

(2003) 08 KAR CK 0103

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 6439 of 1988

M.C. Cherian (Dead) by L.Rs

APPELLANT

Vs

Mahant P. Krishnananda Giri Goswamy and Others

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121 A, 132, 133, 2 (A) (3), 48 A (1)

Citation : (2004) 1 KarLJ 125 : (2003) 4 KCCR 332 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : A.Y.N. Gupta, Padubidri Raghavendra Rao, in I.A. No. VII, T. Ananth Murthy, in I.A. No. V, Ravi B. Naik and S.M. Babu, in I.A. No. VI, for the Appellant; J. Nagaraj, A.G.A. for Respondents-2 and 5 and N.V. Rajagopal, for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The lands involved in this case are Sy. Nos. 48 and 51 to 54, in all measuring 16 acres 16 guntas situated in Karimanti Village, Belagola Hobli, Srirangapatna Taluk, Mandya District. The lands belong to the first respondent-Mahant P. Krishnanda Giri Goswamy, who is hereinafter referred to as "Landlord". It is the case of the landlord that the lands in question were not cultivated and were fallow for several years and therefore with a view to bring the lands under cultivation, by management karar agreement dated 25-12-1964 the lands were given to one M.C. Cherian, the father of the petitioners, hereinafter referred to as "the applicant" on certain terms and conditions enumerated in the said agreement. The relevant portions of the agreement will be referred to in due course. The agreement was terminable by six months notice by either of the parties. According to the landlord pursuant to the agreement, the applicant got the lands cultivated as Manager strictly in accordance with the terms and conditions enumerated therein.

2. In the year 1971 the landlord filed suit in O.S. No. 32 of 1971 before the

Munsiff Court against the applicant for grant of judgment and decree for possession of the lands, injunction and other reliefs by urging various averments in the plaint. The applicant filed written statement inter alia contending that he is the tenant of the lands in question. On the basis of the pleadings of the parties in the original suit, the Civil Court framed issues. Issue No. (1) framed was.--

"(1) Whether the agreement dated 25-12-1964 operates as tenancy of the defendant under the plaintiff? or

Whether the defendant is in possession of the suit lands as an agent on behalf of the plaintiff as per agreement?"

The above issue was referred to the Land Tribunal for answering the same by recording its finding with reasons and the proceedings in the original suit were stayed in view of Sections 132 and 133 of the Karnataka Land Reforms Act, 1961 (in short "KLR Act") awaiting the finding from the Land Tribunal on the above referred issue.

3. The applicant filed Form 7 application u/s 48-A(1) of the KLR Act before the Land Tribunal, Srirangapatna, respondent 2 for grant of occupancy rights in respect of the lands in question. By an order dated 7-10-1977 the Land Tribunal after holding an enquiry u/s 48-A(2) of the Act read with Rule 17 of the KLR Rules after affording fair and reasonable opportunity to the parties has rejected the application at the first instance. The said order was set aside by this Court in W.P. No. 13984 of 1977 at the instance of the applicant and the matter was remanded to the Land Tribunal for reconsideration of the claim of the applicant. After conducting an enquiry, the Land Tribunal by its order dated 4-11-1981 again rejected the application holding that the lands in question are not tenanted one and that the applicant is not tenant. While doing so, it has answered the tenancy issue referred to it by the Civil Court against the applicant by passing an order with its reasons on application of facts and evidence on record. The same was challenged by the applicant in Writ Petition No. 10644 of 1982 before this Court urging various legal grounds. Later the writ petition was transmitted to the erstwhile Land Reforms Appellate Authority and treated as deemed appeal consequent upon providing appeal provision u/s 118A of the KLR Act by way of amendment by Act No. 18 of 1986 against the orders of the Land Tribunal. It was registered as LRA No. 189 of 1986 by the Mandya erstwhile Land Reforms Appellate Authority. By the order under revision dated 6-9-1988 the Appellate Authority dismissed the appeal after considering rival legal contentions urged on behalf of the parties by recording its concurrent findings with reasons. The legality and validity of the same is questioned in this land reforms revision petition on various grounds.

4. During the pendency of this revision petition the first respondent died. I.A. No. IV was filed stating the deceased first respondent has no legal representatives and to proceed with the matter as such. Thereafter, I.A. Nos. V and VI are filed to bring one Mr. Bhishma Pitamaha, claiming to be the brother of deceased first

respondent, as additional respondent. I.A. No. VII is also filed to implead one Mahant Sri K. Krishna Mohana Nandagiri Goswamy, the disciple of deceased first respondent. Objections are filed opposing all the applications referred to supra, inter alia contending that they are not entitled to come on record as claimed by them as they are neither the legal representatives and in law they are not entitled to come on record as respondents and therefore they cannot be allowed to come on record.

