
(1980) 03 KAR CK 0028
In the Karnataka High Court
Case No : WP 2499/78

Papegowda

APPELLANT

Vs

Land Tribunal Pandavapura and Others

RESPONDENT

Date of Decision : 12-03-1980

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a
Karnataka Land Revenue Act, 1964 — Section 133

Citation : (1980) 2 KarLJ 162

Hon'ble Judges : Kudoor, J

Judgement

1. This writ petition is listed under "B" group. Emergent notice regarding rule was ordered to be issued in the first instance. In pursuance of the notices issued, respondents 3 and 4, who are the contesting respondents, entered appearance through their advocate. They filed their objections. Respondents 1 and 2 remained unrepresented.

2. This Writ petition under Art. 226 of the Constitution is directed against the order dated 1-1-1978 at Ext-C passed by the 1st respondent Land Tribunal, Pandavapura rejecting the claim of the petitioner for being registered as an occupant in respect of 1 acre 31 guntas of land comprised in S. No. 42/1 of K. Bettahalli village of Pandavapura Taluk in Mandya Dt.

3. The facts necessary for the disposal of this writ petition may be stated as under:

The land in question and two other items of land comprised in S. Nos. 35/2 and 35/7 belonging to the family of respondents 3 and 4, was mortgaged with possession in favour of the petitioner Papegowda by Ningegowda, husband of the 3rd respondent and brother of the 4th respondent on 19-5-1960 for a sum of Rs. 1,000. After the death of Ningegowda there was a partition in the family of respondents 3 and 4 on 14-3-1969 under which S. No. 42/1 (which will be hereinafter referred to as the "suit land") fell to the share of respondent-4 Basavaiah and S. Nos. 35/2 and 35/7 fell to the share of the 3rd respondent. The

petitioner herein was an attestor to this partition deed. On 15-3-1969, the 3rd respondent sold S.Nos. 35/2 and 35/7 to the petitioner herein. The mortgage was also redeemed on the same day. The petitioner herein made an application dated 31-12-1974, in Form-7 under S. 48A (1) of the Karnataka Land Reforms Act, 1961 (for short the "Act") claiming occupancy in respect of 1 acre 31 guntas of land comprised in S. No. 42/1 which fell to the share of the 4th respondent under the partition deed dated 14-3-1969. In the claim application, the petitioner mentioned respondent-3 as the owner of the suit land. He claimed tenancy for the past 16 years. The tribunal, after holding an enquiry, rejected the claim of the petitioner holding that the petitioner was in possession of the suit land as a mortgagee and after the mortgage was redeemed, the 4th respondent came into possession of the suit land and was cultivating it personally. It is this order that is under challenge in this writ petition.

3. Shri Basavaraju, learned counsel for the petitioner, primarily contended that the order of the tribunal in rejecting the claim of the petitioner is not correct as the tribunal did not consider two pieces of relevant material which was produced and relied upon by the petitioner in support of his case. They were; (1) the order-sheet in OS. No. 199/1973 produced in this case as Ext-A in which the petitioner herein was appointed as the receiver in respect of the suit land and (2) the record of rights in which the petitioner is shown to have been in possession of the suit land on the relevant date. It is his case that if the tribunal had considered these two pieces of material, it would have come to the conclusion that the petitioner was in possession of the suit land and from which the learned Advocate developed an argument stating that they would raise a presumption in favour of the petitioner that he was a tenant of the suit land.

4. As regards the order sheet Ext-A, the same was not produced before the tribunal. Even otherwise the order dated 26-11-1975 appointing the petitioner herein as the Receiver would not lend support to the fact that the petitioner herein was in possession of the suit land and on that basis he was appointed as the receiver. The suit in question was filed by the 4th respondent against the petitioner herein and three others for declaration and permanent injunction. In that suit, an application for the grant of temporary injunction under order 39 Rule 1 C.P.C. was also filed. The said application was resisted by the defendants in the suit including the petitioner herein. After hearing the arguments the Court observed that there was no force in the objection taken by the defendants. However, it thought that it was just and convenient to appoint the defendant (petitioner herein) as the receiver. The order in question, in my opinion, would not lend support to the stand taken by the learned counsel for the petitioner that the petitioner was in possession of the suit land before he was appointed as the receiver. No material is produced to show that the petitioner herein took possession of the suit land as receiver in pursuance of the order dated 26-11-1975. Thus, in my opinion, the order sheet Ext-A now relied upon by the learned counsel for the petitioner would not lend support to the plea that the petitioner was in possession of the suit land.

