Procedure in case of death of one of several plaintiffs or of sole plaintiff - (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under Sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

The above rule is made applicable to appeals also by Rule 11. Rule 11 reads:

"11. Application of Order to appeals - In the application of this Order to appeals, so far as may be, the word "plaintiff shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal".

The procedure adopted by the Appellate Tribunal is contrary to the above rules. Clearly, the Appellate Tribunal was at error in proceeding with the appeal because the appeal of Syed Ibrahim abated since the legal representatives to his estate have not been impleaded and the record of the common appeal became defective.

The Appellate Tribunal had no power to proceed with the defective appeal and to reverse the order of the Land Tribunal when it proceeded to determine the appeal on the ground of joint ownership urged by the appellants which claim was common to both appellants. The say of the legal representatives of Syed Ibrahim was necessarily to be heard by the Appellate Tribunal before it could have set aside the order of the Land Tribunal in entirety. Without doubt the Tribunal could not have passed any order in favour of a dead person. Similar question arose before the Apex Court in a batch of appeals in *Badni (Dead) by L.Rs. and Others, Etc. Etc. Vs. Siri Chand (Dead) by L.Rs. and Others, Etc.*, The Apex Court having dealt with the issue, observed:

"6. We have considered the rival submissions and we are of the view that the High Court was right in coming to the conclusion that the decree was based on a common issue against the appellants in all the six R.S.As and the failure to bring the legal representatives of one of the deceased - appellants in one R.S.A. will result in abatement of other appeals. Otherwise there will be conflicting decrees in the event of other R.S.As being allowed on merits, which cannot be allowed."

To similar effect is the ratio laid down by the Apex Court reported in *SRI CHAND AND ORS. v. JAGDISH PERSHAD KISHAN CHAND AND ORS.* AIR 1966 sc 1427 :

"An appellate Court has no power to proceed with an appeal and to reverse and vary the decree in favour of all the plaintiffs or defendants under Order 41, Rule 4 when the decree proceeds on a ground common to all the plaintiffs or

defendants, if all the plaintiffs or the defendants appeal from the decree and any of them dies and the appeal abates so far as he is concerned. Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others, , Ref. to".

If this be the position in law in regard to connected appeals, the position in respect of a single appeal filed by more than one appellant one of whom died during the pendency of the appeal would be still worse, as in the event of death of one of the appellants the appeal in its entirety could not be proceeded with at all because the appeal urged a common cause which cannot be bifurcated and determined separately while granting relief. The appellants will have to either succeed or fail together because the case set up by them before the Appellate Tribunal is not distinct and separate. Therefore, the revision has to succeed.

8. In view of the above, the revision is allowed and the impugned order passed by the Appellate Tribunal is set aside. The appeal filed before the Appellate Tribunal is dismissed as having abated. However, in the circumstances of the case, I reserve the right to Syed Badruddin, the first appellant before the Appellate Tribunal, and the L.Rs of Syed Ibrahim to avail off whatever remedy that may be open to them in law, especially in the light of the fact that the Appellate Authority is, as of now, abolished.