

(2014) 02 KAR CK 0134
In the Karnataka High Court
Case No : Writ Appeal No. 1728 of 2012 (LR)

Sandamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 34

Citation : (2015) 1 KarLJ 73 : (2015) 4 KCCR 3165

Hon'ble Judges : Rathnakala, J;N.K. Patil, J

Bench : Division Bench

Advocate : Pampapathi K. for M.V. Chandra Shekara Reddy, Advocate for the Appellant; B. Veerappa, Additional Government Advocate and N. Bayya Reddy, Advocate for the Respondent

Judgement

N.K. Patil, J.—This appeal by the respondents 3 to 6/appellants is directed against the impugned order dated 10-1-2012 passed by the learned Single Judge in Writ Petition No. 27983 of 2004 (LR). The brief facts of the case are:

"The petitioners/respondents 4 to 6 herein have filed writ petition before the learned Single Judge in W.P. No. 27983 of 2004, questioning the correctness of the order dated 9-2-2004 passed by the Land Tribunal, Mulbagal in Nos. LRF.575/74-75 and 1145/75-76, granting occupancy rights in respect of Sy. No. 330 of Mulbagal Village measuring 1 acre 08 guntas in favour of deceased Venkataramaiah now represented by his LR and in respect of Sy. No. 331/2 of Mulbagala Village measuring 20 guntas, in favour of respondents 4 to 6/appellants 2 to 4 herein, contending that, they are the children of late Dhruvarayachar and Rukmini Bayamma. The land bearing Sy. Nos. 330 measuring 1 acre 08 guntas and Sy No. 331/2 measuring 20 guntas situated at Mulbagal Village belonged to Rukmini Bayamma. One Kullappa, S/o. Narayanaswamy, the father of appellants 2 to 4 filed Form 7 claiming occupancy rights in respect of land measuring 20 guntas in Sy. No. 331/2 and one Venkataramaiah, the husband of appellant 1 has filed Form 7 claiming occupancy

rights in respect of land measuring 1 acre and 08 guntas in Sy. No. 330 of Mulbagal Village. The Land Tribunal, by its order dated 30-6-1987, granted occupancy rights in their favour which was challenged in W.P. No. 15777 of 1993 by the petitioners and their mother and this Court has set aside the order of the Land Tribunal and remanded the matter to implead the real owner. After the remand, the Land Tribunal has passed an order dated 9-2-2004 in Nos. LRF 575/74-75 and 1145/75-76 in favour of the appellants herein. Being aggrieved by the said order, the petitioners/respondents 4 to 6, have filed a writ petition before this Court in W.P. No. 27983 of 2004. The said matter had come up for consideration before the learned Single Judge on 10-1-2012. The learned Single Judge, after hearing the learned Counsel for both the parties and after careful perusal of the materials available on record, has allowed the said writ petition and set aside the order of the Land Tribunal, holding that the appellants have not produced any iota of evidence to show that they are cultivating the lands in question, specifically referring that late Rukmini Bayamma has filed original suit in O.S. No. 176 of 1986 for redemption of mortgage which was decreed in the year 1987 and therefore, from 1969 till 1987 the lands in question were in possession of the mortgagee i.e. Venkatappa and therefore, the question of Kullappa and Venkataramaiah being the tenants does not arise. Further, it is held that, since RTC extracts indicate from 1964-1965 till 1970-1971 the column 12(2) has been left blank in respect of Sy. No. 330 and for the years 1971-1972 till 1976-1977, the name of one Kuppanna has been shown in column 12(2) and in respect of Sy. No. 331/2, the RTC extracts show from 1964-1965 till 1970-1971, column 12(2) has been left blank and for the years 1971-1972 till 1976-1977 cultivation is shown as own and the name of Kullappa or Venkataramaiah does not find place in the RTC extract. One Venkatappa, the mortgagee has stated that he was cultivating the land and it was mortgaged and the mortgage has been admitted and therefore, the Tribunal was not justified in granting occupancy rights in favour of appellants and the impugned order cannot be sustained in law. Being aggrieved by the order passed by the learned Single Judge, the respondents 4 to 6/appellants have presented this appeal."

