

(2014) 12 KAR CK 0256

In the Karnataka High Court

Case No : Writ Appeal Nos. 30340 and 30957-959/2013 [LR]

Sateesh Ganapathi Kadam

APPELLANT

Vs

The Land Tribunal

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Guardians and Wards Act, 1890 — Section 44, 8
Karnataka Land Reforms Act, 1961 — Section 108, 110
Limitation Act, 1963 — Section 28

Citation : (2014) 12 KAR CK 0256

Hon'ble Judges : Mohan M. Shantana Goudar, J; K.N. Phaneendra, J

Bench : Division Bench

Advocate : G.B. Shastry and R.M. Kulkarni, Advocate for the Appellant; C.S. Patil, AGA, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order dated 17.01.2013 passed by the learned Single Judge in W.P. No. 40890/2003 (LR) is questioned in these writ appeals. By the impugned judgment, the learned Single Judge has confirmed the order passed by the Land Tribunal, Chikodi dated 28.04.2003.

2. The questions that arose for consideration before the Tribunal as well as before the learned Single Judge in the writ petitions are:

(i) Whether Kadams (tenants) entered into possession of the properties as tenants under landlords (Inamdars) or under the receiver appointed by the Court?

(ii) Whether Kadams (tenants) are entitled for grant of occupancy rights over the properties in question?

The Tribunal as well as the learned Single Judge, on facts, have concluded that Kadams have entered into possession of the properties in the year 1951 as lessees under the receiver appointed by the Court and therefore, they are not entitled for grant of occupancy rights.

These appeals are filed by the tenants (Kadams) to consider the correctness of the order passed by the Land Tribunal as well as the learned Single Judge in the writ petition.

3. The matter has got a long history. Smt. Umadaabi, W/o. Daulatkhan Inamdar (hereafter called as Inamdars'') was the owner of the properties in question. She mortgaged the properties in favour of one Rachappa Gulappa Hatrote (hereinafter called as Hatrotes'') under registered mortgage deed dated 16.08.1890. The appellants herein are from Kadam family (hereinafter called as Kadams''). According to the appellants, their propositus was the tenant over the petition properties and that after the demise of their propositus, the present appellants (Kadams) are cultivating the properties as tenants.

4. The lands in question were coming in Kolhapur State earlier. The said State had enacted the law called Debt Conciliation Act, 1943. The predecessors-in-title of Inamdars filed application on 22.06.1943 under the provisions of the said Act for discharge of mortgage debt in application No. PF. 17/1353 (Fasli) before the Debt Conciliation Board against Hatrotes. By the order dated 26.01.1945, the Debt Conciliation Board held that the mortgage debt stood extinguished and that the Inamdars were entitled for possession of lands free from encumbrance. However, there is no record to show that the said order of the Debt Conciliation Board was executed or that the possession was handed over to the Inamdars in pursuance of the order dated 26.01.1945 by Hatrotes.

Subsequent to the order dated 26.01.1945 passed by the Debt Conciliation Board, the dispute started between the Inamdars and Hatrotes in respect of possession of the properties. The mortgagee-Hatrotes initiated proceedings under Section 145 of Cr.P.C. in Misc. Case No. 7/1946 and the Circle officer was appointed as receiver in the said proceedings by the Magistrate. The said receiver auctioned the cultivation rights every year. The receiver so appointed leased the petition properties in favour of one Mr. Gundu Shivappa Jadhav in the year 1946-47 and in favour of Mr. Ramagouda Patil in the year 1947-48 and in favour of Mr. Dattu Govind Kalagatte in the year 1949-50 and in favour of Ganapati Mahadev Kadam in the year 1950-51. Said Ganapati Mahadev Kadam is the propositus of Kadams who claim tenancy over properties. The name of Ganapati Mahadev Kadam was entered into the revenue records on 06.02.1951 as is clear from Annexure "B" produced with the memorandum of writ petition. The copy of the revenue-records makes it amply clear that Ganapati Mahadev Kadam became tenant from the year 1950-51 for a period of 10 years. The name of Ganapati Mahadev Kadam appeared in the revenue records in the year 1954-55, though he is a tenant from the year 1950-51. The very record of rights - Annexure-B discloses that the receiver is appointed by the Court and that the receiver is the possessor of the property. The mode of possession is also mentioned in column No. 10 of record of rights vide Annexure-B to the effect that possession of the receiver is as per the Court order. The receiver is specified as possessor of the property by virtue of Mutation Entry No. 238. The copy of the

mutation entry No. 238 is produced at Ex. R2 along with statement of objections filed by the Inamdars. In the said mutation entry No. 238 which is made on 06.02.1951, it is clearly observed therein that the properties in question are in the possession of Court receiver.

