

(2013) 09 KAR CK 0399

In the Karnataka High Court

Case No : Writ Petition No's. 5432 and 6028 of 2012 (LR)

M.D. Mryutyunjaya

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) 6 KarLJ 631

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : R. Nagaraj, for the Appellant; T.P. Srinivas, Ld. Additional Government Advocate and Sri Jayakumar S. Patil, Ld. Senior Counsel, for the Respondent

Judgement

H. Billappa, J.—In these writ petitions under Article 226 of the Constitution of India, the petitioner has called in question, the order dated 18-4-2011, passed by the Land Tribunal, Tumkur, in Case Nos. HLRM 178, 179/1976-1977 vide Annexure-B. By the impugned order at Annexure-B, the Land Tribunal, Tumkur, has granted occupancy rights in favour of the second respondent in respect of Sy. No. 131 of Hebbur, Amanikere Village, measuring 1 acre 36 guntas.

2. Aggrieved by that, the petitioner has filed these writ petitions.

3. Briefly stated, the facts are:

The petitioner claims that he is the legatee under the Will executed by one Puttarevamma. Puttarevamma filed Form 7 on 26-12-1975 claiming occupancy rights in respect of Sy. No. 131 of Hebbur, Amanikere Village measuring 1 acre 36 guntas and Sy. No. 164 of Hebbur Village measuring 4 acres 7 guntas. The father of the second respondent also filed Form 7 in respect of Sy. No. 131 of Hebbur, Amanikere Village, measuring 1 acre 36 guntas. The application filed by the second respondent's father was rejected by order dated 27-2-1989. It was challenged in W.P. No. 25218 of 1993. The matter was remitted for fresh consideration. The parties were permitted to lead further evidence. Thereafter,

the parties have not led any evidence. By order dated 18-4-2011, the Land Tribunal, Tumkur, has granted occupancy rights in favour of the second respondent in respect of 1 acre 36 guntas of land in Sy. No. 131 of Hebbur, Amanikere Village. Therefore, these writ petitions.

4. The second respondent has filed statement of objections contending that Puttarevamma was utter stranger and she never cultivated the land as tenant. She was not a tenant. The RTC entries stand in the name of the second respondent's father. The Tribunal considering the material on record has rightly granted occupancy rights in favour of the second respondent. Therefore, the impugned order does not call for interference.

5. The learned Counsel for the petitioner contended that the impugned order cannot be sustained in law. He also submitted that in W.P. No. 25218 of 1993 this Court specifically remitted the matter to record further evidence and thereafter decide the matter. Thereafter, none of the parties led any evidence. Therefore, the Tribunal should have rejected the application. Instead of that, the Tribunal has granted occupancy rights in favour of the second respondent which is totally incorrect. Further he submitted that on 11-4-2003 the Counsel for the second respondent has taken time to address arguments on impleading application. The impleading application has been filed on 28-10-2002 by the petitioner. From 9-5-2003 to 26-9-2003, the case has been adjourned from time to time. No proceedings have taken place between 26-9-2003 and 8-2-2010. On 8-2-2010, the case has been adjourned to 15-2-2010. On 15-2-2010, the petitioner and his Counsel were present. The petitioner is shown as GPA holder of Puttarevamma. Thereafter, the matter has been adjourned from time to time. No specific order has been passed on IA for impleading or treating the petitioner as LR of the deceased Puttarevamma. Subsequently, the parties have filed their written arguments. On 28-2-2011, the written arguments of the second respondent has been filed. On 17-10-2011 the second respondent has produced RTC extracts. The petitioner has filed written arguments on 23-3-2011. Thereafter, the impugned order has been passed granting occupancy rights in favour of the second respondent which is totally incorrect. The impugned order has been passed in violation of the direction of this Court and without any opportunity to the petitioner. He also submitted that the Tribunal has failed to consider the evidence on record in proper perspective and therefore, the impugned order cannot be sustained in law.

6. As against this, the learned Counsel for the 2nd respondent submitted the impugned order does not call for interference. He also submitted that the Tribunal on proper consideration of the material on record has rightly granted occupancy rights in favour of the second respondent and therefore, the impugned order does not call for interference. He also submitted that the order sheet shows that the petitioner is treated as L.R. of the deceased Puttarevamma and he has filed his written submissions. He also submitted that the impugned order shows that the Tribunal has considered oral and documentary evidence.

Therefore, the impugned order does not call for interference.

7. The learned AGA submitted that the parties have submitted their written arguments and they have not led any evidence. The Tribunal considering the material on record has granted occupancy rights in favour of the second respondent and therefore, the impugned order does not call for interference.

