

(1992) 08 KAR CK 0016
In the Karnataka High Court
Case No : C.R.P. No's. 3641 and 3642 of 1989

Racha Naika

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121 A, 2 (34), 4

Citation : (1992) ILR (Kar) 2930 : (1992) 3 KarLJ 616

Hon'ble Judges : Kedambady Jagannatha Shetty, J

Bench : Single Bench

Advocate : S.P. Shankar, for Kaleemulla Shariff, for the Appellant; G.K. Shevgoor, for R-3 and M. Shivappa, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Kedambady Jagannatha Shetty, J.—These two Revision Petitions arising out of two orders of the Appellate Authority reversing the common order passed by the Land Tribunal, as such these Petitions are disposed of by a common order.

2. The brief facts of the case are that the 3rd respondent in both these Revision Petitions viz., CRP 3641/1989 and 3642/1989, is the owner of land in Sy.Nos. 109, 110/1 and. 111/1 totally measuring 3 acres and odd and Sy.No.211 measuring 2 acres 39 guntas of Chandakavadi village and Sy.No. 212 measuring 2 acres 1 gunta and Sy.No. 213 measuring 2 acres 13 guntas, all situated in Kodimole village of Chamarajanagar Taluk, The petitioner filed Form No. 7 before the Land Tribunal, claiming occupancy rights as he was cultivating the lands having taken the lands on lease from the father of respondent No. 3 by paying annual rents and obtained such lease from time to time, the last of which was on 11-12-1960. On receipt of notice from the Land Tribunal, the respondent landlord filed a statement stating that the petitioner was not cultivating the land but he was given right to collect the fruits from the trees being given to the petitioner. The respondent-landlord at no time had given possession of the land to the petitioner except for the purpose of collecting the fruits on basis. The Land

Tribunal after an enquiry has held that the petitioner is a tenant of the land in question and accordingly granted occupancy right as agricultural tenant in favour of the petitioner.

3. This has been challenged by the third respondent in two appeals before the Appellate Authority. The Appellate Authority has in both the appeals formulated the following point for its consideration:-

"Whether the Land Tribunal was right in granting occupancy right in favour of the 1st respondent in respect of S.Nos. 109, 110 and 111 of Chandakavadi village and S.Nos. 211, 212 and 213 of Kodimole village, Chamarajanagar Taluk (in AACC 433/87 and AACC 433/87)?"

4. The Appellate Authority on consideration of both oral as well as documentary evidence has held that the alleged lease is only on contract for fruit bearing trees, viz,, coconut, areca nuts etc., and as such it is not a lease of land. Relying on a Decision of this Court in W.P.No. 5598 of 1977 reported in Short Notes No. 15 in Karnataka Law Journal Hemadevappa v. Land Tribunal DD 24-1-1979 it has observed that the Decision fully applies to the facts of the case and as such it is not possible to hold that the petitioner is a tenant of the land in question. In the penultimate paragraph of the judgment of the Appellate Authority, it has been observed that:

"For the reasons stated above, we are of the opinion that the agreement under which the 1st respondent came into possession of the lands in question is only a contract to gather fruits in the trees standing in the land and it is not a lease to cultivate the land..... In the result we are unable to sustain the orders of the Land Tribunal granting tenancy rights to the first respondent in S.Nos.109, 110/1, 111/1, 211, 212 and 213.

Hence, we allow the appeal and order that the order of the Land Tribunal granting occupancy right in favour of the first respondent in S.Nos.109, 110 and 111 (in CRP 3641/1989) and S.Nos. 211, 212 and 213 (in CRP 3642/1989) of Kodimole village, Chamarajanagar Taluk is hereby set aside."

Hence, these Revision Petitions by the petitioner,

5. The learned Counsel for the petitioner Sri S.P. Shankar, submitted firstly, that the Appellate Authority committed an error in holding that the petitioner has not made out a case that the land in question was tenanted and the petitioner was a tenant of the land in question, on the ground that the documents produced by the petitioner is not a lease but it is ; without considering the document in its entirety, if it had been considered in its proper perspective, it would have been clearly established that the petitioner was put in possession of the lands in question as a tenant. Next, he contended that the interpretation given by the Appellate Authority in respect of the lease deed and the rent receipts are not only arbitrary but they are illegal.

6. Sri S.P. Shankar, learned Counsel, further took me through the documents and

referring to the contents of the documents argued that a mere nomenclature viz., alone cannot determine the character and nature of the land, The document in entirety if read and considered along -with other documentary evidence like rent receipts, would clearly go to establish that the land was leased out to the petitioner as a tenant. In the alternative he has submitted that the Appellate Authority in view of the petitioner's possession of the land in question ought to have held that the petitioner is a deemed tenant by virtue of Section 4 of the Land Reforms Act, Elaborating his arguments he has relied on the Decisions reported in Hemadevappa v. Land Tribunal; GURU-SIDDAIAH v. LAND TRIBUNAL, BAGALKOT 1979 (2) KLJ 176 BALESHA RAM v. LAND TRIBUNAL, CHIKODI 1978(1) KLJ 116; VENKATAPPA NINGAPPA v. STATE OF KARNATAKA 1981(1) KLJ 382; GADLAPPA AND ORS. v. GANGAMMA 1968(1) KLJ 522

