
(1990) 01 KAR CK 0036
In the Karnataka High Court
Case No : W.P. No. 24642/1982

Rudregowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 63

Citation : (1990) 1 KarLJ 137

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The point for consideration is whether the impugned order in each of these writ petitions suffers from any legal infirmity by reason of non-consideration from the existence of a partition among the members of the petitioners' family.

2. All the impugned orders in these writ petitions are strikingly similar in content.

3. The reasoning of the Tribunal is that the theory of partition is unacceptable to it because the declaration made in Form No. 11 was not filed in accordance with the partition deed. The tribunal has observed that if the filing of the declarations have been subsequent to partition, it would have accepted the theory. Another observation of the tribunal is that there are sufficient reasons to doubt the partition deed itself.

4. It is difficult to sustain the impugned orders of the tribunal for two reasons. If partition deed was acceptable to the tribunal if it had taken place subsequent to the filing of the declaration, there is no reason why it should not have been accepted merely because it is anterior to the declaration. The tribunal has glossed over the fact that what is material for consideration is not only the fact of partition, but also the nature of partition. Whether it came into existence before or after the declaration, assumes secondary importance. It is seen in the declaration form in regard to question No. 4, the answer given by the declarant is that the declaration relates to individual and not to joint family and it is self-explanatory that what is meant by the expression is the individual status and not

the joint status. Individual status could be reasonably presumed to be the result of partition among the members of the family. It cannot be said that there was no reference to the status of the family at all for after all partition is an indication of the status of the family and the nature of status of the family. It is in furtherance of this declaration that in the statement of objections filed at the time of enquiry held under Section 67(1)(b) of the Karnataka Land Reforms Act that the petitioners urged that partition took place on 4-4-1973 and explained the extent of land which came to the share of the petitioners in the said partition. The tribunal was not right in observing that the declaration is not based on the fact of partition. The observation is rather casual. On the other hand, when an objection was raised against the presumption that the petitioners are holding land in excess of the ceiling limit, it was the duty of the tribunal to further investigate into the matter and held a proper enquiry in this regard. On the other hand, the tribunal has rejected the contention merely because the partition was anterior to the declaration and that the declaration was not based on the partition deed. The finding reached by the tribunal appears to be rather inaccurate and superficial. Though the tribunal has stated that there are sufficient reasons to doubt the partition deed itself, the reasons are not stated by it. In this regard, it is not a speaking order. The quasi judicial authority is bound to assign reasons in support of its finding. A finding reached without rationale, deserves to be rejected. In all these writ petitions, the impugned orders suffer from material lapses.

5. The learned Government Pleader Sri Siddagangaiah left no stock unfurled to negative the arguments advanced by the learned Counsel for the petitioners and categorically stated that there is no evidence of the existence of the partition at all in all these cases and asserted that the impugned orders are legal and binding and that the writ petitions deserve to be thrown out.

6. It is difficult to accept this spirited contention of the learned Government Pleader because both facts and reasons as well as law are against the respondents. The finding reached by the tribunal, to say the least, is unsupported by valid reasoning and also perfunctory.

7. For the above reasons, these writ petitions are allowed and the impugned orders in each of these writ petitions are quashed. The cases are remitted back to the tribunal for fresh enquiry and disposal on merits and in accordance with law allowing liberty to the petitioners to adduce such evidence as they deem fit in the circumstances in support of their contentions. It is hereby directed that the tribunal shall dispose of these cases within a time limit of 45 days from the date of receipt of a copy of this order. A copy of this order shall be transmitted to the tribunal forthwith.

Writ Petition allowed.