

(2000) 07 KAR CK 0073

In the Karnataka High Court

Case No : Land Reforms Revision Petition Nos. 4381 of 1988 connected with
Land Reforms Revision Petition Nos. 4382, 4383, 4659, 5387, 5031
and 3553 of 1988

Nanjundaiah (Dead) by L.Rs

APPELLANT

Vs

Honnamma and Others

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121A

Citation : (2000) 7 KarLJ 700

Hon'ble Judges : S. R. Venkatesha Murthy, J

Judgement

1. These revision petitions seek to assail the order of the Land Reforms Appellate Authority, Mandya, dated 3rd June, 1988 by which the Land Reforms Appellate Authority conferred occupancy rights in favour of the appellant-late Nanjundegowda represented by his legal representatives in respect of lands in Anakanahalli village bearing Survey No. 51/1, measuring 2 guntas, Survey No. 35/2 measuring 27 guntas, Survey No. 49/1 measuring 37 guntas, Survey No. 50/3 measuring 1 acre 17 guntas, Survey No. 52/3 measuring 1 acre 32 guntas, Survey No. 71/1 measuring 1 acre 23 guntas, Survey No. 31/2A measuring 15 guntas and also in respect of land in Survey No. 13 of Milenahalli Village measuring 6 acres 5 guntas, Survey No. 75/1 of Honnenahalli Village measuring 7 acres, Survey No. 75/2(c) of Honnenahalli village measuring 18 guntas, Survey No. 81/C of the same village measuring 5 acres 4 guntas.

2. Late Nanjundegowda sought occupancy rights in respect of the following lands:

Originally claimed Subsequently amended

Anakanahalli

Sy.No. Extent Survey No. Extent

35 0-27 35-1 0-02

49-1 0-32 35-2 0-27

50 1-17 49-1 0-37

52-3 1-32 50-3 1-17

71-1 1-23 52-3 1-32

31 0-20 71-1 1-23

64 0-13 31-2A 0-15

5 6-11 Milenahalli 12 1-33

41 7-37 13 6-05

Honnenahalli

75 4-07 75-1 7-00

13 6-02 75-2C 0-18

81-C 5-44

The claim of the Nanjundegowda was contested before the Land Tribunal. The Land Tribunal, after an elaborate enquiry, came to the conclusion that Nanjundegowda had failed to establish that he was a tenant in occupation of the lands on and around 1-3-1974 and rejected the application. The Land Reforms Appellate Authority, Mandya in LRA No. 174/86 allowed the appeal and conferred occupancy rights as aforesaid except in respect of 1 acre and 33 guntas of land in Survey No. 12 of Milenahalli Village and 13 guntas of land in Survey No. 64 of Anakanahalli village. Hence, these revisions.

3. The second respondent-Bala Lingaiah was the owner of the lands in question in respect of which Form 7 has been filed by late Nanjundegowda now represented by his legal representatives. One Javarappa had filed Form 7 in respect of the lands in question in the year 1975 against the late second respondent. On rejection of the application in Form 7 filed by Javarappa, he filed Writ Petition No. 4020 of 1980 challenging the order of the Land Tribunal and undisputedly, the said petition was dismissed on 4-12-1980. After the rejection of the application filed by Javarappa, the second respondent sold the lands claimed in Form 7 by Javarappa in favour of the petitioners herein. Meanwhile, the late first respondent had filed Form 7 as aforesaid in respect of the lands in question. The purchasers were impleaded as parties and they contested the claim of late Nanjundegowda on various grounds.

4. On 8-4-1991, the first respondent sought amendment of Form 7 alleging that there were discrepancies noticed at the time of the measurement of the lands and that the same required to be corrected. The application gave the details of the survey numbers originally mentioned in Form 7 and the amendment that was required.