7. Sri G.K.Shevgoor, learned Counsel for respondent No.3 has submitted that all the documents under which land was taken by the petitioner clearly go to show that it was given for cutting and removing the fruits and at no stage it was given for cultivation of lands in question as a tenant. The words occurring in the document should be given proper and correct meaning which clearly establish that at no time the land in question was given on lease to the petitioner. What was given to the petitioner was only a right to collect the fruits from the garden land. The lease deed referred to in which the words occurring as and advance money given therein, clearly go to show that what was given to the petitioner was not the right to cultivate the land as a tenant but a right to collect coconuts from the yielding trees and as such by no stretch of imagination, it can be said that the land was given to the petitioner as a tenant. Further, ho has submitted that the Appellate Authority is the final fact finding authority which has based its finding on the basis of admissible evidence, as such it cannot be interfered in exercise of revisional jurisdiction u/s 121A of the Act.

8. Let me consider the conflicting contentions of the parties.

9. It is an undisputed fact that the petitioner filed Form No.7 on 30-12-1974 claiming he was a tenant of S.Nos. 211, 212, 213 measuring 1 acre 13 guntas, 2 acres 1 gunta and 1 acre 21 guntas of Kodimole village and S.Nos. 109, 110/1 and 111/1 totally measuring 3 acres and odd in Chandakavadi village under one Peer Sab, the father of the respondents in these two above referred Revision Petitions. The Land Tribunal considering the material on record viz., the Agreement, dated 18-10-1965, by which the lands with fruit bearing trees viz., coconut trees and areca and other fruit bearing trees were given to the petitioner on with right to collect the usufructs from the fruit bearing trees, has held that since the lands were given in possession with fruit bearing trees under various Agreements, the land was tenanted and the petitioner was entitled to occupancy right. In the appeals, the Appellate Authority on consideration of the documents has held that there was no lease of land, but only the right to pluck the fruits from the fruit bearing trees already on the land and the possession of the land given for the purpose of plucking fruits does not amount that land was leased to

the petitioner and the act of plucking the fruits from the fruit bearing trees does not amount cultivating the land and he is in lawful possession as tenant of the land in question.

10. In view of the conflicting contentions of the parties, it is necessary to consider the recitals of the Agreements, dated 11-2-1960, 10-1-1958 and 18-10-1965 and other evidence adduced by the parties.

11. In all these documents, it is clearly mentioned that the petitioner was given possession of the garden lands with the right to gather/pluck the fruits from the fruit bearing trees on the payment of . No right was given to cultivate the land. The evidence of the petitioner before the Tribunal was that when he took the land under the Agreements, there were already fruit bearing trees. However, he has stated that some coconut trees were planted about 8 years ago obviously after 1-4-1974 and after the declaration in Form No. 7 was filed. There is no evidence adduced by the petitioner on his taking possession. of the land as per the Agreements that he had at any time raised the crops. The respondent-owner had filed R.T.C. from 1971 to 1974-75 before the authority which discloses that no ground crop is raised in the land in question. Thus, it clearly establishes that what was given to the petitioner under the Agreement was only garden lands consisting of fruit bearing trees. In the Agreement referred to above, the word referred therein is not the rent payable by the petitioner for use and occupation of the land for agricultural purposes within the meaning of Section 2-A(28) of the Act. the petitioner was given the right only to gather fruits from fruit bearing trees on his giving certain number of fruits of a certain value.

12. In this context, the learned Counsel for the respondent has relied on the Decision of this Court in Hemadevappa v. Land Tribunal, Maddur. The facts of that case are identical to the present case. In that Decision it is observed thus:-

"The lands formed a grove consisting of mango and tamarind trees, yielding coconut trees and young coconut plants. R-2 was given the right to gather the usufruct from the coconut trees on his giving certain number of coconuts of a certain value. The tamarind trees, mango trees and the newly planted coconut plants were not included in the agreement of lease and the right to enjoy them was retained by the lessor. Held what was granted to R-2 was the right to collect coconuts from yielding trees and not the land as such. Direction in the lease to R-2 to plough the lands without causing any harm to the newly planted coconuts plants, to remove weed and to preserve the land and to repair the fence, must be read in the context of what was given to R-2. Hence, R-2 was not a tenant within Section 2-A(34) and the lands were not tenanted lands within Section 44 of the Act."

The Appellate Authority relying on the said Decision has held that the petitioner is not a tenant of the land in question.

13. The learned Counsel for the petitioner contended that when the petitioner was given the possession of the land under the Agreement and he was paying

pertaining to the gathering fruits from the fruit bearing trees, he is a tenant of the land and the agreements are the lease deeds of agricultural land within the meaning of land" defined u/s 2-A(18) of the Act. In support of the submission, he has cited the Decisions of this Court in Gurusiddaiah and Balesha Ram's cases , cited supra. In Gurusiddaiah's case, the point involved was whether after the expiry of lease of five years period, the tenant was to give possession back to the landlord. In the said case, it is observed as follows:-

"Where a lease was for five years on an yearly basis, merely because the rentals amount for the period of 5 years had been paid in advance and there was a recital that after the expiry of five years possession of the land must be given to the landlord, it cannot be said that the same have the effect of converting the lease into a mortgage. In view of Section 6 of the Act the recital to surrender possession after 5 years can have no consequence."

