

(2005) 03 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 24391 of 1997

Rati alias Varija

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 133, 24, 48 A

Citation : (2005) ILR (Kar) 5219 : (2005) 2 KCCR 1045

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R.V. Jayaprakash, for the Appellant; Ratna N. Shivayogimath, HCGP for R1 and R2 and K. Chandrakantha Ariga, for R-3, for the Respondent

Judgement

S. Abdul Nazeer, J.—In this writ petition, the petitioner has called in question, the orders dated 24.12.1976(Annexures "C and "D" respectively) passed by the Land Tribunal, Karkala, whereby, the petitioner's application seeking grant of occupancy right was rejected and the application of the 3rd respondent was allowed.

2. The petitioner and the 3rd respondent are the children of late Sri. Parameshwara Shervegara. Parameshwara Shervegara was the tenant of the lands in question. The 4th respondent purchased the said lands from its previous owner under a registered sale deed dated 23.06.1959. Parameshwara Shervegara had taken the lands from the 4th respondent on lease on 04.10.1959. Parameshwara Shervegara died prior to 01.03.1974. The petitioner married 4th respondent, the owner of the properties in question.

3. After coming into force of Karnataka Land Reforms Act, 1961 as amended by Act 1/1974, the petitioner filed an application in Form No. 7 for grant of occupancy right in respect of the lands in question as a legal representatives of the deceased Parameshwara Shervegara, her father. Likewise, her brother, the 3rd respondent also made a similar application for grant of occupancy right in respect of the lands in question. The land Tribunal, by the order dated

24.12.1976 (Annexure "C") rejected the application of the petitioner on the ground that she cannot claim tenancy under her husband. The application of the 3rd respondent was allowed and occupancy right was granted in his favour in terms of the order dated 24.12.1976 (Annexure "D").

4. Thereafter, the petitioner filed a suit in O.S.No. 355/1994 on the file of the Principal Munsiff, Karkala for partition and separate possession of half share in the properties of her father including the tenanted lands. In the said suit, the 3rd respondent has taken up a contention that the Land Tribunal, has granted occupancy right exclusively to him in respect of the prosperities in question and that the petitioner is not entitled to any share. In the circumstances, the petitioner has filed the present writ petition challenging the orders impugned.

5. I have heard the learned Counsel for the parties and perused the materials placed on record.

6. Sri. R.V. Jayaprakash, Learned Counsel for the petitioner submits that the Land Tribunal is not justified in rejecting the application filed by the petitioner for grant of occupancy right and granting occupancy right of the said land exclusively in favour of the 3rd respondent. It is his further submission that the father of the petitioner was a tenant of the lands in question and after his death, the petitioner and 3rd respondent being the heirs, are entitled for equal share, placing reliance on Section 24 of the Karnataka Land Reforms Act, it is urged that the rights of the tenants are heritable and that after the death of their father, the petitioner and the 3rd respondent, are holding the lands on the same terms and conditions on which their father was holding at the time of his death. Therefore, the Land Tribunal ought to have granted occupancy right to an extent of 50% in favour of the petitioner. He further submits that since the Land Tribunal has failed to consider this aspect of the matter, the Civil Court has jurisdiction to go into the said question in the suit filed by the petitioner for partition of the properties of late Parameshwara Shervegara. He has relied on the decision of Apex Court in case of Balawwa and Another Vs. Hasanabi and Others, . The decisions of this Court in case of Sri Parushuram Nemani Kuduchakar and Others Vs. Smt. Shantabai Ramachandra Kuduchakar and Others, and Doddamma Vs. Muniyamma and Others,

