

(2015) 10 KAR CK 0170

In the Karnataka High Court

Case No : W.P. Nos. 42293 and 43414/2003 (LR)

Nirvani Parappa Ankale and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0170

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Jagadish Patil, Advocate, for the Appellant; K.S. Patil, H.C.G.P., for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—In both the petitions the petitioners have called in question the order passed by the Land Tribunal, Hukkeri in Case No. TNC/SR-5723+701+4143 dated 05.07.2003 in granting occupancy rights in favour of respondents Kempanna and Gholeppa sons of Sangappa Ankali in respect of lands bearing R.S. No. 26/15 measuring 3 acres 10 guntas, sy. No. 33/3 measuring 5 acres 29 guntas, sy. No. 56/3 measuring 3 acres 7 guntas, sy. No. 101/5B measuring 0-21 guntas of Avargol village in Hukkeri Taluk, Belgaum district. No dispute raised by the landlords.

2. According to the facts in both the cases, husband of petitioner No. 1 Ratnawwa in W.P. No. 42293/2003 by name Shivaputrappa Ankali and petitioner in W.P. No. 43414/2003 by name Nirvani Ankali and father of the respondents Kempanna and Ghulappa in both the cases by name Sangappa Parappa Ankali are full blood brothers. It is the case of the petitioners that lands were originally cultivated by one Parappa Ankali, as a protected tenant, who died long back leaving behind his three sons by name Sankappa Ankali, Nirvani Ankali and Shivaputrappa Ankali. Out of them presently Sankappa Ankali and Shivaputrappa Ankali are dead and their legal representatives are prosecuting the case. Petitioners in W.P. No. 43414/2003 are the legal representatives of deceased

Shivaputrappa and the respondent Kempanna and Ghulappa are the legal representatives of deceased Sangappa Ankali.

3. It is the case that after the death of original tenant Parappa Ankali, lands were being enjoyed by all the above said brothers as members of a joint family as tenants. The said propositus Parappa was a protected tenant and his name was entered in the Land revenue records pertaining to land in Sy. No. 101/5 as early in 1948. Subsequent to the death of said Parappa the eldest member of the joint family, Sangappa Ankali has taken over the lands on behalf of the joint family and he has been cultivating the lands along with his brothers. Because he was the Manager of the joint family, the revenue records were made out in the name of the said Sangappa.

4. It is the further case of the parties that the petitioners in W.P. No. 43414/2003 after the death of Shivaputrappa they gave a varadi to enter the name of wife of Shivaputrappa by name Ratnawwa to enter her name to the 1/3rd share of her husband and in the year 1976 the Tahasildar has entered her name to 1/3 share in all the tenanted lands. It is also the case of the parties that the said Ratnawwa wife of Shivaputrappa have filed a suit in O.S. No. 114/1972 before the Munsiff Court, Hukkeri, for partition and separate possession of their 1/3rd share in all the family properties including the disputed tenanted lands. The Court has granted the decree by judgment and decree dated 31.10.1973. The matter went upto the appellate Court in R.A. No. 115/1975 before the Senior Civil Judge, Chikkodi, who allowed the appeal and remitted the matter to the trial Court with a direction to frame an issue regarding tenancy pertaining to the disputed lands and refer the same to the Land Tribunal, as such the issue of tenancy was framed and the issue was referred to the Land Tribunal, Hukkeri, for its decision and the suit is still pending.

5. It appears, after coming into force of the Karnataka Land Reforms Act as amended in 1974 the petitioners have filed their independent Form No. 7 claiming occupancy rights of their 1/3rd portion out of the lands in question before the Land Tribunal and the said Sangappa Ankali also filed Form No. 7 claiming occupancy rights to the entire extent of land on the ground that he alone was the tenant of the said lands and his brothers by name Nirvani and Shivaputrappa have no right of occupancy or tenancy over any portion of the said lands.

6. The Land Tribunal entertained the said three applications. By an order dated 08.08.1976 in fact Land Tribunal has granted occupancy rights of the lands jointly in favour of Sangappa Ankali and Nirvani Ankali to the extent of their 1/2 share each. Subsequently, Form No. 7 filed by wife of Shivaputrappa by name Ratnawwa was taken up for enquiry by the Land Tribunal and by order dated 31.10.1981, has rejected the application filed by the said lady. Being aggrieved by the said order the said Ratnawwa wife of Shivaputrappa Ankali filed W.P. No. 1870/1982 before this Court and the said writ petition was transferred to Land Reforms Appellate Authority and after abolition of the said appellate authority

again retransferred and renumbered as W.P. No. 12934/1997. The said writ petition came to be allowed vide orders dated 23.10.1999 wherein this Court has set aside both the orders passed by the Land Tribunal dated 08.08.1976 and 31.10.1981 and remanded the matter to the Land Tribunal, Hukkeri, for disposal of the applications filed by the petitioners and said Sangappa afresh after clubbing the three applications together and holding common enquiry.