This Decision has no application to the facts of the case.

The next Decision i.e., Balesha Ram's case is also of no help to the petitioner. In that Decision, it is held thus:-

"Even if the land was not in the actual possession of the tenant immediately prior to first March, 1974, if it was a tenanted land, it vests in the State Government. That the land cannot be registered in favour of the tenant who was not in actual possession immediately prior to first March, 1974 is not relevant for the purpose of deciding the question as to whether the land stands vested in the State Government u/s 44 of the Act."

"A tenant who was lawfully entitled to cultivate the land personally immediately prior to the commencement of the Amendment Act, but was wrongfully prevented from doing so, is not entitled to registration of occupancy rights u/s 45 of the Act."

14. The next contention of Sri S.P. Shankar the learned Counsel for the petitioner was that at any rate in view of the petitioner's possession of the land in question as per agreement he should be held as deemed tenant u/s 4 of the Act. The respondent's Counsel has controverted this submission and stated on proper interpretation of those documents viz., Agreements, it clearly go to show that the petitioner was not given the lands in question for cultivation. The word appear, in the documents means, the custody/care of the fruit bearing trees given to the petitioner with the right to pluck fruits on payment of to the respondent. It does not construe the petitioner lawfully cultivating the land belonging to the respondent. Section 4 envisages that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant. If a person is in custody/possession of the fruit bearing trees on the land under an Agreement of he cannot be a tenant muchless - a deemed tenant.

15. The learned Counsel for the petitioner has cited the Decision of this Court in Venkatappa Ningappa's case, cited above, in support of his submission of

deemed tenant. That was the case in which the petitioner was cultivating the land under a hired labour in the absence of personal supervision of the owner which came to be held that the petitioner's cultivation does not amount to cultivation by hired labour and petitioner would be a deemed tenant u/s 4(b) of the Act. It is observed therein that "if the ingredient or element of personal cultivation is lacking in the case of a so called cultivation by hired labour, it will inevitably lead to the conclusion that it is not a case of hired labour, but of a deemed tenant." In the instant case, lands in question were not given for cultivation. The Decision relied on by the petitioner is of no assistance to him. It is distinguishable on facts of these cases.

16. Where the garden land (though agricultural land) was agreed to be given to the person for gathering the fruits on payment of to the owner, the very possession of such land cannot make it an agricultural lease, and the person cannot be treated as a deemed tenant. u/s 2(34) "tenant" means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes a person who is deemed to be a tenant u/s 4. Under Explanation to Section 2(34) it is made clear that a person who takes up a contract to cut grass, or to gather the fruits or other produce of any land, shall not on that account only be deemed to be a tenant. Mr. Shevgoor, learned Counsel for the respondent, contended that when the petitioner has failed to establish that he was holding the land on lease from the owner, it is not open to him now to contend that he belongs to the category of deemed tenants. There was no plea or proof that the petitioner belongs to the category of "deemed tenant". He has further argued, in the absence of such plea and proof, the petitioner should not be allowed to contend that he falls under the category of deemed tenant. In support of this submission, he has relied on the Decision of this Court Gadlappa's case?, cited supra. In the said Decision, it is held thus:-

"A deemed tenant belongs to a class different from the class to which a tenant who holds lands on a lease belongs and the attributes of a deemed tenancy are different from those of a tenancy on a lease.

It is not enough for a defendant to say that he holds lands on lease from the owners, and if that plea fails, it is not open to him to contend that he belongs to the category of deemed tenants. Unless there is a plea and proof that the defendant belongs to the category of deemed tenants, it will be too late for him on the failure of the plea that there was an express lease, to fall back on the plea of deemed tenancy."

The contention of Mr. Shevgoor, learned Counsel for the respondent is well founded. The petitioner having failed to establish that he holds lands on lease from the respondent, it is not open to him to contend that he belongs to the category of deemed tenant. Moreover, there is no plea and proof that the petitioner belongs to the category of deemed tenant.

17. The Appellate Authority on consideration of oral and documentary evidence

has come to the conclusion that the petitioner is not a tenant and is not entitled to occupancy right. This finding of fact is that of the final Court of fact. The scope of Revision u/s 121A of the Act is limited and does not extend to re-appreciation of fact. In the Decision reported in Thimmamma Vs. Siddarangaiah, this Court has held that "it is thus clear that the scope of Revision u/s 121-A of the Act is limited and does not extend to re-appreciation of facts."

18. The learned Counsel Mr. S.P.Shankar, appearing for the petitioner, has, no doubt, put forth persuasive arguments and also made gallant attempts to show that the order of the Appellate Authority suffers from illegality and irregularity in its proceedings. I do not find any illegality in the order of the Appellant Authority nor any irregularity in its proceedings.

19. For the reasons stated above, these Revision Petitions fail and are rejected.

In view of the peculiar circumstances of the case, no order as to costs.