

(2007) 08 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No. 11007 of 2003

Pandurang Jivajirao Manglekar (since deceased by L.Rs. Smt.
Sudhatai Manglekar and Others)

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Evidence Act, 1872 — Section 17, 20
Karnataka Land Revenue Act, 1964 — Section 34

Citation : (2007) ILR (Kar) 3602 : (2008) 1 KarLJ 366 : (2007) 4 KCCR 376 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Prabhuling K. Navadgi, for the Appellant; Jayakumar S. Patil, Vigneswara S. Shastry and Shivayogimath Associates for R3-R5, R7 and R8, G.S. Kannur, for R6 and Nadiga Shivanandappa, HCGP for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar, J.—The petitioner i.e., late Pandurang claiming to be the tenant over the property bearing Sy.No. 204/2 measuring 6 acres 20 guntas situated at Gokak Village, filed application in Form No. 7 for grant of occupancy rights. Respondents 3 to 8 are the land owners. By the order dated 30.12.1977 the Tribunal granted occupancy rights in favour of the petitioner. The said order was questioned before this Court in writ petition after about 10 years and ultimately in view of change in law the matter stood transferred to the Land Reforms Appellate Authority, Chikodi for disposal and the same was numbered as RA/182/88:87-88. During the pendency of the matter before the appellate authority, the Land Reforms Act was again amended and the appellate authorities were abolished. Hence, the appeal again was transferred to this Court and renumbered as WP.No. 20311/1993. This Court remanded the matter back to the Tribunal by allowing the writ petition and directed the Tribunal to record further evidence, if adduced. After remand, the parties were given opportunity by the

Tribunal.

The petitioner got examined himself and examined a witness by name Parashuram on his behalf. On behalf of the respondents, Uday (respondent No. 5) and a witness by name Sreekanth were examined. After hearing, the Tribunal as aforementioned, has rejected the application filed by the petitioner. Hence, this writ petition is filed by the tenant-petitioner.

During the pendency of this writ petition, the petitioner-tenant died and his legal representatives are brought on record.

2. Sri Prabhuling Navadagi, learned advocate appearing on behalf of the petitioners contended that respondents 3 and 4 herein have admitted before the Land Tribunal as far back as on 30.12.1977 that the petitioner is cultivating the property as tenant since 15 to 16 years prior to recording of the said deposition; the copies of statements of respondents 3 and 4 are produced at Annexures-B and C along with the writ petition; the witness of the respondents viz., Srikant Mulgund admits that the petitioner is in possession of the property; admission of respondents 3 and 4 and their witness is not considered and appreciated by the Land Tribunal at all; though the land is now lying within the limits of Gokak Town, the same will not lose the character of an agricultural land; that the presumption arising out of the revenue records standing in the name of respondents 3 and 4 stood rebutted by the admission of the respondents and their witness. On these among other grounds, the petitioners prayed for setting aside the order of the Land Tribunal.

Per contra, Sri Jayakumar S. Patil, learned senior advocate appearing on behalf of respondents 3 to 8 submits that the statements of respondents 3 and 4 dated 30.12.1977 were not recorded by the Chairman of the land Tribunal and therefore the said statements cannot be relied upon. He further submits that in view of the consistent entries in the name of respondents 3 to 8 found in revenue records, the Tribunal was justified in rejecting the claim of the petitioner.

3. At the outset it should be mentioned that the entries in the revenue records stand in the name of respondents 3 to 8 including the relevant year i.e., 1973-74. Thus, the presumption arises in favour of the possession of respondents 3 to 8.

4. As aforementioned, the Tribunal had granted occupancy rights in favour of the petitioner by the order dated 30.12.1977. At that point of time, respondents 5 to 8 were minors. Respondent No. 3 is the mother of respondents 4 to 8. Only respondents 3 and 4 herein were majors. Thus, the depositions of respondents 3 and 4 only were recorded by the Land Tribunal on 30.12.1977 during the course of enquiry at the first instance. The said statements found at Annexures-B and C would clearly disclose that respondents 3 and 4 have admitted the possession of the petitioner as a tenant since 15 to 16 years prior to the recording of their deposition. The statements are signed by respondents 3 and 4. Respondent No. 3 has signed her statement in Kannada language, whereas respondent No. 4 has

signed in English, which means respondents 3 and 4 are educated. The Chairman and members of the Tribunal also have endorsed their signatures on the said statements.

