

(2001) 02 KAR CK 0078

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 3515 of 1990

Prahlad

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 21

Citation : (2001) 3 KCCR 1744

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

Bench : Single Bench

Advocate : Sona Vakkund and M.B. Nargund, for the Appellant; M. Ramaiah, Addition Government Advocate for Respondents 1 and 2 and Patil and Patil for Respondents 3 to 6, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chinnappa, J.—Heard the learned Advocates Smt. Sona Vakkund and Sri M.B. Naragund for the Petitioner and Sri Patil and Patil for Respondents-3 to 6. Sri M. Ramaiah, Additional Government Advocate for R-1 and R-2.

2. The undisputed facts are that one Paragouda was the tenant. He had no issues. He died on 20.3.1964 leaving behind his wife. During his life time he executed a Will in favour of the husbands of Respondents 3 to 5 his nephews. After his death, the Petitioner filed O.S. 89 of 1965 for possession of the property which came to be dismissed. As against that he preferred Regular Appeal 31 of 1967 which also came to be dismissed. He questioned that order in R.S.A. 708 of 1970 and this Court was pleased to remand the matter to the trial Court to raise an issue in regard to tenancy and to refer the matter to the Land Tribunal for its findings. Thereafter, the husband of the 3rd Respondent filed Form No. 7 on 31.7.1976 and the Tribunal allowed that application. That order was questioned in W.P. 8872 of 1976 and this Court was pleased to remand the matter to consider the question whether the tenant can execute a Will. However, the Tribunal granted occupancy right in favour of the applicant. That order was yet

again questioned before the land Reforms Appellate Authority, Bijapur, in LRA No. 11 of 1989 and the appellate authority dismissed the appeal confirming the order passed by the tribunal, Jamkhandi in KLR.SR.4/TBC dated 30.11.1988 vide its order dated 27.10.1989. Being aggrieved by this order, the Petitioner/landlord preferred this petition.

3. The learned Counsel for the Petitioner has vehemently argued that the appellate authority has given two reasons to dismiss the petition and those two reasons are unsustainable. The 1st reason is that the suit filed by the Petitioner for resumption of land came to be dismissed. Therefore, there is presumption that the Respondent is in possession of the property. In the records maintained in regard to the nature of cultivation in the suits filed by the Petitioner and also other particulars are mentioned. It also discloses the names of the husbands of R3 to R5 which clearly disclose that they are cultivating the property. This documentary evidence coupled with the fact that the suit filed by the Petitioner to resume the land which came to be dismissed also indicates that the husbands of the Respondents 3 to 5 were cultivating the property. As stated above, it is also not in dispute that the Respondents 3 to 5 are in possession of the entire area and they are cultivating the property. This documentary evidence coupled with the fact that the suit filed by the Petitioner to resume the land which came to be dismissed also indicates that the husbands of the Respondents 3 to 5 were cultivating the property. As stated above, it is also not in dispute that the Respondents 3 to 5 are in possession of the entire area and they are cultivating the property. Thus, they are lawfully cultivating the property right from the death of the deceased Paregouda who died in the year 1964. This fact is not in dispute. At every point of time, the attempt of the Petitioner to dislodge them from the property also failed. His contention that the Respondents 3 to 5 are in possession of the property by virtue of the will cannot be accepted in view of the fact that right from 1964 they have been in possession of the property. Therefore, as rightly pointed out by the learned Counsel for the Respondent, they are deemed tenants of the Petitioner.

4. It is no doubt true that that Paregouda has executed a will bequeathing his right in favour of his nephews who are the husbands of Respondents 3 to 5. Even assuming that the will cannot give any right, the long standing uninterrupted possession of the husbands of Respondents 3 to 5 and after their death, Respondents 3 to 5 are in possession of the property, the will said to have been executed does not have any value in this case.