7. Per Contra, Sri. K. Chandranath Ariga, Learned Counsel for the 3rd respondent argues that the Land Tribunal is justified in rejecting the application of the petitioner, since she cannot be a tenant under respondent No. 4 who is her husband. In this connection, he has relied on the decision of this Court in the case of Smt. A. Jalajakshi D. Alwa v. Meenakshi Naik by LRS 1987 (I) KLJ 1. It is further argued that the 3rd respondent was cultivating the land as a tenant in his independent right, on the appointed day and immediately prior to that date. Therefore the Land Tribunal is justified in granting occupancy right in favour of the 3rd respondent. He further argued that the petitioner has already filed a Civil suit for partition of the properties belonging to Parameshwara Shervegara including the tenanted Lands. He has relied on the decision of the Apex Court in

the case of Mudakappa Vs. Rudrappa and others, and submits that when rival claims were set-up for tenancy right and for entitlement of registration, it is incumbent upon the Tribunal to consider the rival claims and that the Tribunal alone is a Competent Authority to decide the said issue. He further argues that the Civil Court has no competence to decide this question in the partition suit pending between the parties.

8. The material facts are not in dispute. It is not disputed that Parameshwara Shervegara was the tenant of the lands in question and admittedly respondent No. 4 had purchased the said properties on 23.06.1959 and the petitioner had married the 4th respondent. It is also not in dispute that the Civil suit for partition, is pending before the competent Court in respect of the properties of Parameshwara Shervegara, including the tenanted lands.

9. The application of the petitioner was rightly dismissed by the Land Tribunal as per Annexure "C because she had claimed tenancy under her husband-respondent No. 4. It is settled that a living spouse cannot claim conferment of occupancy right as a tenant of other living spouse in respect of agricultural land under the Karnataka Land Reforms Act of 1961. A Division Bench of this Court in case of SMT. A. Jalajakshid. Alwa's case (supra) has held that the Karnataka Land Reforms Act does not recognise a tenancy between a husband and wife and vice-versa though the common law or other laws may recognise the same.

10. It is the case of the Petitioner that she is entitled to claim the tenancy right in the capacity of the legal representative of deceased late Parameshwara Shervegara, her father. Since there was no dispute that the lands were tenanted lands, they stood transferred to and vested in the State Government as on 01.03.1974. The Land Tribunal did not go into the question as to whether the tenancy in respect of the said land was a joint family tenancy or the tenancy exclusively belongs to the 3rd respondent. Now the question is, whether the Civil Court can decide as to whether the tenancy is a family tenancy or exclusive tenancy of the 3rd respondent?

11. As noticed above, Section 24 of the Karnataka Land Reforms Act, 1961 states that the rights of the tenants are heritable. It is as follows:

"24. Rights of tenant to be heritable -where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death.

12. In Mudukappa's case (supra,) the Apex Court has held that when rival claims were set up for tenancy right and entitled for registration, it is incumbent for the Land Tribunal to enquire into the dispute and encounter the same in the prescribed manner. It is further held that when the question arise whether the applicant therein or the Joint Family is the tenant, that question is to be decided by the Tribunal alone u/s 48A read with Section 133 and not by the Civil Court.

13. In Balawwa's case (Supra,) which is more or less similar to the present case,

the Apex Court has held that u/s 48A of the Karnataka Land Reforms Act, the Tribunal can only grant the relief by declaring occupancy right to the applicant, provided, preconditions are satisfied namely the land was in possession of the tenant concerned, on the relevant date and that the Land Tribunal has no jurisdiction to grant relief of partition and the Civil Court itself has the jurisdiction to entertain the suit for partition. In that case, Imamsab was the original tenant. A suit for partition was filed in respect of his properties. A widow of his son and husband of one of his daughters claimed exclusive title in respect of two items of landed properties on the basis of the order passed by the Land Tribunal u/s 48A of the Act. The Trial Judge granted partition of the said two items of the properties. A contention was raised before the Apex Court that the Civil Court has no jurisdiction to grant partition of the said two items of the properties by placing reliance on Mudukappa's case rejecting the said contention, it has been held as follows:

"Looking at the provisions of Section 48-A of the Karnataka Land Reforms Act and the relief which is sought for in the present case, it is difficult to hold that the Tribunal had the jurisdiction to grant the said relief so as to oust the jurisdiction of the Civil court. u/s 48-A, the Tribunal can only grant the relief of declaring the occupancy right in favour of an applicant provided the preconditions for the same are satisfied, namely, that the land was in the possession of the tenant concerned on the relevant date. That being the position and the Tribunal under the Land Reforms Act not having the jurisdiction to grant relief of partition, the Civil court itself has the jurisdiction to entertain the suit for partition. The first contention of the learned Counsel for the appellants is, therefore, devoid of any force."