5. Sri Jayakumar S. Patil, learned senior advocate has contended that the said statements are not recorded by the Chairman and that therefore the such statements cannot be looked into and considered. He relies upon the judgment of the Division Bench of this Court in the case of Byrappa and Anr. v. State of Karnataka and Ors. reported in 1981(2) KarLJ 1 in support of his contention, wherein it is held that the Chairman of the Land Tribunal should record the evidence in the enquiry before the Tribunal. But the aforesaid judgment is explained by another Division Bench of this Court subsequently in the case of Seetharamiah Vs. Land Tribunal, , wherein it is observed that in case if what is recorded by a person other than the Chairman is in accordance with the dictation of the Chairman himself, the recording of such statement, must be regarded as made by the Chairman himself as contemplated by Section 34 of the Karnataka Land Revenue Act r/w. Rule 17 of the Karnataka Land Reforms Rules. It has been observed therein that the jurisdiction under Article 226 of the Constitution of India, has to be exercised for advancing the cause of justice and not for the mere purpose of upholding technicalities. In this matter the statements of respondents 3 and 4 recorded on 30.12.1977 are duly signed by the deponents as well as by the Chairman and members of the land Tribunal. It is endorsed on the statements that the statements are recorded before the Land Tribunal. After making such an endorsement, the Chairman and members has put his signatures. Thus, it is clear that the statements are recorded before the Chairman and other members of the Land Tribunal at any time subsequently till this day. More over, respondents 3 and 4 have not denied the aforesaid admission in the proceedings before the Land Tribunal. Respondents 3 to 8 have filed their written arguments before the Land Tribunal on 6.3.2003 as per Annexure-R6. Even in the written arguments, respondents 3 and 4 have not denied that they have made such statements as per Annexures-B and C admitting the claim of the petitioner. If really respondents 3 and 4 had not made such admissions before the Land Tribunal, they would have definitely appeared personally before the Land Tribunal at least after remand and would have denied their earlier statements. In the light of their non-denial of the statements at Annexure-C and D made by them, it cannot be said that they have not made such statements as per Annexures-B and C. Thus, in view of the subsequent judgment of the Division Bench of this Court in Sitaramaiah's case cited supra, there is no hurdle to rely on the statements vide Annexures-B and C for coming to the conclusion. Added to it, the witness examined on behalf of respondents 3 to 8, viz., Srikanth Mulgund, after remand, has also admitted the tenancy and possession of the petitioner. Copy of the deposition of Srikanth Mulgund is produced at Annexure-H to the writ petition. In examination-in-chief itself Srikanth has admitted that the petitioner was and is in possession of the property in question. In the cross-examination he has further made it clear that

the property in question has been cultivated by the petitioner as a tenant since long time. According to landowner's witness, the petitioner is in possession of the property as a tenant since 15 years prior to 1970. The aforesaid admissions would amply disclose that the petitioner has been cultivating the property in question since long time as a tenant or at least since 1961.

An admission is concession or voluntary acknowledgement made by a party or someone identified with him in legal interest of the existence of certain facts which are in issue or relevant to an issue in the case. The predominant characteristic of this type of evidence consists in its binding character. Admissions are broadly classified into two categories: (a) judicial admissions and (b) extra-judicial admissions. Judicial admissions are formal admissions made by a party during the proceedings of the case. Extra-judicial admissions are informal admissions not appearing on the record of the case. Judicial admissions being made in the case are fully binding on the party that makes them. They constitute a waiver of proof. They can be made the foundation of the lights of the parties. Extra-judicial admissions or informal admissions unlike judicial admissions, however, are binding only partially and not fully, except in cases where they operate as or have the effect of estoppel in which case again they are fully binding and may constitute the foundations of the rights of the parties. Where the admissions are shown to be voluntary and deliberate and made without any mistake, fraud, or misapprehension they may form an insuperable hurdle in the way of the party against whom they are set up.

6. It is well settled that an admission if clearly and unequivocally made, is the best evidence against the party making it. As aforementioned in this matter, respondents 3 and 4 and their witness have clearly, unequivocally and unambiguously admitted and stated that the petitioner is cultivating the property as a tenant since long time.