7. After remission of the matter the Land Tribunal again gone into the matter clubbing all the three applications filed by the respective brothers noted above and disposed of the applications vide orders which is impugned under these writ petitions. Consequent to the impugned order Land Tribunal has granted occupancy rights in favour of respondent Kempanna and Gholeppa who are the sons of Sangappa Parappa Ankali and in the same order rejected Form No. 7 application filed by Nirvani Ankali and Ratnawwa wife of Shivaputrappa Ankali, which orders are called in question before this Court.

8. I have carefully perused Form No. 7 filed by Sangappa, Nirvani and Ratnawwa, before the Land Tribunal. Form No. 7 pertaining to Sangappa before the Land Tribunal disclose that he has claimed tenancy rights over seven properties including the properties which are granted to him by the Land Tribunal under the impugned order. The said person claim in his Form No. 7 that he was aged about 60 years and he has been a protected tenant since 40 years and he claims that he is the sole tenant of the said land. Form No. 7 filed by Nirvani, another brother of the said Sangappa states that he claims that he has been enjoying all the said property for more than 40 years and he is also a protected tenant and he claims 1/8th share in sy. Nos. 13 and 14, 1/2 share in sy. No. 26, 1/2 share in sy. No. 33/3 and 1/4th share in sy. No. 56/3 and 1/2 share in sy. No. 101/5B along with his brother Sangappa. Form No. 7 filed by Ratnawwa wife of Shivaputrappa, she also claims occupancy rights in respect of 1/3rd share in the above said properties. Admittedly, the parties earlier to filing of Form No. 7 before the Land Tribunal participated in the Civil Suit and the Civil Court has granted decree to an extent of 1/3 share to each of the brothers in O.S. No. 114/1972 which was filed for partition and separate possession of their 1/3rd share in all the joint family and ancestral properties including the tenancy rights pertaining to the tenanted lands, the decree was passed on 31.10.1973 as quoted supra. However, the said judgment was reversed by the Civil Judge (Sr. Dn.), Chikkodi, by allowing the appeal in R.A. No. 115/1975 and remitted the matter and by virtue of the same, the decree is not in force passed in O.S. No. 114/1972. However, the Court has framed an issue with regard to tenancy rights of parties and referred the same to the Land Tribunal, Hukkeri. These are all undisputed facts.

9. From reading of the above said Form No. 7 and also the litigation taken place between the parties before the Civil Court it is clear that it is not a rival tenancy case, but it is a case between the members of the same family for partition with reference to the tenanted properties. Therefore, it is clear either by means of

proceedings before the Land Tribunal or before the Civil Court, the issue with regard to the joint family and the joint family properties so far as the tenanted lands are concerned has to be thrashed out.

10. In this background virtually when the Civil Court has referred the matter to the Land Tribunal, the Land Tribunal has to in detail consider the real dispute between the parties, i.e., whether the joint family comprising of said Sangappa Ankali, Nirvani Ankali and Shivaputrappa Ankali cultivated the disputed lands and they are entitled for their share in the said alleged tenanted properties or whether the said Sangappa Ankali was exclusive tenant of the said properties bereft of other joint family members and whether he cultivated the land as a senior member of the family with his brothers or he exclusively acquired the tenancy rights. These are the important moot points ought to have been decided by the Land Tribunal.

11. Learned counsel for the petitioners strenuously contended by taking me through the order passed by the Land Tribunal. The Land Tribunal has not taken any pains to ascertain on the basis of the oral and documentary evidence lead by the parties, to give a finding whether the Lands were enjoyed by the joint family or whether the said Sangappa was the sole tenant, whether he acquired the tenancy on his own and he is alone the protected tenant of the said lands, what was the source of the tenancy. The Land Tribunal only swayed away by the entries in the R.T.C. extracts in the year 1973-74, but it has not discussed the other documentary and oral evidence pertaining to the existence of joint family and also the enjoyment of the properties by the father of the said Sangappa, Nirvani and Shivaputrappa. Further he argued that the oral evidence lead by the parties clearly show that they were all jointly enjoying the said properties as tenants after the death of their father, i.e., Parappa Basappa Ankali. Further, the learned counsel for the petitioner also brought to my notice that, in the year 1948 prior to the land Reforms Act coming into force, some of the documents, particularly the document produced at "Annexure-B dated 15.02.1948" pertaining to Sy. No. 101/5 shows that one Gireppa Ningappa Todal and Parappa Basappa Ankali (Father of Sangappa, Nirvani and Shivaputrappa), shown to be in possession and enjoyment of the said property which is also one of the properties involved before the Land Tribunal wherein the occupancy rights was granted solely in favour of Sangappa Ankali. The Land Tribunal has not properly appreciated how the name of Parappa Basappa Ankali finds a place in the revenue records. Further, the learned counsel has also submitted that the evidence recorded by the Land Tribunal at the first instance when the said Sangappa Ankali was alive he has given a clear statement that himself and one of the petitioners, Nirvani have been jointly cultivating the above said lands as tenants since 10-15 years and Shivaputrappa taken his share in the property, etc. He also drawn my attention to the evidence of Galappa Sankappa Ankali recorded on 03.05.2003 and also Ratnawwa recorded by the Land Tribunal wherein the petitioners have lead ample evidence to establish that the joint family was the holder of tenancy rights of the said land and they have been in