5. So far as I.A. No. IV is concerned, the same is rejected as the matter cannot be proceeded with without bringing someone in place of first respondent for hearing and passing an order on merits of the case. Having regard to the complexity of the matter and to safeguard the estate of the deceased first respondent, the matter cannot be treated as abated, as contended by Mr. Padubidri Raghavendra Rao, learned Counsel for deceased first respondent and the applicant in I.A. No. VII. As far as I.A. Nos. V, VI and VII for impleading applicants are concerned as additional respondents in place of the deceased first respondent, the applicants claim to have succeeded to the estate of deceased first respondent. The learned Counsel for the impleading applicant in I.A. No. VII placed reliance upon the judgments of the Supreme Court and the Madhya Pradesh High Court in *Sital Das Vs. Sant Ram and Others*, , *H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore*, Head Note (B) and *Swami Harbansa Chari Ji and Another Vs. State of Madhya Pradesh*, and contending that after the death of first respondent, the applicant has succeeded to the estate of deceased first respondent as his disciple and is the Matadhipathi of Tripura Bhairavi Mutt situated at Varnasi and Mysore. The other impleading applicants also placed reliance upon the various decisions and also produced documents in support of their claim to come on record as the legal representatives of the deceased 1st respondent. The merits of the above said applications are not decided by this Court in this proceeding as each one of them are claiming succession to the estate of the deceased 1st respondent. Their claims are kept open to be adjudicated by the competent Civil Court by getting themselves impleaded in the Original Suit No. 17 of 1978 before the Civil Judge (Senior Division), Srirangapatna, which is pending before the said Court. However, the learned Counsel appearing on behalf of impleading applicants have been heard on merits of this case.

6. Mr. A.Y.N. Gupta, learned Counsel for the petitioners contends that since first respondent embraced sanyasatwa in the eye of law it shall be treated as a civil death for him and he has no legal representatives to come on record in these proceedings. If, this contention is accepted, then the petitioners should not have made the first respondent as a party to this revision petition. On the other hand, the applicants in other interlocutory applications claim that they are the legal representatives of the deceased first respondent and they succeeded to his estate. It is a disputed question of fact which cannot be gone into by this Court in these proceedings. Since suit is already pending in the Civil Court, they are at

liberty to establish their respective claim and rights in the suit. Only for that limited purpose I.A. Nos. V, VI and VII are allowed so as to prosecute these proceedings. However, it is made clear that this Court has not decided their rights as claimed by them and they shall not construe that they have been recognised as the legal representatives of deceased first respondent. Right of succession as claimed by them in the interlocutory applications has to be established by them in the original suit by producing evidence in support of their claim. The learned Counsel for the petitioners is directed to amend the cause title of this revision petition.

7. The learned Counsels on both sides made vehement arguments placing reliance upon certain provisions of the KLR Act and number of decisions in support of their respective contentions. Learned Counsel for the applicant Mr. A.Y.N. Gupta placed strong reliance upon the agreement dated 25-12-1964 and also the decision of the Supreme Court in 1971 SCR 696 for harmonious interpretation of terms and conditions of the agreement to ascertain the intention of parties.

8. The crux of the matter lies on the terms and conditions agreement. It is argued by the learned Counsel Mr. A.Y.N. Gupta on behalf of the applicant that the same shall be construed as lease deed in respect of the lands in question having regard to the terms and conditions which are unambiguous. Therefore, he has contended that tenancy rights should have been granted to the applicant by the Land Tribunal.

9. The Land Tribunal on consideration of facts and evidence on record upon interpretation of the terms and conditions of the agreement has held that the lands are not tenanted and the applicant was not a tenant of the same. It is categorically held by it that the applicant was getting the lands cultivated as Manager pursuant to the terms and conditions of the agreement referred to supra which findings are concurred with by the Appellate Authority by recording its reasons. Therefore, this Court proceeds to examine the said findings with reference to the terms and conditions of the agreement entered between the parties.

10. The recitals and the terms and conditions of the agreement are relevant to resolve the real issue that has arisen in this case. For better understanding of the same, the relevant portions of the terms and conditions of the agreement are extracted hereunder to find out whether the impugned orders passed by the authorities below warrant interference by this Court u/s 121A of the Act.

11. In paragraph 2 of the agreement in unequivocal terms it is recited as under:--

"And whereas the above named first party is the absolute and full owner of the lands mentioned in the schedule below and whereas he intends to cultivate the land personally and raise crops therein and whereas the above named second party is agreeable to help the first party in the cultivation and management of the said lands to facilitate agricultural production".

From the above recitals the intention of the parties is clear that the landlord want to cultivate the lands personally and the applicant agreed to help in the cultivation and management of the lands. This is further clear from Clause 1 of the conditions of the agreement, which reads as under.--

"That both parties do help each other in the cultivation of the lands mentioned in the Schedule below and in all agricultural operations on the said lands to raise diverse crops therein".