35/2 0-27 Anakanahalli Honnenahalli

49/1 0-37 35/1 0-2 75/1 7-00

50/3 1-17 35/2 0-27 75/2C 0-18

52/3 1-32 49/1 0-37 81/C 5-4

71/1 1-23 50/3 1-17

31 0-20 52/3 1-32

64 0-13 71/1 1-23

81 7-37 31/2A 0-15

Milenahalli

75/1 6-33 12 1-33

75/2 4-7 13 0-05

On the same day, the Land Tribunal made an endorsement on the application as "accepted". Thereafter the Land Tribunal impleaded the purchasers as respondents 2 to 12 and having recorded the evidence, documentary as well as oral, came to the conclusion that the claim for occupancy made by first respondent herein was untenable and rejected the same. The first respondent-Nanjundegowda challenged the order of the Land Tribunal as aforesaid by filing Writ Petition No. 4924 of 1982. Consequent on the constitution of the Land Reforms Appellate Authority by amendment of the Karnataka Land Reforms Act, the writ petition was remitted to the Land Reforms Appellate Authority, Mandya for disposal in accordance with law. The Land Reforms Appellate Authority raised the following points for consideration:

1. Whether the lands in dispute are agricultural lands?
2. Whether the action of the Land Tribunal permitting amendment of Form 7 on 8-4-1981 by including the lands in Milenahalli and Honnenahalli was valid?
3. Whether the inclusion of Survey No..... of Milenahalli village in Form 7 by the amendment application dated 8-4-1981 was valid?
4. Whether the lands in question were tenanted or not on 1-3-1974?
5. Whether the appellant was in occupation as a tenant of the lands in question as on 1-3-1974?
6. Whether the order of the Land Tribunal was correct and whether it was liable to be interfered with?
5. The Land Tribunal found in favour of the appellant on all the points and allowed the appeal. Hence, these revisions.
6. It is not in dispute that the lands involved in these cases are agricultural

lands. The first respondent-late Nanjundegowda claimed occupancy rights in respect of the lands mentioned in Form 7 filed on the ground that he is a tenant. The basis for the first respondent's claim has been stated on the obverse of Form 7 filed by him and it is to the effect that his uncle Kallumaligegowda brought the claimant from Kenchanahalli to Anakanahalli where the lands are situated and built a house for him and settle him there promising to give the lands to him. Before doing so, Kallumaligegowda died. The first respondent's uncle is stated to have told him that he could improve the lands and make himself comfortable. After the death of Kallumaligegowda, his relatives K. Lakkegowda and N. Boaraiah who are residents of Neelagiri assured him that he could work on the lands and bring credit for the clan of the uncle. Believing such an assurance, the respondent improved the properties. Nevertheless, no document is made in his favour. The first respondent claimed that the Land Tribunal may adjudicate as to whether he was a tenant or not and save him from the fraud practised on him. This case of the first respondent was sought to be supported by a large number of documents produced by him. At the first instance, the Land Tribunal which examined all the papers, which are essentially correspondence between the first respondent and the owners of the lands, came to the conclusion that none of the documents supported a case of tenancy of the first respondent and rejected the same having noticed that one other person had earlier made a claim for occupancy rights and his claim was rejected and confirmed by the High Court in writ petition.

7. Before the Land Tribunal, it was sought to be contended for the first respondent herein, that in any event, the first respondent was in occupation of the land and was therefore to be regarded as a deemed tenant under Section 4 of the Karnataka Land Reforms Act, 1961. The Land Reforms Appellate Authority accepted this contention holding that since the first respondent was found in occupation of the land as can be seen from the voluminous correspondence between the parties, he should be deemed to be a tenant of the land. The Land Reforms Appellate Authority held that the application dated 8-4-1991 filed by the first respondent for amendment of the petition was partly valid and the claim so far as land in Survey No. 12 of Mailenahalli village could not be entertained and the claim was required to be rejected. So far as the other land was concerned, the names of the villages Mailenahalli and Honnenahalli being included by way of amendment was valid. Consequently, the Land Reforms Appellate Authority allowed the appeal, as aforesaid.

8. The points for consideration are:

(1) Whether the Land Reforms Appellate Authority was right in concluding that the amendment application dated 8-4-1981 was rightly allowed except to the extent indicated in the appellate order?

(2) Whether the dismissal of C.R.P. No. 3582 and C.R.P. No. 3553 of 1988 for non-prosecution and the dismissal of L.R.R.P. No. 1 of 1997 by challenging the impugned order constitutes *res judicata* as against the petitioners herein?

(3) Whether the order of the Land Reforms Appellate Authority can be legally sustained?