possession and enjoyment of the properties as tenants and therefore they are also entitled for a share in the said joint tenancy. Learned counsel strenuously contended that the Land Tribunal has not even looked into the oral and documentary evidence placed by the parties.

12. Per contra, learned counsel who is appearing for contesting respondents Sri Kamathe, has categorically contended that Parappa, father of Sankappa, has never cultivated the land as tenant, Sangappa has exclusively taken the property for tenancy and he had been the exclusive tenant. Therefore, the Land Tribunal considering name of Sangappa Ankali right from 1952 in the revenue records has considered that he is entitled to be recorded as a tenant of the said land. Therefore, there is no reason for the Court to interfere with the orders passed by the trial Court.

13. It is on the basis of the above said rival contentions as I have already narrated, it becomes responsibility of the Land Tribunal to ascertain the source of tenancy whether it was the tenancy acquired by Sangappa alone or during the lifetime of his father he had acquired any right of tenancy over the properties and all brothers have continued the tenancy after the death of their father and it continued to the heirs of such tenant on the same terms and conditions. Therefore, the source of tenancy play a dominant role in this case to ascertain whether it is a joint family tenancy or it was acquired independently by Sangappa Ankali.

14. If the Tribunal records a finding one way or the other, then the findings become final, subject to the challenge under the Land Reforms Act. As the Civil Court's jurisdiction to decide the very same question is ousted and if the Land Tribunal also does not decide this question, but decides to confer occupancy rights on the basis of only the entries in the revenue records or on the basis of cultivation of the said land and decline to record a finding as to whether occupancy right was granted exclusively to Sangappa holding that he is only the tenant, then the other parties have no remedy before the Civil Court. Therefore, it is correct and proper that the Land Tribunal itself has to take pains to decide all such disputes between the parties.

15. As could be seen from the above said facts and circumstances, the dispute is only as to whether the leasehold property belonged to the joint family or was individual right of Sangappa and therefore it is not a rival tenancy at all and the Land Tribunal ought to have borne in mind this particular aspect.

16. In this particular case it is the claim that Parappa Basappa Ankali was the earlier tenant and thereafter his death Sangappa, Nirvani and Shivaputrappa who are the full blood brothers claim joint tenancy over the property. The jurisdiction to decide the question as to who was the cultivator of the land in question is to be decided by the Land Tribunal by giving a finding whether the petitioners and Sangappa succeeds to the tenancy rights, for the purpose of ascertaining this, the Tribunal has to consider the evidence both oral and documentary and it has

to discuss the evidence, assign reasons and has to record findings and give its conclusion over the question as to whether the lands were cultivated by the said Sangappa in his individual capacity or as a member-Kartha of the joint family.

17. In this background let me come back to the order passed by the Land Tribunal. The Land Tribunal order is running about nine pages. Upto 8th page the Land Tribunal has stated what are all the claim made by the parties and the arguments submitted by the learned counsel. Ultimately at page No. 8 only it gives reasons in only few lines stating that:

"Sy. No. 26/15, 101/5B, 33/31 and 56/3 are all in the name of Sangappa Parappa Ankali for the year 1973-74. Apart from that, Sangappa has given a statement that himself and his brother Nirvani were cultivating the said lands earlier and said Nirvani has produced certain documents to show that he has supplied sugarcane to Sankeshwar Sugar Factory, but these documents are not perfect documents.

It is further stated that:

"The Land Tribunal has decided to grant occupancy rights in favour of Sangappa Parappa Ankali to the said survey numbers as Smt. Ratnawwa and Nirvani, their names do not find a place in any of the record of rights. Therefore, their applications are liable to be dismissed."

