

(1996) 03 KAR CK 0003
In the Karnataka High Court
Case No : C.R.P. No. 3643 of 1991

Patel Veerabasappa

APPELLANT

Vs

Basamma

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Karnataka Village Offices Abolition Act, 1961 — Section 4, 5, 5 (1)

Citation : (1996) ILR (Kar) 1435 : (1996) 2 KarLJ 102

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Ashok Patil, for the Appellant; B. Rudregowda, for the Respondent

Final Decision : Allowed

Judgement

Chinnappa, J.—This Civil Revision Petition is filed u/s 115 of the CPC against the order dated 28.6.91 passed in M.A. No. 56/83 on the file of the Additional District Judge, Shimoga, dismissing the appeal and confirming the order dated 8.8.83 in V.O.A.C. 6/82-83 passed by the Tahsildar, Bhadravathi.

2. The brief facts of the case of the petitioners are that S.No. 33 measuring 21.33 Gs., S.No. 35 measuring 1.34 Gs., S.No. 37 measuring 9.10 Gs. and S.No. 70 measuring 16.33 Gs. of Thimmalapura Village were Patel Service Inam lands of Thimmalapura. Patel Veerabasappa was the Patel of Thimmalapura Village till the Karnataka Village Offices Abolition Act, 1961 (for short "the Act"), came into force. Prior to Patel Veerabasappa holding the office of Patel, his elder brother Sangappa was holding the same. Patel Sangappa died in the year 1938 leaving behind only Basamma his wife. Basamma, on the death of her husband stayed in her parents house at Holegalalu Village. Veerabasappa son of Veerappa was appointed the Patel of Village Thimmalapura on 21.1.1940. On his becoming Patel, the Inam land accrued to him as the holder of the office. Since then, he has been in possession and cultivating the said lands. On 29.12.1966 Patel Veerabasappa filed an application before the Tahsildar for regrant of the land and

he has paid taxes in a sum of Rs. 417/- vide challan No. 52. The said Veerabasappa died subsequently and these petitioners were brought on record. In the meantime, Basamma also filed application. After hearing both the parties, the Tahsildar passed an order holding that these petitioners are entitled for S. No. 37 and 70 in all measuring 24-15 acres and Smt. Basamma is entitled to S. No. 33, 35, 70 in all measuring 24.14 acres.

3. As against that order, the petitioners preferred MA 56/83 before the Additional District Judge, Shimoga. The learned District Judge, by his order dated 28.6.91 dismissed that appeal confirming the order passed by the learned Tahsildar. The said order is impugned in this Revision Petition.

4. Heard the learned Counsel Sri Ashok Patil for the petitioners and Sri B. Rudregowda for the respondents.

5. The learned Counsel for the petitioners submitted that the deceased Veerabasappa was the village officer of Thimmalapura when the Act came into force. After coming into force of this Act, the land vested with the Government as per Section 4 of the Act. Veerabasappa filed application to the Village Officer u/s 5 of the Act for regranteeing the same. Respondents filed objections. The learned Tahsildar instead of granting the land in toto to Veerabasappa and his legal representatives, partitioned the properties between the L.Rs. of Veerabasappa and Basamma which is contrary to the provisions of law. He also submitted that the respondents neither filed their application nor paid the necessary fee payable to the Government for regranteeing of the land. According to him, before the property is regranteeed to the petitioners, the respondents cannot claim share in the property. The Tahsildar had no jurisdiction to partition the property. Sangappa the husband of Basamma was the Patel of that village but he died long ago and thereafter, Veerabasappa became the Patel of the property. Therefore, he claims that the order passed by the learned Tahsildar and confirmed by the learned District Judge are liable to be set aside. However, the learned Advocate for the respondents fully supported the orders passed by the Courts below. He also further submitted that the learned Tahsildar after having considered all the aspects allotted the items of the property in favour of the respondents and the other property in favour of the petitioners herein applying the equitable principle and this order also has been confirmed by the District Judge. Therefore, he submitted that the impugned order may not be disturbed at this belated stage.

6. In view of this argument, it is now necessary to find out as to whether the impugned orders call for interference by this Court. As far as the facts are concerned, there is no dispute and the only Question that arises for Consideration is:

Whether the properties can be partitioned by the Tahsildar at the time of regranteeing?

7. The Petition was filed u/s 5 of the Act. According to Section 5(1) of the Act the land can be granted to the person who was the holder of the Village office

immediately prior to the appointed date on payment by or on behalf of such holder to the State Government of the occupancy price equal to three times in the case of holders of inferior village office and six times in the case of holders of other village offices, the amount of the full assessment of such land within the prescribed period and in the prescribed manner. Therefore, it is clear that only the petitioners made the application as required u/s 5(1) of the Act by paying the prescribed amount and in the prescribed manner to the Government. There is nothing to indicate that the respondent has paid any amount and also made an application as necessary. In addition to all this, admittedly the husband of Basamma was the Patel till the year 1938 and after his death the deceased Veerabasappa was appointed as Patel and he held that office till this Act came into force. So the important ingredient of Section 5 is that the property should be regranted to the person who was the holder of the village office immediately prior to the appointed date. The husband of Basamma was never in possession of the property after Patel Veerabasappa became the Patel of that Village. Therefore, it is clear that only Veerabasappa could make the application and not Basamma and there is nothing to indicate that Basamma also made an application satisfying all the requirements of Section 5 of the Act. Incidentally, it may be mentioned that as she did not file the application as stipulated u/s 5 of the Act, the Tahsildar treated her as only respondent.