(emphasis supplied)

Clause 2 of the agreement makes it crystal-clear that the applicant was entrusted with the supervision of cultivation of the lands and not as a tenant. The said clause reads thus.--

"That the second party does undertake to look after the management of the land and other agricultural operations to the best advantage of both".

(emphasis supplied)

For the supervision and cultivation of the lands, as per Clause 3(a) of the Management Karar, the applicant was entitled to the following.--

"3(a) That the first party is entitled to Two hundred Palla of fine paddy of hundred seers per pass out of the yield and 5% of the net profits every year and the balance after adjustments (sic mentioned as adjournments) towards costs of cultivation be taken as remuneration by the second party for managing the Farm".

(emphasis supplied)

From the above it is clear that the applicant was entitled to remuneration for managing and helping the landlord in cultivation of the lands in question. If, really the applicant was cultivating the lands personally in terms of the definition of Section 2(A)(3) of the KLR Act as tenant, he was not entitled to receive such remuneration as specifically mentioned in the above clause of the agreement.

12. The recitals of the agreement referred to supra are clear that there was no relationship of landlord and tenant between the parties in respect of the lands in question. The same is made further clear in Clause 8 of the agreement, which reads as under.--

"8. That it is further agreed and clearly understood between the contracting parties to this agreement that there is no relationship of landlord and tenant between them and that no tenancy is created between them either by this agreement or otherwise".

Thus, in the agreement itself it is made clear that there is no relationship of landlord and tenant. The terms and conditions of the agreement are binding on the parties and the applicant cannot seek to eschew Clause 8 of the agreement for claiming tenancy rights.

13. The parties have clearly understood the object and purpose of the agreement and the applicant had agreed to manage the cultivation of the lands by assisting the landlord. The entries in the pahanis stood in the name of the landlord. Therefore, the Land Tribunal after proper appreciation of the said entries which have presumptive value u/s 133 of the KLR Act of 1964 has held that the lands were not tenanted and that the applicant was not tenant of the lands in question. Accordingly, the Issue No. (1) referred to the Land Tribunal by the Civil Court in O.S. No. 17 of 1978 was answered against the applicant holding that the applicant is not a tenant and the lands are not tenanted lands. The Appellate Authority has rightly affirmed the same by concurring with the findings with valid and cogent reasons and proper reappreciation of facts and evidence on record. Hence, no interference with the impugned orders is called for in this case.

14. The orders of the Land Tribunal and Appellate Authority reveal that the applicant has not stepped into the witness-box before the Land Tribunal to prove his tenancy claim. On his behalf, his Power of Attorney Holder one Shivashankar gave evidence to establish the tenancy claim in respect of the lands in question. Whatever he has stated in his statement of evidence before the Tribunal is only a hearsay evidence and he had no personal knowledge regarding the facts of the case, agreement and the nature of cultivation of the lands in question by the applicant. He has categorically admitted in his evidence that the name of the landlord was entered in the pahanis from 1965 to 1968 and thereafter the applicant himself submitted application to the Tahsildar requesting to enter the name of the applicant in the revenue records after deleting the name of the landlord. As per Clause 6 of the agreement, the same was terminable by issuance of six months notice by either party, which was issued by the landlord through his Advocate as referred above. It is further stated that after the expiry of the period of agreement, the applicant had no right or interest in the lands in question. In accordance with the said clause, the agreement was terminated by the landlord by notice dated 12-3-1968. In view of the said termination of agreement, whatever relationship the applicant had with the landlord in respect of the management of the lands in question came to an end and therefore both the authorities have rightly answered the contentious points in favour of the landlord holding that the applicant is not a tenant of the same.

15. The applicant replied to the notice vide his reply notice dated 18-3-1968 stating that he is prepared to surrender the lands at any time to the deceased landlord, which would clearly establish the fact that he has not been cultivating the lands as a tenant. The agreement between the parties in respect of the lands was terminated by the applicant. Thereafter, the applicant had no right whatsoever upon the lands in question. Therefore, the Land Tribunal and the Appellate Authority have rightly rejected the tenancy claim of the applicant by recording their findings with valid and cogent reasons in answer to the contentious points on proper appreciation of facts and evidence on record, which findings are in conformity with the law laid down by this Court in the cases referred to supra upon which the learned Counsel for the landlord has rightly

placed reliance and the same will with all fours applicable to the facts of this case. On the other hand, none of the decisions and provisions of the Act upon which Mr. A.Y.N. Gupta has placed reliance will apply to the fact situation of the case on hand. The learned Counsel for the applicant is unable to point out that the finding of the authorities are erroneous and warrant interference. I am in full agreement with the concurrent findings and the reasons recorded in the impugned order by the authorities. Hence, no interference is warranted by this Court in exercise of this Court's revisional jurisdiction.

16. For the reasons stated above, the revision petition is dismissed with liberty to the impleaded applicants to prove their succession to the estate of deceased first respondent in the pending suit.