9. Point No. 1.-Form 7 filed by the late first respondent related to 11 items of land situated at Anakanahalli Village. The deceased first respondent filed an application on 8-4-1981 that after the survey of the land by the authority, a mistake in Form 7 were noticed, and therefore, there should be an amendment by correcting Form 7 by the lands identified in Form 7 and the amendment related not only to identity of the lands situated in Anakanahally village besides variation of the extents and inclusion of villages, in respect of certain of the lands that were mentioned in Form 7. On the day, the application was filed, the Land Tribunal made an endorsement on the application itself to the effect "accepted". Thereafter the petitioners herein and other alienees were impleaded as parties to the proceedings. Before the Land Reforms Appellate Authority, the alienees contended that the Land Tribunal had no jurisdiction to entertain the application for amendment of Form 7 and the Land Tribunal could not have allowed the same, much less without hearing any of the parties to the proceedings, including the owner who had been impleaded as a party. The Land Reforms Appellate Authority sought to make a distinction that in respect of Survey No. 13 mentioned in Form 7, only the name of the Village was sought to be substituted and in respect of other lands, the extents were sought to be corrected. But so far as Survey No. 12 of Mailenahalli village is concerned, the land not having been mentioned in Form 7, the amendment could not be permitted and proceeded to affirm the rejection of the claim of the deceased first respondent regarding Survey No. 12 of Mailenahalli village. This rejection by the Land Reforms Appellate Authority has not been questioned by the respondent and has become conclusive.

10. By a series of decisions of this Court, it has been held that an application to amend Form 7 could be exercised only if an application is made on or before 30-6-1979, the last date for receipt of applications in Form 7 for conferment of occupancy rights. The Division Bench of this Court in Pakeera Moolya v K.R. Mari Bhat, 1994(3) Kar. L.J. 281 (DB), in Para 9 of the judgment, has observed as follows.-

"9. It is no doubt true that tenants and landlords who reside in rural areas may not be fully aware of particulars of land entered in revenue records. The time for filing applications was extended by five years from 1-3-1974 to 30-6-1979 and by which time there was at least one round of litigation of another and enough time to find out particulars of lands thereof. The argument of ignorance of litigants therefore does not appeal to us because for a person of diligence five years is a very long period to set right all discrepancies of substantial nature. Although in an application several items of lands may be included claiming occupancy rights, the claim in respect of each one of the lands mentioned therein is a separate claim. Understood thus, a claim must be made in respect of a land that he is a tenant and seek for registration of occupancy rights in his favour. If

any land is omitted in the original application and after the expiry of the period of limitation it will not be permissible to amend such an application to include new item of land is very clear because that would amount to making a new claim in respect of a new item. If any claim had been made in respect of any land which is identifiable any discrepancy in the application is in regard to description of a property, amendment may be made so that the property can be easily recognised. Making new claim in respect of a new item of land is introducing new cause of action as is ordinarily understood. Indeed, the scope of amendment of pleadings in such cases has been succinctly explained by the Supreme Court in *A.K. Gupta and Sons Limited v Damodar Valley Corporation*, AIR 1967 SC 96, that the expressions "cause of action" in that context does not mean every fact which is material to be proved to entitle the plaintiff to succeed. The expression only means a new claim made on a new basis constituted by new facts. In the present case where claims have been made in respect of certain items of land which are not part of the original application at all must be treated new claims giving rise to new cause of action and such a course is not permissible at all particularly in the light of Section 48-A(8) of the Act. With respect we agree with the view expressed in *Seethadevi v Narayana Kamath and Others*, 1987(2) Kar. L.J. 89 (DB): ILR 1987 Kar. 1779 (DB) and there is no reason to make a departure from that view expressed by this Court earlier. The consent of a party also cannot confer jurisdiction on the Tribunal. When the Tribunal could not adjudicate on the claim of tenant in respect of certain lands as not having formed part of original claim and amendment carried out after expiry of period of limitation to make claims, no grant could be made in that regard. The Tribunal exceeded its jurisdiction in granting amendment of Form 7 in regard to lands comprised in Survey Numbers 13/3 and 13/2C measuring 5 cents and 2 cents. The order made by the Tribunal in regard to lands comprised in Survey Numbers 13/3, 13/2C, 33/2 and 33/3, 13/2A shall stand quashed. In other respects the order of the Tribunal cannot be disturbed".