In this context a reference may be made to a judgment of the Apex Court in the case of Thiru John Vs. The Returning Officer and Others, , wherein it is observed thus:

It is well settled that a party's admission as defined in Sections 17 to 20 fulfilling the requirements of Section 21. Evidence Act, is substantive evidence *proprio vigore*. An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established.

The above principle will apply with greater force in the instant case. Here, there are a number of clear admissions in prior declarations precisely and deliberately made in solemn documents by Shri John. These admissions were made *ante litem motam* during the decade preceding the election in question. These admissions were entitled to great weight. They had shifted the burden on the

appellant (Shri John) to show that they were incorrect. The appellant had miserably failed to show that these admissions were incorrect.

In this matter, admissions were made as far as back as on 31.12.1977. Even after remand, i.e., on 5-2-2003 the only witness examined on behalf of the respondents, viz., Srikanth Mulugund has in his examination-in-chief itself admitted that the petitioner is cultivating the property. In the cross-examination he has further confirmed and admitted that the petitioner is cultivating the property as tenant since long time. These admissions made on behalf of respondents 3 to 8 and the admissions of respondent Nos. 3 and 4 would rebut the presumption arising out of the entries made in the revenue records. Such admission is the best evidence against the respondents who have made it. There cannot be any dispute that u/s 133 of the Karnataka Land Revenue Act, an entry shall be presumed to be true until the contrary is proved. Thus, the presumption is rebuttable. Contrary facts may be established by the circumstances of the case or by other evidence found in the records.

Presumption shall have to be drawn only at the outset of the case, since it may get diluted, rebutted or over run in the course of the trial. The role of record of rights, thus, essentially, is in the realm of appreciation of evidence in a case. In this matter as aforementioned, this Court is of the firm view that the admissions made by the respondents 3 and 4 and their witness and other circumstances of the case are sufficient to displace the presumption arising from the entries in the pahanies.

There is no abstract principle that whatever appear in the revenue records will be presumed to be correct when it is borne out by the evidence that the entries are not correct. In this context it is relevant to note the observations made by the Apex Court in the case of Baleshwar Tewari (Dead) by LRs. and others Vs. Sheo Jatan Tiwary and others, .

...Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the lands he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil whom the Act confers title to the land he tills.

7. In the case on hand, respondents 3 and 4 have neither denied the admissions made by them nor have clarified the effect of such admissions. As aforementioned, respondents 3 and 4 have not deposed before the Land Tribunal after remand. Had they not really made such admissions, they would have definitely stated on oath before the Land Tribunal after remand. On the contrary, the only witness examined on behalf of the respondents 3 to 8 has again

reaffirmed that the petitioner is cultivating the property as a tenant since long time. In the light of such consistent admissions by the respondents 3 and 4 and by the solitary witness, no reliance can be placed on the entries found in the revenue records.

8. The admission as aforementioned is the best evidence, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. In the case on hand, the admissions were neither withdrawn nor are proved erroneous.

In the case of Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others, , it is categorically held by the Apex Court that judicial admissions by themselves can be made the foundation of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the makers thereof.

Merely because the land in question has now come within the limits of Gokak Town, the same will not lose the character of agricultural land. The matter has to be viewed as it stood on the appointed day i.e., 1.3.1974. The land cannot be deemed to be a non-agricultural land if no order u/s 95 of the Karnataka Land Revenue Act is passed. The obvious purpose of Section 95 of the Karnataka Land Revenue Act is to prevent indiscriminate conversion of agricultural land into non-agricultural land and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of the Land Revenue Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will, for non-agricultural purposes. The provision of Section 95 of the Karnataka Land Revenue Act, has to be construed as mandatory and to be given effect to as such. In this matter, admittedly the land is not converted for non-agricultural use. If it so, the land continues to be to be agricultural land and consequently there is no bar for the petitioner to get the occupancy rights over the land in question. It is not even the case of land owners that the land is used for non-agricultural purposes.

9. Looking to the totality of the facts and circumstances, it is clear that the petitioner has been cultivating the property as the tenant since much prior to 1.3.1974, as on 1.3.1974 and even thereafter. Hence, he is entitled to get the occupancy rights.

Consequently the impugned order is liable to be quashed. Accordingly, the same is quashed. Application in Form No. 7 for grant of occupancy rights filed by the petitioner is allowed. The Tribunal is directed to grant occupancy rights to the petitioner over the property in question.

Petition is allowed accordingly.