5. Now coming to the record of rights Exts-B1 and B-3 produced by the Petitioner, Ext-B1 relates to the period 1968-69 to 1972-73 and Exhibit-B3 relates to the year 1974-75 to 1976-77. In Ext.-B1, the name of the petitioner is shown in the "other rights" column as the mortgagee. Even in the cultivator's column for the year 1968-69, the petitioner is shown to have been in possession of the land as a mortgagee. For the year 1969-70 to 1972-73, the name of the petitioner continued in the cultivators column for these years the mode of cultivation is indicated by the code number one As regards the record of rights Ext-B3 which is for the year 1974-75 to 1976-77, the name of the petitioner continued in the cultivator's column. The mode of cultivation is also continued by Code No. 1. It is stated in the "other rights" column that the mortgage in favour of Papegowda (petitioner herein) was redeemed It is contended on behalf of the petitioner from the entries found in the cultivator's column showing the name of the petitioner, that the petitioner was in possession of the suit land in those years and it is further contended that it must be presumed from these entries, that the petitioner was holding the suit land as a tenant. In support of this contention reliance was placed on S. 133 of the Karnataka Land Revenue Act, 1964. S. 133 of the Land Revenue Act raises a presumption regarding the entries found in certain revenue records. It stipulate, Now coming to the contention that the tribunal did not consider the, that an entry in the record of rights and a certified entry in the register of mutation shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. From a reading of S. 133, it would reveal that the presumption arising thereunder is only regarding the entry that it is true until the contrary is proved. It does not, in turn, raise any further presumption arising out of the entries in the record of rights. If we apply S. 133 to the case on hand, at best the petitioner may contend that the entries in the record of rights showing his name in the cultivator's column shall be presumed to be true until the contrary is proved but he cannot stretch further the presumption arising under S. 133 to hold that he was in possession of the suit land as a tenant. Such a construction in my opinion would not be permissible in view of the language employed in S. 133 of the Karnataka Land Revenue Act. record of rights, I am unable to, persuade myself to accede to this contention. The tribunal did refer to the entries in the record of rights and did notice that the name of the petitioner was found in the cultivator's column. However, on consideration of the material produced before the tribunal, it came to the conclusion that the name of the petitioner was shown in the record of rights as a mortgagee and his name continued to be shown in the record of rights even after the mortgage was redeemed and further on the basis of the other evidence produced before it, it recorded a finding that after the redemption of the mortgage, the 4th respondent came into possession of the suit land and was cultivating it personally. In that view of the matter, I see no force in the contention that the tribunal did not consider the entries in the record of rights and as such the order is vitiated.

7. Regarding the claim of the petitioner for being registered as an occupant in

respect of the suit land, it is contended before me that the petitioner became the tenant of the suit land after the mortgage was redeemed. There is no dispute that the mortgage was redeemed on 15-3-1969. It seems to me that this case of the petitioner now presented before me is not in conformity with his claim application made in Form-7. He made his application on 31-12-1974. In his application, he claimed tenancy in respect of the suit land for the past over 16 years. This would take us to the year 1958, long prior to the mortgage in his favour which was on 19-5-1960. Now coming to his evidence before the tribunal which was recorded on 8-9-1977, the petitioner had stated that he was a tenant in respect of the suit land since the past 15 years. This takes us to the year 1962. Thus I find no consistency in the case set up by the petitioner as regards his tenancy. At the cost of repetition I would say that according to his claim application, his tenancy commenced in the year 1958 according to his evidence before the tribunal, it commenced in the year 1962 and as per his case pleaded before this Court, it started only after the redemption of the mortgage which was in the year 1969. The tribunal has considered the oral as well as the documentary evidence adduced on either side and recorded a finding against the petitioner that he failed to establish his tenancy in respect of the suit land and in my opinion, rightly. I see no good grounds to issue rule in this case.

8. In the result, for the reasons stated above, the writ petition fails and the same is dismissed.