5. In Timmakka Kom Venkanna Naik Vs. Land Tribunal, the question that arose before the Division Bench of this Court was as to whether a tenant would bequeath his right in favour of the 3rd party under a Will. It is held after considering Sections 2A, 34, 44, 45 and 48A that bequeath tenant's interest by Will. Statute has peremptorily provided succession which cannot be defeated by tenant by bequeathing his interest. No person can be called a tenant unless he cultivates land lawfully. When a tenant cannot bequeath right of tenancy, person

claiming benefit under such a Will cannot be termed as a tenant. Such person not entitled to grant of occupancy right. However, the statute has peremptorily provided succession which cannot be defeated by tenant by bequeathing his interest.

6. In this case Paragouda had no issues. It is also submitted that Paragouda and his wife were not in good terms and she deserted him. Under that circumstance, he executed a Will. However, the learned Counsel for the Petitioner submitted that the wife of Paragouda was driven out of the house by the husbands of Respondents-3 to 5 and therefore, the Will executed by Paragouda transferring the tenancy in favour of these Respondents is not valid. In view of the decision rendered by this Court as well as the Supreme Court the tenant cannot bequeath the property in favour of a third person. On the other hand, the legal heirs will inherit the right of tenant as tenancy is heritable. But admittedly, the wife of Paragouda had not filed any application in Form No. 7. Even she had not contested the case claiming that occupancy right should be granted in her favour. In the absence of it, the dispute was only between the Petitioner and Respondents 3 to 5 and as stated above, there is no dispute that these Respondents were in possession of the property. All the attempts made by the Petitioner to take possession from the Respondents 3 to 5 as referred to above also proved futile. It cannot be said that their possession is illegal as far as the Petitioner is concerned. Even holding that the Will executed by Paragouda in favour of the husbands of Respondents-3 to 5 is invalid but their possession and also treating them as tenant by the Petitioner prior to 1.3.1974 fully established that they are in lawful possession of the property.

7. In *Sangappa Kalyanappa Bangi v. Land Tribunal Jamkhandi and Ors.* ILR 1999 Kar 863 the question that arose before their Lordships of the Supreme Court was whether a devise under a Will would amount to "as assignment of interest" in the lands and therefore, would be invalid under the provisions of Section 21 of the Land Reforms Act? It is held:

Though it can be said in general terms that the devise simpliciter will not amount to an assignment, in a special case of this nature, interpretation will have to be otherwise. Deceased tenant can assign his rights only to the heirs referred to in the provision and such heirs could only be the spouse or any descendants or one who is related to the deceased tenant by legitimate-kinship.

The aforesaid two decisions cited above were also referred to by their Lordships. No doubt their Lordships of the Supreme Court in *Jaspal Singh Vs. Additional District Judge, Bulandshahr and Others*, held that nephews could not be said to be heirs of original tenants.

8. It is also necessary to mention here that the Petitioner had issued Ex.P-46 the receipt in favour of Respondent-3 acknowledging the receipt of rent for the years 1961-63 during the life time of the said Paragouda. However, the learned Counsel submitted that it was issued for and on behalf of Paragouda. Therefore,

these Respondents cannot claim tenancy on the basis of the Will. From the receipt it can be gathered that his nephews were cultivating the property during the life time of Paragouda. In other words, they were in possession of the property which was also accepted by the Petitioner as tenants probably due to the fact that Paragouda was old and he was unable to cultivate the property. In other words, the nephews are also not strangers to the family. As stated above, the wife of Paragouda also was not in good terms. That being the case, Paragouda wanted his nephews to cultivate the property and during his life time they cultivated for and on behalf of Paragouda and after his death, they continued to be the tenants and the Petitioner does not say that the Respondents have not paid the rent. In other words, it can be held that the Petitioner has impliedly accepted them as tenants and therefore, he filed the suit for resumption of the land from the husbands of Respondents 3 to 5. It is also clear that the wife of Paragouda had given a statement before the authority saying that she was thrown out of the house by the Respondents. This further strengthens the case of the Respondents that they have been in possession. In this case, both the Courts have gone into this aspect in greater detail and held that the Respondent No. 3 is the tenant and accordingly granted occupancy right. For the above reasons, I hold that there is no merit in this petition and is liable to be dismissed.

Accordingly, the petition stands dismissed.