

(1984) 01 KAR CK 0019
In the Karnataka High Court
Case No : Writ Appeal No. 1951 of 1983

Rokyayabi

APPELLANT

Vs

Ismail Khan and Others

RESPONDENT

Date of Decision : 03-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 141
Karnataka Land Reforms Act, 1961 — Section 48 A

Citation : AIR 1984 Kar 234

Hon'ble Judges : V.S. Malimath, Acting C.J.; N. Venkatachala, J

Bench : Division Bench

Advocate : U.L. Narayana Rao, for the Appellant; Noor Hussain, for the Respondent

Judgement

V.S. Malimath, Ag.C.J.

1. After admitting this appeal, with the consent of the learned counsel for the contesting parties, we heard the matter finally today.

2. The first respondent alleges that he filed an application for grant of occupancy rights before the Land Tribunal, Tiptur, u/s 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act). That application having been rejected, he has challenged the order of the Tribunal in Writ Petition No. 42230/82. After the appellant, owner of the lands, was duly served, she made an application 1. A. I for appointment of a receiver in respect of the lands in question. The learned single Judge has rejected the said application on merits observing that the averments in the application, if at all may justify the appellant seeking an appropriate interim order of injunction and not an order of appointment of a has further held that the application for appointment of a receiver is not maintainable. Hence this appeal.

3. Sri U. L Narayana Rao, learned counsel for the appellant, contended that the learned single Judge was not right in taking the view that an application for

appointment of a receiver cannot be maintained in a writ petition filed under Art. 226 of the Constitution of India challenging the order of the Land Tribunal rejecting the application of the applicant made under S. 48-A of the Act for grant of occupancy rights.

4. The learned single Judge has held that Order XL Rule 1CPC which provides for appointment of receiver cannot be invoked as a writ petition under Art. 226 of the Constitution is not a civil proceeding. For this conclusion the learned single Judge has relied upon the Explanation to Section 141 C. P. C. S. 141 C. P. C. provides that the procedure provided in the C. P. C. in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. The Explanation to S. 141 C. P. C. however provides that the expression "proceedings" includes proceedings under Order IX but does not include any proceeding under Art. 226 of the Constitution. It is therefore held that a proceeding under Art. 226 of the Constitution cannot be regarded as a proceeding which would attract the provisions of the Code of Civil Procedure.

5. But Sri Narayana Rao invited our attention to R. 39 of the Writ Proceedings Rules, 1977 framed by this Court under Art. 226 of the Constitution, and contended that though the provisions of the C. P. C. are not automatically attracted to a proceeding under Art 226 the provisions of the C. P. C. have been made applicable by the said Rules. R. 39 of the said Rules reads: -

"39. Application of the High Court of Karnataka Rules etc.,

The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the CPC 1908 shall apply, as far as may be, to proceedings under Art. 226 and/or Art. 227 and writ appeals in respect of matters for which no specific provisions is made in these Rules."

It is, therefore, clear that though the provisions of the C. P. C. are not made automatically applicable having regard to the Explanation to Section 141 C. P. C., the provisions of the C. F. C. are made applicable by a specific Rule made by this Court under Art. 226. R. 39 of the said Rules provides that the provisions of the C. P. C. shall apply as far may be to proceedings under Art. 226 and writ appeals in respect of matters for which no specific provision is made under the said Rules. We have therefore no hesitation in agreeing with the contention of Sri Narayana Rao that the provisions of the C. P. C. have been made applicable to proceedings under Art. 226 to the extent indicated in R. 39 of the said Rules. Hence it follows that the provisions of O. XL R. I C. P. C. can be availed of in a proceeding under Art. 226.

6. Sri Narayana Rao is also right in inviting our attention to Section 48-C of the Act which empowers the Tribunals in proceedings u/s 48-A of the Act to make appropriate interim orders in the nature of the temporary injunction or appointment of receiver in respect of the land or lands for which an application is made under S. 48-A of the Act. As the present proceeding under Art. 226 arises

out of an application made u/s 48-A of the Act, it is obvious that by virtue of Section 48-C of the Act the concerned parties could make an appropriate application for an interim order of temporary injunction or appointment of receiver in respect of the lands which are the subject matter of the application made u/s 48-A of the Act. Hence, it is not possible to agree with the view taken by the learned single Judge that the application filed by the appellant for appointment of receiver was not maintainable.

7. So far as the merits of the case are I concerned, we entirely agree with the view taken by the learned single Judge that the facts of this case do not merit appointment of a receiver. The learned single Judge is justified in observing that the averments at best can only justify the appellant seeking an interim order of injunction and that no case has been made out for the appointment of a receiver.

8. Hence this appeal fails and is dismissed. No costs.

9. Appeal dismissed.