In *R. Krishnaswamy Rao v Lakshmaiah Setty*, 1989(3) Kar. L.J. 440, this Court examined the question as to whether an application seeking to amend Form 7 by including fresh area, though in the same survey number, amounts to a fresh claim and is not entertainable. It is clear, therefore, that after 30-6-1979, the applicant who files Form 7 has a very very limited right to seek an amendment of Form 7 and that right does not cover inclusion of any extent of land not already included or to include a land in another village not already included in Form 7. It is clear that the Land Tribunal did not have jurisdiction to entertain the petition by including the lands in different villages by way of amendment. The finding recorded by the Land Reforms Appellate Authority that the amendment was valid to the extent found by it is clearly not tenable. So far as the lands in Honnenahalli Village is concerned, they were all newly added. It was impermissible for the Land Tribunal or the Land Reforms Appellate Authority to examine the case of the first respondent for occupancy rights at all.

11. So far as Survey No. 35/1 of Anakanahalli Village is concerned, relating to 2

guntas of land, there was no claim made at the first instance and therefore, it could not have been entertained by the Land Tribunal. So far as Survey No. 35/2 is concerned, in the original petition, the extent is mentioned as Survey No. 35 measuring 27 guntas and even without an amendment, the claim could have been examined. So far as Survey No. 49/1 is concerned, the claim made by the first respondent related to 32 guntas only and that is the only extent to which the claim could have been entertained by the Land Tribunal and not to the extent of 37 guntas as sought to be amended. So far as Survey No. 50/3 is concerned, the extent in Form 7 was mentioned in the original application as measuring 1 acre 17 guntas. The petitioner however, restricted his claim to 15 guntas in Survey No. 31/2A. In respect of lands in Mailenahalli and Honnenahalli villages, there were no claim made at all and therefore, the Land Tribunal could not have entertained the amendment application in relation to the lands in Mailenahalli and Honnenahalli villages. As observed in Pakeera Moolya case, even consent could not have conferred jurisdiction on the Land Tribunal to examine claims for occupancy rights in respect of lands not included in Form 7. In respect of the lands in Survey Nos. 41, 75 and 13 of Anakanahalli Village, the first respondent subsequently gave up the same and in respect of those lands, there is no question of the first respondent seeking occupancy rights. Even in respect of Survey No. 13 of Mailenahally village, no claim could be entertained for the extent of land as sought to be incorporated by way of amendment did not tally with Survey No. 13 of Anakanahally village as originally claimed in Form 7. Apparently no explanation was offered by the first respondent as to how Survey No. 13 of Anakanahally village and survey No. 13 of Mailenahally Village related to the same land i.e., the land as per the amendment made. Even in respect of land in Survey No. 75/1 of Honnenahalli Village 18 guntas of land in Survey No. 75/2C and 5 acres and odd of land in Survey No. 81/C of Honnenahally village, the Land Reforms Appellate Authority could not have come to the conclusion that the amendment was permissible, for it did not tally with any of the survey numbers or extents mentioned in Form 7 as originally filed. It is clear, therefore, that the order of the Land Reforms Appellate Authority so far as it related to the amendment application dated 8-4-1981 is clearly against the law laid down by this Court and should be set aside. Point No. 1 is held in favour of the petitioners.

12. Point No. 2.-It was sought to be contended for the respondents that the claim of the petitioners is barred by *res judicata* and the revisions are liable to be dismissed. The basis for the submission is that C.R.P. No. 3582 of 1988, C.R.P. No. 3553 of 1988 filed by the two of the petitioners therein challenging the order in question came to be dismissed for non-prosecution. L.R.R.P. No. 1 of 1997 filed by one of the respondents in the appeal before the Land Reforms Appellate Authority was rejected on the ground that it was barred by limitation. The attempt at getting the order of dismissal of the CRPs for non-prosecution set aside has proved futile. Thus, the challenge to the order of the Land Reforms Appellate Authority has become conclusive and therefore, the present batch of revisions are liable to be dismissed on the ground of *res judicata*.

13. In *Narhari v Shanker*, AIR 1953 SC 419, the Supreme Court has observed thus:

".... It is now well-settled that where there has been one trial, one finding and one decision, there need not be two appeals even though two decrees may have been drawn up. As has been observed by Tek Chand, J. in his learned judgment in *Mst. Lachhmi v Mst. Bhulli*, AIR 1927 Lah. 289 mentioned above, the determining factor is not the decree but the matter in controversy. As he puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the judgment. The question of *res judicata* arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of *res judicata* does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of *res judicata*. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one".