2. We have perused the grounds urged by the appellants in the memorandum of writ appeal and heard the submissions of learned Counsel for both the parties.

3. The submission of the learned Counsel appearing for the appellants is that, in fact, the name of one late Kuppanna, father of the appellants 2 to 4 has been shown in the ROR for the years 1972-1973 to 1974-1975 in column 12(2) which shows that they are cultivating the said land as tenant. Further, he submits that the name of Venkataramaiah is also shown in the record of rights, but not recording his name by the Village accountant does not take away his right to claim tenancy in respect of lands in question. Further he submits that, the Land Tribunal in the year 1987 and also by order dated 9-2-2004 has granted occupancy rights in their favour and whereas, the petitioners/respondents 4 to 6 have not produced any documents to show that they are the actual owner of the lands in question and as on 1-3-1974, the lands were not vested in the

Government, except index of land and producing concocted decree obtained on compromise in O.S. No. 176 of 1986 between late Rukmini Bayamma, W/o. Dhruvarayachar and Venkatappa that the mortgage has been redeemed by the mortgagee. But without considering the said aspect of the matter, the learned Single Judge has set aside the order passed by the Land Tribunal and therefore, it is liable to be set aside.

4. Per contra, learned Counsel appearing for petitioners/respondents 4 to 6, herein, inter alia contended and substantiated that, the order passed by the learned Single Judge is just and reasonable and after due consideration of the entire material available on record, after recording finding of fact in para 11 of its order in strict compliance of the relevant provisions of the Karnataka Land Revenue Act, 1964 and Karnataka Land Revenue Rules, 1969 and in consonance with the relevant materials on record.

5. Learned Additional Government Advocate appearing for respondents 1 and 2 herein, inter alia, contended and substantiated that the order passed by the learned Single Judge is just and proper and after due consideration of the oral and documentary evidence available on file. To substantiate his submission, he submitted that, the judgment and decree passed in OS. No. 176 of 1986, shows that the lands in question was cultivated by one Venkatappa, mortgagee and the said mortgage has been redeemed. Further he submitted that the lands in question is standing in the name of Smt. Rukmini Bayamma and Form 7 has been filed by showing the name of the original owner as "Dhruvarayachar" and the earlier order passed by the Land Tribunal has been set aside and the matter was remitted back with a direction to the parties to implead the original owner. Taking all these factors into consideration, the learned Single Judge is justified in allowing the said writ petition and setting aside the order of the Land Tribunal and therefore, it does not call for interference.

6. After hearing the learned Counsel for the parties and after careful perusal of the order passed by the learned Single Judge and the order passed by the Land Tribunal and the other materials available on file, it emerges that, one Sri Venkataramaiah and Sri Kullappa during their lifetime have filed Form 7 for registering occupancy rights in their favour in respect of lands in question. But they have not produced any iota of documents to show that they are cultivating the said lands as tenants and as on 1-3-1974, the said lands were vested with the Government and without establishing that they are cultivating the said lands as tenants by producing records of rights showing the mode of cultivation as 3 or 4 in column 12(2) or producing any revenue or levy receipts. Nor they have examined any independent witnesses to establish that they are cultivating the said lands as tenants as on 1-3-1974, except examining few persons who are in no way connected with the said lands. Further, it is pertinent to note as rightly pointed out by the learned Additional Government Advocate appearing for respondents 1 and 2 that, the earlier writ petition filed by petitioners in W.P. No. 15777 of 1993 was allowed by this Court on 5-12-2000 and the matter was