8. I have carefully considered the submissions made by the learned Counsel for the parties.

9. The point that arises for my consideration is:

Whether the impugned order calls for interference?

10. It is relevant to note, Puttarevamma has filed Form 7 claiming occupancy rights in respect of Sy. No. 131 of Hebbur, Amanikere Village measuring 1 acre 36 guntas. Similarly, the second respondent's father has filed Form 7 claiming occupancy rights in respect of Sy. No. 131 of Hebbur, Amanikere Village measuring 1 acre 36 guntas. By order dated 27-2-1989, the claim of the second respondent's father has been rejected. Therefore, the second respondent's father has approached this Court in W.P. No. 25218 of 1993. This Court has remitted the matter with the following observation:

Having regard to the fact that the Land Reforms Appellate Authority found that the claim could not be adjudicated upon otherwise than by recording additional evidence and having regard to the fact that there is no equivalent authority which could continue the proceedings and record evidence and thereafter dispose the matter on merits, I am of the opinion that the order impugned deserves to be set aside and the matter is remitted to the Land Tribunal to record further evidence tendered by both the parties. Thereafter the matter may be disposed of on merits in accordance with Rule 17 of the Karnataka Land Reforms Rules, 1974.

11. It is clear, the matter has been remitted with a direction to record further evidence and decide the matter. After remand, on 28-10-2002, the petitioner has filed application to implead him as party to the proceedings on the ground that Puttarevamma has executed Will in his favour bequeathing her properties including the land in question. On 11-4-2003, the Counsel for the second respondent has taken time to address arguments. From 9-5-2003 to 26-9-2003 the case has been adjourned from time to time. Thereafter, from 26-9-2003 till 8-2-2010 no proceedings have taken place. The order sheet discloses that no order has been passed on the impleading application or treating the petitioner as L.R. of the deceased Puttarevamma. However, it is mentioned in the order sheet that the petitioner is GPA holder of Puttarevamma. On 9-7-2010 it is mentioned the petitioner is L.R. of Puttarevamma and also GPA holder of Puttarevamma. Subsequently, on 28-2-2012 the second respondent has filed written submissions. On 17-1-2011, the second respondent has produced RTC extracts. The petitioner has filed written submissions on 23-3-2011. Thereafter, the impugned order has been passed granting occupancy rights in favour of the

second respondent in respect of Sy. No. 131 of Hebbur, Amanikere Village, measuring 1 acre 36 guntas.

12. Perusal of the records indicate that no specific order has been passed on the impleading application or treating the petitioner as L.R. of the deceased Puttarevamma. This Court in W.P. No. 25218 of 1993 has remitted the matter to record further evidence and decide the matter. After remand, none of the parties have led any evidence. They have filed their written submissions. The second respondent has filed his written submissions and also produced RTC extracts. There was no opportunity to the petitioner to challenge the documents produced by the second respondent. The statement of Puttarevamma has been recorded on 27-12-1975. She has stated that she had filed Form 7 in respect of Sy. No. 131 and Sy. No. 164. She has produced 71 letters. The statement of the landlord also has been recorded on 27-12-1975. The landlord has stated that Puttarevamma was cultivating the land since 1966 and she was giving half share in the crops and Dallali Rangaiah was not cultivating the lands. He has also stated that he was writing letters. In the statement dated 9-3-1976 the landlord has stated that Dallali Rangaiah was the tenant since 1957 till 1965 and he was giving geni till 1963. Thereafter, he was not properly giving the geni. Therefore, in 1966 the geni was cancelled and he started cultivating the land. Perusal of the order sheet and the impugned order shows that no specific order has been passed permitting the petitioner to come on record as party or L.R. of the deceased Puttarevamma. There is no reference to the letters mentioned in the deposition of Puttarevamma. The evidence of the landlord has not been properly considered. Apart from this, the Tribunal has considered the documents produced by the second respondent without giving any opportunity to the petitioner. Therefore, in the circumstances, the matter requires reconsideration.

Accordingly, the writ petitions are allowed and the impugned order passed by the Land Tribunal, Tumkur, in Case Nos. HLRM 178, 179/1976-1977, dated 18-4-2011, is hereby quashed. The matter is remitted to the Land Tribunal, Tumkur, with a direction to reconsider the same in accordance with law, by giving opportunity to the parties and in the light of the observations made above.

By order dated 27-8-2013, Sri T.P. Srinivasa, the learned AGA was appointed to represent the estate of the deceased third respondent. As the matter is now disposed of, it is for the parties to move the Tribunal for necessary orders. The Tribunal shall dispose of the matter within six months from the date of its constitution.