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18. The above said observation of the Land Tribunal clearly goes to show that the Land Tribunal has not applied its mind to the oral and documentary evidence lead by the parties. It is only swayed away on the basis of the mere entries in the revenue records pertaining to 1973-74, it has not made its any effort to ascertain the source of the tenancy rights as to whether Sangappa in whose favour tenancy rights are granted as alleged, obtained the tenancy rights and what was the source of his tenancy rights from which point he continued in possession of the property as a tenant, prior to that who was in possession of the said property, whether Parappa, the father of Sangappa was in possession of the said property as a tenant or not and what is the oral evidence lead by the parties with regard to the existence of joint family and when actually the joint family disrupted if any and whether after disruption of the joint family Sangappa has acquired any tenancy rights over any of the properties which are all important factors that ought to have been considered by the Land Tribunal on the basis of the entire materials placed for its consideration but the Tribunal has not bestowed its attention in this regard.

19. As I have stated that the Civil Courts are ousted from giving any finding with regard to the tenancy over the agricultural lands the Tribunal has to make all its efforts to consider all these factors in order to ascertain rights of the parties. Therefore, in my opinion, the Land Tribunal has committed a serious error. Therefore, the matter requires to be remanded.

20. Apart from the above grounds for remanding the matter to the Tribunal, learned counsel for the petitioners also brought to my notice that, one of the members who has participated in the adjudicating process has not signed the order passed by the Land Tribunal. He drawn my attention to the order passed by the Land Tribunal. I have carefully perused the same. As rightly contended by the learned counsel, it does not bear the signature of Sri B.M. Patil, one of the Land Tribunal Members. Except him, other members have signed including the Chairman.

21. In this regard, learned counsel for the petitioners drawn my attention to the decision of this Court reported in Vijaya Bank Vs. The Secretary to the Government of Karnataka, Revenue Department and Others, , wherein this Court has observed that:

"the object and purpose of Karnataka Land Reforms Act, 1974 Rule 17(8), failure of the members to sign the order at the same time and place. The judicial discipline that in a multi member judicial/quasi judicial adjudicatory body, all the adjudicators who have heard the matter and pronounced the judgment shall sign the same at the same time and place. The said salutary object of law is effectively manifested in Rule 17(8) of the Rules."

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On facts the Court also observed that,

"It is evident on record that five members have heard the matter only three members have signed the order and two of them have not signed the order. Ultimately, the Court held, the impugned order of the Tribunal which is not signed by all the members who have heard the matter is a nullity and such adjudication is not a valid juridical adjudication. On that ground the matter remanded to the Tribunal for fresh disposal."

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In this case also though all the members have participated as adjudicators but one of the members has not signed the same.

22. Last but not the least so far as the remand is concerned, this Court had an occasion to deal with certain aspects in a case law reported in 2000(3) Kar.L.J. Sh. N. 3 between Muninarasappa v. Smt. Sharadamma (deceased) by LRs and others, the Court has observed in the following manner.

"As far as the remands are concerned, the sad story is that there has been one case which has been remanded as many as 12 times and multiple remands seem to be the order of the day. When a case is remanded by the High Court, the Tribunal is required as of necessity to realise that serious error had been committed on the earlier occasion and to see to it that there is absolutely nothing goes wrong thereafter. Unfortunately, this is not the case and it will be very necessary that the Tribunals be requested to take their work seriously and

to see to it that the cases are disposed of in consonance with the legally accepted procedures and principles of law on the first occasion itself. If this is not done, the inevitable result would be that the Land Reforms Act cases which have not been disposed of even after lapse of 24 years could easily be continued well into the middle of the next century. It is only hoped that proper corrective action will be taken at right point of time."

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23. The Court has also directed the registry to forward the copy of the said judgment to the Secretary to the Government, Revenue Department. In spite of such orders the Land Tribunals are again and again committing such mistakes, they are not properly bestowing their attention to all the materials available on record and consider the rights and liabilities of the parties by discussing all the relevant materials both oral and documentary evidence. They have to assign reasons recording a finding and conclusion over the question involved in the case. Therefore, in this view of the matter also, I am of the opinion the matter requires to be remanded. Hence, the petitions deserve to be allowed.

Writ Petitions are allowed. Consequently, the order passed by the Land Tribunal in TNC/SR 5723+701+4143 dated 05.07.2003 are hereby set aside, the matter remitted to the Land Tribunal, Hukkeri. The Land Tribunal is directed to dispose of the matter afresh after considering all the guidelines which are made in the body of this order and also considering the oral and documentary evidence on record by means of giving specific finding as to

- 1) The source of tenancy either to the joint family or to the deceased Sangappa alone;
- 2) Whether the lands were cultivated by the said Sangappa in his individual capacity or as a senior member or kartha of joint family.
- 3) Whether the petitioners are entitled for grant of occupancy rights jointly with respondents 3 and 4 who are the sons of Sangappa.

and then pass appropriate orders in accordance with law by discussing the evidence, assigning reasons and recording findings and its conclusion.