remanded to implead the real owner. After evaluation of the records available on file, it emerges that, Form 7 were filed by the late Venkataramiah and Kullappa showing the name of landowner as "Dhruvarayachar". In fact, he is not the owner in possession and one Rukmini Bayamma, wife of Dhruvarayachar is the owner of the lands in question and after the death of said Dhruvarayachar and Rukmini Bayamma, petitioners/respondents 4 to 6 are their L.Rs. Further, as rightly pointed out by the learned Single Judge after due consideration of the entire material available on file, the stand taken by the respective parties and the submission of their Counsel, in para 11 of the order, it is a fact that, Rukmini Bayamma has filed original suit in O.S. No. 176 of 1986 for redemption of mortgage which was decreed in the year 1987 and therefore, from 1969 till 1987 the lands in question were in possession of the mortgagee i.e. Venkatappa and therefore, the question of Kullappa and Venkataramaiah being the tenants does not arise. The RTC extracts indicate that, from 1964-1965 till 1970-1971, column 12(2) has been left blank in respect of Sy. No. 330 and for the years 1971-1972 till 1976-1977, the name of one Kuppanna has been shown in column 12(2). In respect of Sy. No. 331/2, the RTC extract show, from 1964-1965 till 1970-1971, column 12(2) has been left blank and from 1971-1972 till 1976-1977 cultivation is shown as own. The name of Kullappa or Venkataramaiah does not find place in the RTC extracts and one Venkatappa, the mortgagee has stated that he was cultivating the land and it was mortgage and the mortgage has been admitted. It is also not in dispute that, Kullappa, claimed occupancy rights in respect of land bearing Sy. No. 331/2 measuring 20 guntas and late Venkataramaiah claimed occupancy rights in respect of Sy. No. 330 measuring 1 acre 08 guntas. It is significant to note that, the name of the owner is shown as "Dhruvarayachar" and the Tribunal has granted occupancy rights in their favour on 30-6-1987. Rukmini Bayamma and her children have challenged the said order in W.P. No. 15777 of 1993 which was allowed by this Court and the matter was remitted back to the Land Tribunal to implead the real owner. Thereafter, the Land Tribunal has passed the order on 9-2-2004, which was challenged in W.P. No. 27983 of 2004. It is relevant to note that, late Kullappa and Venkataramaiah claimed occupancy rights against Dhruvarayachar, but they have not produced anything to show that they are cultivating the said lands as tenants. In fact, the said lands were mortgaged in favour of one Venkatappa and before that one Lakshmaiah was cultivating the said lands and thereafter, he was cultivating the said lands. Further, Rukmini Bayamma has filed O.S. No. 176 of 1986 for redemption of mortgage and it was decreed in the year 1987. The name of Kullappa and Venkataramaiah does not find place in ROR to show that they are cultivating the said lands as tenants and as on 1-3-1974, they are tenanted lands. The Land Tribunal has not recorded its finding that, the lands in question is a tenanted lands and they are vested in the Government as on 1-3-1974 and they were cultivated by one Kullappa and Venkataramaiah. Venkatappa has stated that he was cultivating the said lands and it was mortgaged and mortgage has been admitted. Therefore, we are of the opinion that, the Land Tribunal is not justified in granting the occupancy rights in favour of the appellants in respect of the said

lands and therefore, the order passed by the Land Tribunal cannot be sustained, for the reason that, it has not conducted the enquiry in strict compliance of Rule 17 of the Karnataka Land Reforms Rules, 1974 read with Section 34 of Karnataka Land Revenue Act, 1964. The Land Tribunal can register the occupancy rights only after recording finding of fact that the lands in question are tenanted lands and they were vested in the Government as on 1-3-1974. But in the instant case, the appellants have failed to prove before the Land Tribunal or before this Court or produced any iota of documents to show that they are cultivating the said lands as tenants and as on 1-3-1974 they were vested in the Government. Taking all these factors into consideration, we are of the view that, the learned Single Judge is justified in allowing the writ petition and therefore, it does not call for interference. Nor we find any error or irregularity in the said order.

For the foregoing reasons, the appeal filed by the appellants is dismissed as devoid of merits.