Subsequently in *Sheodan Singh v Daryao Kunwar*, AIR 1966 SC 1332, the question as to whether the dismissal of an appeal on a preliminary ground like limitation, or default in printing, with the result that the Trial Court's decision stands confirmed, the decision of the appeal Court will be *res judicata* and the appeal Court must be deemed to have heard and finally decided the matter. On the basis of this decision, the Counsel for the respondent sought to contend that the dismissal of the aforesaid revisions will constitute *res judicata* as against the petitioners also and the revisions have to be dismissed on that ground. In order to appreciate the contention on behalf of the deceased first respondent, it is necessary to notice Rule 19 of the Karnataka Land Reforms Rules, 1974 which specifies the form of the application to be filed by a tenant. The rule specifies that application under sub-section (1) of Section 48-A of the Act should be in Form 7 and it enjoins the applicant to furnish particulars of all the lands held under each separate tenancy in one or more than one taluk in respect of which the applicant claims to be entitled to be registered as an occupant. It is clear, therefore, an application in Form 7 filed by an applicant should contain the entire claim made by him against all those persons and lands situated in all the taluks to be incorporated in the application. This is a vital distinction between the concept of the frame of a suit in the CPC and the proceedings under the Act. What could otherwise be regarded as a vice of multifariousness in the CPC would not be so in an application filed under the Act. This distinction has been clearly brought out in *Pakeera Moolya's* case, referred to above. If in respect of each land, a separate application could be made, then each of such a claim would be a separate application and a decision thereon would constitute *res judicata* in respect of the subject-matter of that petition. In the instant case, by virtue of Rule 19 of the Karnataka Land Reforms Rules, 1974, the entire claim that could be made by a person seeking occupancy rights even if the lands are situated in

different taluks and held under different landlords, they have to be consolidated in one application. Therefore, each land must be regarded as a separate subject-matter of the petition for purposes of determining whether the finding constitutes *res judicata* or not. The claimants are different persons who are alienees from owner of the lands. It has also to be noticed that the entire claim is dealt with in one decision against which several aggrieved persons have preferred the revisions in accordance with law. The fact that the owner of the land suffered dismissal of his revision for default would not affect the petitioners who are prosecuting the revisions as apparently the owner had parted with the properties in question and it is alienees who are otherwise affected and are thus entitled to prosecute the revisions without regard to the failure of the owner to prosecute his revision. Otherwise, the alienees would be shut out all together for no fault of theirs. Whatever may be the reason for the owner's failure to prosecute his revision, from out right inaction to collusion with the opposite party, it would be travesty justice to throw out a revision, otherwise delegantly prosecuted by alienee.

14. In *Kathoom Bivi Ammal and Another v Arulappa Nadar*, AIR 1970 Mad. 76, the question of *res judicata* in cross-suits in respect of same subject-matter came up for consideration. The Court made the following observations at page 79 as follows.-

"6..... But this decision cannot help the appellants because there were different decisions in different suits tried on different occasions by different Judges. In Mulla's Commentaries on the Code of Civil Procedure at page 38, Edition 11, the learned author says:

"The preponderance of judicial decisions in different High Courts is in favour of the view that the judgment not appealed against does not become *res judicata*. This is on the ground that a decision given simultaneously cannot be said to be a decision in a former suit".

8. The High Court applied the principle that *res judicata* could not apply in the same proceeding in which the decision was given and added that by a parity of reasoning it could not apply to suits which were consolidated. They pointed out that the view taken in *Panchanada Velan v Vaithinatha Sastrial*, (1906)16 Mad. L.J. 63 (FB): ILR 29 Mad. 333 (FB), which has been consistently followed in this Court has not been shaken by either of the two decisions relied upon by appellants. It follows, therefore, that in this case, the appeal is not barred by *res judicata*. The two suits were tried together by consent the issues raised a common question, the evidence was the same, the decision in one suit followed the decision in the other suit, the effect of the appeal in one suit was in substance to get rid of the common decision and therefore, the fact that an appeal was filed only against the decree in one suit, but not against the decree in the other suit does not mean that the decree in the suit not appealed against became *res judicata*".

It is clear from the above observations that the dismissal of the revision by the owner, who at that time had no subsisting interest in the lands sold to the various revision petitioners would not affect the claim of the revision petitioners who are challenging the very decisions against them. In the circumstances, the dismissal of the revisions filed by the other parties would not constitute res judicata against the revision petitioners. Admittedly, the entire claim against the various parties including the erstwhile owner of the property were consolidated and decided by recording common evidence and by rendering a common decision. It follows, therefore, that the right of each one of the parties to challenge the decision against him is not governed by failure of the other party who is equally adversely affected by the judgment to present a separate revision or appeal as the case may be. Point No. 2 therefore is held in favour of the petitioners.