14. In Parashuram Nemani Kuduchakar's case (supra) this Court has held that when there is a rival claim and question before the Tribunal was whether the cultivation of the land by a member of the joint family is on behalf of the joint family or exclusively by the person who is cultivating, the Tribunal is competent to go into the said question and decide one way or the other on the basis of the material placed before it. If the Tribunal records a finding after contest in one way or the other, then the said finding becomes a final subject to challenges under the provisions of the Act. The Civil Court's jurisdiction to decide the very same question is completely ousted. However, if the Tribunal does not decide this question, but decides to confer occupancy rights on an application purely based on the Revenue records showing his name in the Revenue register and on the basis of his actual possession of the land or cultivation of the land and declines to record a finding whether the occupancy rights granted is a right belonging to the Joint Family or to an individual, then it is open to the other members of the Joint Family to seek a partition of their rights in the occupancy rights granted in favour of a member in the family. In the said suit the Civil Court is not called upon to decide as to who is the tenant, as the said question is completely decided by the Tribunal. What the Civil Court is called upon to decide in such a suit is whether the tenancy rights conferred on a member of the family as his self acquisition or

belonging to the Joint Family? The Civil Court is fully competent to go into this question. The Court has summarised legal position at paragraph 28 of the order.

15. Following the aforesaid decisions, this Court in Doddamma's case(supra) has held that when there is a rival claim for tenancy by the members of a family the Land Tribunal is competent to decide as to whether the tenancy is individual or Joint Family tenancy. However, when the application for conferment of occupancy right is filed by one of the members of the family, conferment of occupancy right on the said applicant would not preclude the other members of the family to contend that the said tenancy is a Joint Family tenancy and they are entitled to partition and separate possession of the shares.

16. From the above discussion, it is clear that when a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death, which is evident from Section 24 of the Act. Therefore, if both the sons and daughters of the deceased tenant apply for grant of occupancy right, the Tribunal has to club the applications of the rival claimants, consider them and decide the person entitled to be registered as an occupant and pass orders accordingly. If the Tribunal records a finding one way or the other, then the said finding becomes final subject to challenge under the Act. The Civil Courts jurisdiction to decide the very same question is ousted. If the Tribunal does not decide this question, but decides to confer occupancy rights on the basis of the entries in the revenue records or on the basis of his actual possession or cultivation of the land and declines to record a finding as to whether the occupancy right is granted exclusively to him, then the other applicant is entitled to seek partition of the occupancy rights granted in favour of the other heir of the deceased tenant.

17. In the present case, the tenancy is conferred on the 3rd respondent as per the order dated Annexure "D" on the basis of the revenue records and his possession and cultivation of the Land. The Land Tribunal has not recorded a finding that the tenancy exclusively belongs to him. The petitioner has made a claim on the ground that she is a legal representative of Parameshwara Shervegara, Her application was dismissed on a technical ground that she cannot claim tenancy under her husband. Therefore, petitioner has filed a suit for partition of the properties of Parameshwara Shervegara including the tenanted lands. I am of the view that the Civil Court has jurisdiction to decide this issue because the Civil Court is not called upon to decide as to who is the tenant as the same question is already decided by the Land Tribunal. The Civil Court is called upon to decide as to whether the tenancy right granted in favour of a person is his self acquisition or it belonged to his predecessor and that other heirs have a share in said property. The Civil Court is competent to go into this question. Therefore, no interference is called for in so far as the impugned orders are concerned.

18. The Civil Court in the pending partition suit in O.S. No. 355/ 94 is directed to

consider the claim of the petitioner as also the 3rd respondent in accordance with law.

Petition is disposed of accordingly. No costs.