

(2013) 09 KAR CK 0266
In the Karnataka High Court
Case No : Writ Petition No. 16164 of 2011 (LR)

N. Sadanand Bhat

APPELLANT

Vs

N. Jaya Sapaliga and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 2 KarLJ 515

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Judgement

H. Billappa, J.—In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has called in question, the order dated 11-3-2010, passed by the Land Tribunal, Mangalore Taluk, in Case No. LRT 1249/75-76 vide Annexure-E. By the impugned order at Annexure-E, the Land Tribunal, Mangalore Taluk, has granted occupancy rights in favour of the first respondent in respect of 15 guntas of land in Sy. No. 266/2 of Kadri Village.

2. Aggrieved by that, the petitioner has filed this writ petition.

3. Briefly stated the facts are:

Srinivas Kamat, the father of the second respondent executed Geni Chit in favour of Sri Venkataramana Bhat, the father of the petitioner in respect of Sy. No. 266/2 of Kadri Village measuring 72 cents. It is stated, the Sy. No. is wrongly shown as 266/1B in the Geni Chit. The extent is shown as 80 cents. But, the available land in Sy. No. 266/2 is 72 cents. Venkataramana Bhat continued to be the tenant in respect of the land in question. After his death, the petitioner continued to cultivate the land as tenant.

4. The father of the petitioner had filed Form 7 claiming occupancy rights in respect of the lands held by him including Sy. No. 266/2 measuring 72 cents. The father of the first respondent also had filed Form 7 claiming occupancy rights in respect of 15 cents of land in Sy. No. 266/2. It is stated, Venkataramana Bhat

had constructed a house in 15 cents of land in Sy. No. 266/2. He had leased it to Narayana Sapaliga, the father of the first respondent. Venkataramana Bhat had filed eviction petition in HRC No. 20 of 1977 against Narayana Sapaliga. He was not aware that Narayana Sapaliga had filed Form 7. The second respondent had filed RCOP No. 237/1964 before the District Munsiff and Rent Controller, Mangalore and did not succeed. Therefore, the second respondent developed enmity against Venkataramana Bhat.

5. The grant was made in favour of Venkataramana Bhat. Since Narayana Sapaliga had claimed a portion of land in Sy. No. 266/2, there was a rival claim in respect of 15 cents of land in Sy. No. 266/2. It was left open to be decided. The third respondent by order dated 19-8-1977 granted 15 cents of land in favour of Narayana Sapaliga. It was challenged by Venkataramana Bhat in W.P. No. 11775 of 1977. The matter was remitted for fresh consideration. By order dated 25-11-1987 occupancy rights were granted in favour of Narayana Sapaliga on the ground that the original landlord has consented for granting of occupancy rights. The appeal was filed in L.R.A.A. No. 08 of 1988. It was transferred and renumbered as W.P. No. 30268 of 1993. The matter was remitted for fresh consideration. Thereafter, by order dated 11-3-2010, the Tribunal has granted occupancy rights in favour of the first respondent in respect of 15 cents of land in Sy. No. 266/2 of Kadri Village. Therefore, this writ petition.

6. The learned Counsel for the petitioner contended that the impugned order cannot be sustained in law. He also submitted that the impugned order is not a speaking order. Further he submitted that the petitioner has produced Geni Chit, Geni receipts, rent recovery proceedings and other documents. The Tribunal has not considered the documents produced by the petitioner. He also submitted that the Geni Chit shows that 80 cents of land in Sy. No. 266/2 was leased in favour of the petitioner's father. In Form 7, the father of the first respondent has claimed 15 cents under Venkataramana Bhat. It is stated that the lease was oral. Without considering the documentary and oral evidence the impugned order has been passed. Therefore, the impugned order cannot be sustained in law.

7. As against this, the learned Counsel for the first respondent submitted that the impugned order does not call for interference. He also submitted that the Tribunal taking into consideration the Geni Chit and holding that the father of the first respondent was the tenant has granted occupancy rights and therefore, the impugned order does not call for interference. He also submitted that the claim is in respect of 15 cents of land in Sy. No. 266/2 of Kadri Village and therefore, the grant of occupancy rights in respect of Sy. No. 266/2 may be quashed as a whole and the Tribunal may be directed to re-consider the matter in respect of entire extent of 72 cents.

8. The learned AGA supported the impugned order and submitted that it does not call for interference.

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

the parties.

10. The point that arises for my consideration is:

Whether the impugned order calls for interference?

It is relevant to note, the petitioner's father has claimed 72 cents of land in Sy. No. 266/2 and the first respondent's father has claimed 15 cents in respect of Sy. No. 266/2. The petitioner's father has also claimed occupancy rights in respect of Sy. Nos. 35/7 and 35/8B. The Tribunal has granted occupancy rights in favour of the petitioner's father in respect of Sy. Nos. 35/7 and 35/8B and 57 cents in Sy. No. 266/2. That has become final. The dispute is with regard to 15 cents of land in Sy. No. 266/2 of Kadri Village. The petitioner contends that his father was the tenant. The first respondent contends that his father was the tenant. In Form 7, the father of the first respondent has claimed 15 cents. It is stated, he was tenant under Venkataramana Bhat and it was oral. The petitioner has produced Geni Chit. It is of the year 1940. The second respondent has produced Geni Chit in favour of the father of 1st respondent. The second respondent has initiated proceedings against the father of the petitioner in HRC No. 107 of 1973 for recovery of rents. The petitioner's father is shown as tenant in respect of 72 cents in Sy. No. 266/2. The petitioner has also produced geni receipts, rent recovery proceedings and other documents. The Tribunal by the impugned order has granted occupancy rights in favour of the first respondent in respect of 15 cents in Sy. No. 266/2 of Kadri Village. A perusal of the impugned order shows that the Tribunal has not considered the oral and documentary evidence. Without considering the oral and documentary evidence, the impugned order has been passed. The impugned order is not a speaking order. Therefore, the impugned order cannot be sustained in law. The matter requires reconsideration.

Accordingly, the writ petition is allowed and the impugned order at Annexure-E, dated 11-3-2010, passed by the Land Tribunal, Mangalore Taluk, is hereby quashed. The matter is remitted to the Land Tribunal, Mangalore Taluk, with a direction to reconsider the same, in accordance with law, by giving opportunity to the parties. The Tribunal shall dispose of the matter within four months from the date of its constitution.