15. Point No. 3.-It is sought to be contended for the petitioners that on the pleadings in the case, no case of tenancy of the lands could be established and the finding recorded by the Land Reforms Appellate Authority that the deceased first respondent was a deemed tenant of the land is clearly illegal and requires to be set aside.

16. The case that is sought to be pleaded for conferment of occupancy rights by the deceased first respondent in his application for conferment of occupancy rights is that the original owner of the land Kallumaligegowda inducted the deceased first respondent into the lands in question with an assurance that the lands would be given to him if he improved the lands and that a house was also constructed for him to stay in the village for the cultivation of the lands and that on his (deceased first respondent's) effectively cultivating the lands, he would be given the lands. It is alleged that before the assurance could be implemented, the original owner died and his heirs persuaded the first respondent to continue on the same terms and have failed to implement the assurance. Therefore, this petition is filed for a declaration as to whether the first respondent is a tenant or not. Except the use of the expression "the tenant" all the allegations made in Form 7 pertains to a broken promise of giving the land to the first respondent in the circumstances, as aforesaid.

17. The Land Tribunal took note of the large correspondence that was produced by the first respondent and came to the conclusion that the documents did not establish a relationship of landlord and tenant between the parties and rejected the claim. The Land Reforms Appellate Authority which appreciated the evidence noted the claim of the first respondent's son who gave evidence as Power of Attorney Holder of the first respondent asserted that the land had been given on crop share basis to his father and that the crop share was given to the owner of the land. The respondent-owner of the land denied that the land had been given on crop share basis of the first respondent herein. The Land Reforms Appellate Authority also noticed that the RTC extracts did not support the first respondent's claim of occupancy right the land as a tenant. The owner of the

land had asserted that the first respondent was only assisting in the management of the property as the owners were living in Ooty and that after the first respondent left the management of the property sometime in 1970, Javarappa a relative was assisting in the management of the property and subsequently, the purchasers who are inducted as tenants on crop share basis became owners of the property after the dismissal of Form 7 filed by Javarappa. Obviously other than an assertion of having given rent on crop share basis, the first respondent was not able to produce any material in support of his contention by way of documents. The claim made in Form 7 as aforesaid inherently negated a lease of land to the first respondent. The first respondent's grievance was that the assurance given to him so far as giving of the lands in question had been fulfilled by the owners and therefore, the Land Tribunal should decide whether he is a tenant or not. Even according to the evidence tendered on behalf of the first respondent the possession of the property was lost to him in the year 1981 and no attempt has been made to secure back possession of the property as can be seen from the records. If the relationship alleged is not shown to be that of a landlord and tenant, the factum of such dispossession cannot be characterised as illegal and thus liable to be ignored being contrary to the provisions of the Act, would not arise. Such dispossession or surrender would have to be taken as legal.

18. The Land Reforms Appellate Authority obviously having found that none of the correspondence produced by the first respondent and the land revenue receipts and receipts for payment of certain money for charity and other purposes, there was absolutely no material to support his contention that the lands had been leased on wara basis of the first respondent. Most of the letters that are produced from 1951 onwards never indicated even remotely that the lands were given on crop share basis to the deceased first respondent. Consequently, the Land Reforms Appellate Authority resorted to Section 4 of the Karnataka Land Reforms Act to raise an inference of a deemed tenant in favour of the first respondent.

19. The case that is sought to be pleaded for the owner is that the assistance of the first respondent had been taken for purposes of cultivation of the lands and there was no relationship of landlord and tenant between the parties. The Land Reforms Appellate Authority found that no support can be drawn from the RTC extracts in favour of the view that the first respondent was a tenant of the lands. Therefore, it is clear that the presumption available under Section 133 of the Karnataka Land Revenue Act regarding the nature of possession or possession of the lands in question was not available to the first respondent. In order that a person should claim the status of a deemed tenant, he has nevertheless to show that he had been paying rent or crop share to the owner of the land. In Chokkannagari Narayanappa v Land Tribunal, Chintamani and Another, 1982(2) Kar. L.J. 21, this Court observed as follows.-

"9.....