8. The learned Counsel for the petitioner further contended that Basamma has not made application for regrant of the land as also she has not paid the prescribed amount. It may be mentioned here, the Government is entitled for value of the property for the regrant of the land and each applicant need not pay the said amount. The Section also stipulates only one application from the person who held the office just prior to the coming into force of the Act and all the persons who claim to be the members of the joint family cannot make application. The prescribed amount has been paid by Veerabasappa along with the application. Hence, Basamma has no right to file the application and the question of payment of the prescribed value under the Act does not arise. Such being the case, Basamma cannot be construed as one of the applicants and rightly the Tahsildar has treated her only as a respondent.

9. According to Sub-section (3) of Section 5 of the Act, the regranted land cannot be alienated within 15 years otherwise than by partition among members of Joint Hindu Family. Further the land cannot be partitioned before the same is regranted which is fortified by the following Decisions:

10. It is held by our High Court in a Decision in SHIVAPPA FAKIRAPPA SHETSANADI v. KANNAPPA MALLAPPA SHETSANADI, BLJ 1987, 265 that:

"There is nothing in Section 4 of the Act which can be held to affect the personal law of the parties so as to deprive the junior members of the family of their right to claim partition of the suit land on the abolition of the village office and resumption and regrant of the land."

From this it is clear that the Inam property can be partitioned after the same is regranted in favour of the applicant. It is held by our High Court in a Decision in CHANDRABAI v. LAXMIBAI, 1975(1) Sh.N. Item No. 19, as follows:

"A grant of land resumed u/s 4 to the holder of the Village Office has to be regarded as compensation to the holder of the Village Office. Until the lands are regranted to the holder of the Village Office, other members of the family derive no title, assuming that the watan was family property which was impartible until its abolition. It is too premature for them to institute a suit for partition before regrant is obtained by the holder of the Village Office."

From this it is abundantly clear that the Watan property could be available for partition between the members of the family only after the regrant is completed and not before that. It is further held in a Decision in Bhimappa Ramappa Ghasti Vs. Arjan Laxman Ghasti, that:

"after the abolition of the village office and resumption of the land, it becomes a ryotwari land only on regrant and as such it would be released from the nature of its impartibility and becomes available for partition."

From the above Decisions it is clear that watan property would be available for partition only after the land is regranted in favour of the person who held the office just prior to the coming into force of the Act. Till such time, the property is impartible. Under those circumstances, the order passed by the learned Tahsildar dividing this property into two shares allotting two items of the property in favour of Basamma and the remaining survey numbers in favour of Veerabasappa is contrary to the very scheme of the Act. Therefore, that order is not in conformity with Section 5 of the Act notwithstanding the fact that the share allotted to both the parties is equal.

11. It may be true that Basamma is entitled for a share in the property. As stated above, the Tahsildar has no power to partition the property before the land is regranted. The Act also does not empower the Tahsildar to pass such an order regranteeing the property in favour of other members of the family. On the other hand, as stated above, the Tahsildar has to regrant the land to the person who held the office just prior to the coming into force of this Act. On this ground also the order passed by the learned Tahsildar is liable to be set aside.

12. The learned Counsel for the respondents submitted that the said order has been approved and confirmed by the learned District Judge and this Court at this belated stage may not interfere, which would cause great hardship to Basamma. This argument cannot be accepted. On the face of the order, it is clear that the impugned order is illegal and not in accordance with law. It is also not known as to whether Basamma is in possession and cultivating the suit property. Besides that, the Tahsildar cannot usurp the power of a Civil Court to partition the property,

13. It cannot be said at this stage as to whether Basamma is entitled for share

and if so, what is her share. These are matters to be decided by a competent Civil Court and the Tahsildar cannot pass an order while regranteeing the land. For the foregoing reasons I hold that the Tahsildar has exercised his jurisdiction improperly and contrary to the provisions of law. Therefore, I hold that the order passed by the learned Tahsildar and confirmed by the District Judge in M.A. 56/83 are not sustainable and are liable to be set aside.

14. In the result, therefore, I proceed to pass the following:

ORDER

The Petition is allowed, setting aside the order dated 8.8.83 in VOAC. 6/82-83 passed by the Tahsildar, Bhadravathi, and the order dated 28.6.91 passed in M.A. 56/83 on the file of the District Judge, Shimoga, dismissing the appeal and confirming the order insofar as it relates to the regrant of the land in favour of Basamma pertaining to S. No. 33 measuring 21 Ac. 33 Gs. Kharab; S. No. 35 measuring 1 Ac. 34 Gs. and S.No. 70 measuring 0 - 28 Gs. on the eastern side, totally measuring 24 Ac. 14 Gs. and the said land is granted in favour of the petitioners. However Basamma is at liberty to work out her remedies in the Civil Court, if she is so advised.