The phrase "deemed to be" raises a presumption in favour of the person lawfully cultivating the land and it is a rebuttable presumption. To be a "deemed tenant" one must lawfully cultivate the land belonging to another person. The word "lawfully" implies, possession has a rightful origin and is capable of being defended successfully. Relying on the decision of this Court in *Muniyallappa v B.M. Krishnamurthy*, 1977(1) Kar. L.J. 389 (DB), it was contended that he must be considered as a deemed tenant. But at page 402, this Court, after extracting the relevant portion of the judgment of the Supreme Court, has stated "It is unnecessary for the purpose of disposal of this appeal, to lay down as to who are the persons entitled to the status of 'deemed tenant'". However, Sri Subba Rao relying on the portion extracted from the decision of the Supreme Court submitted that the consent of landlord was not necessary to consider his claim as a deemed tenant. It is true, if consent is there, it becomes a contractual right. Though it is not possible to exhaust the list of persons as to who could be considered as deemed tenants, for the purpose of examining the rival contentions, a few illustrations which have a bearing on the point are set out. A vendee in possession of the property on deferred payment of consideration in instalment, cannot be considered as a "deemed tenant". Likewise, vendor remaining in possession of the property till the payment of entire consideration cannot be deemed to be a tenant. A vendor who continues to be in possession of the property even after the execution of the sale deed with an understanding to harvest the crop standing on the date of the conveyance cannot be treated as a "deemed tenant". So also the vendor who has failed to deliver property cannot take advantage of his laches and claim to be a "deemed tenant". It is only to overcome the situation like this, the Legislature has categorically stated that it must be a lawful cultivation. "Lawful" though not concomitant with the word "concurrence" in view of tenancy laws, that being defended successfully if action is taken. still be capable.

10. "Tenancy" means the relationship of landlord and tenant. "Rent" means money paid or payable by a tenant on account of the use and occupation of the land held by him. Persons specified in clauses (ii) to (iv) of Section 2(34) of the Act by virtue of their relationship, no doubt are required to pay rent. Likewise, the deemed tenant should also pay rent. A person lawfully cultivating the land belonging to another must necessarily pay the rent for use and occupation. Otherwise, there will be no distinction between a person in possession of the property without the concurrence of the landowner and a trespasser".

As already observed that there was no proof of rent or crop share having been paid by the first respondent. Though the first respondent was alive at the time the evidence was recorded by the Land Tribunal, the power of attorney holder, who was by that time 33 years of age, gave evidence of payment of crop share by his father since the year 1950 i.e., from a time the Power of Attorney Holder was 2 years of age. The claim made in the Form 7 by the first respondent inherently contradicted the claim of tenancy. Therefore, the first respondent's claim of a deemed tenancy does not measure upto the decision in *Narayanappa's*

case referred to above. Even in *P. Manjunath Shenoy v Smt. Vishalakshi Pai and Others*, 1996(5) Kar. L.J. 499, this Court has held that in order to be entitled to conferment of occupancy rights, the claimant must establish a relationship of landlord and tenant and mere possession or cultivation of land would not entitled conferment of occupancy rights under the Karnataka Land Reforms Act, 1961.

20. The Karnataka Land Reforms Act is enacted with a view to achieving uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings and for certain other matters specified in the Act. The Land Tribunal gets jurisdiction to confer occupancy rights on tenants or deemed tenants, in respect of tenanted land as on 1-3-1974 which stands vested in the State with effect from the aforesaid date. The Karnataka Land Reforms Act is not an enactment which regulates all kinds of relationship between the parties relating to agricultural land. If, as in this case, first respondent had been authorised to improve the lands in question with an assurance that the lands would be given to him and the person who held out the assurance before fulfilling the promise died and his heirs also held out the same assurance and did not fulfill the promise, the first respondent could not invoke the Karnataka Land Reforms Act to secure fulfillment of that promise. The Land Reforms Appellate Authority which is empowered to appreciate evidence has returned a finding which is unsupported by any material on record. The Land Reforms Appellate Authority's finding that the first respondent is a deemed tenant is baseless and illegal, being contrary to the decisions referred to above. The first respondent's case does not come within the ambit of relationship of landlord and tenant between the parties to have enabled the Land Reforms Appellate Authority to exercise jurisdiction to confer occupancy rights on first respondent in respect of any lands specified in the Form 7 filed by him. The order of the Land Reforms Appellate Authority deserves to be set aside as being illegal and the order of the Land Tribunal deserves to be restored so far as they relate to the revision petitioners herein.

21. In terms stated above, the revision petitions are allowed.