As aforementioned, the Circle Officer who was appointed as receiver in Misc. Case No. 7/1946 initiated under Section 145 of Cr.P.C. auctioned the cultivation rights for four years in favour of different persons and finally the properties were leased in the year 1950-51 in favour of Kadams. In the meanwhile, Hatrotes questioned the order of Debt Conciliation Board passed in application No. PF. 17/1353 (Fasli) by filing O.S. No. 12/1948 which is re-numbered as Special Suit No. 153/1950, inter alia seeking declaration and injunction in respect of the properties in question. The said suit i.e., O.S. No. 153/1950 came to be decreed on 27.08.1953 as is clear from Annexure - R3. By the judgment and decree passed in O.S. No. 153/1950, the Civil Court (Sr. Dn.) has declared that the decision of the Debt Conciliation Board dated 26.01.1945 wiping out the mortgaged debt under Section 9(2) of Debt Conciliation Act is void, inoperative and the plaintiff's right as mortgagee on the suit property is not extinguished. The decree for injunction is also granted in favour of Hatrotes (mortgagee) restraining the Inamdars from obstructing the possession of Hatrotes as long as the mortgage is not extinguished in due course of law. It is further declared by the very judgment that Hatrotes have right to get the income and possession of the properties in question from the receiver. Thus, it is clear from the judgment and decree dated 27.08.1954 in Special Suit No. 153/1950 that the mortgage was held to be valid in the eye of law and the mortgagee would continue in possession of the property till the mortgage is extinguished in due process of law. Till such time, the mortgagee-Hatrotes had got right to get the income and possession of the suit land from the receiver. It is needless to observe that as on 27.08.1954, the receiver was in possession and that Hatrotes were entitled to get possession from the receiver. The judgment and decree passed in Special Suit No. 153/1950 is confirmed by the first appellate court on 31.01.1961 in R.A. (B) Appeal No. 250/1956 and by this Court in R.S.A. No. 206/1963.

5. Subsequently, Inamdars filed a suit in O.S. No. 2/1970 before the Civil Court, Belgaum, against the Mortgagee-Hatrotes for redemption of mortgage. The suit was transferred to Civil Court, Chikkodi and the same was renumbered as O.S. No. 71/1972. The said suit came to be decreed on 26.11.1987 as per Annexure "R7" produced along with statement of objections. The operative portion of the judgment passed in O.S. No. 71/1972 reads thus:

"Suit is decreed. It is declared that the amount due under both the mortgages upto this date is Rs. 23,634-72 Ps. Including interest, plaintiffs and defendant No. 12 to 16 are directed to deposit this amount together with interest at 6% p.a. on Rs. 13,067-36 Ps. from the date of decree within SIX month. On the deposit of the said amount, they are entitled to redeem the mortgages and get back possession of the mortgaged lands from the Receiver. No costs.

A preliminary decree be drawn accordingly."

It is relevant to note here itself that, even during the pendency of" O.S. No. 71/1972, in the Court of Principal Civil Court, Chikkodi, the receiver continued the possession of the property and consequently, it is decreed that the Inamdars are entitled to redeem the mortgage and get back the possession of the mortgaged lands from the receiver. Hence, it is clear that the receiver continued till 26.11.1987 i.e., till the decision in O.S. No. 71/1972.

6. In the meanwhile, the Inamdars executed a sale deed dated 02.01.1970 conveying 1/4th portion of the properties in favour of Ganapathi Mahadev Kadam who claims to be the tenant over the property in question. This matter, however, is not connected with the 1/4th portion, which is sold in favour of Kadams by Inamdars.

7. On coming into force the Karnataka Land Reforms Act, 1961, the deceased Ganapathi Mahadev Kadam (propositus of Kadams family) filed an application for grant of occupancy rights. After his demise, the appellants/writ petitioners, who are the legal representatives of the Kadam, also filed an application for grant of occupancy rights. Initially, the Land Tribunal granted occupancy rights in favour of Kadams on 06.12.1981. Such order of the Tribunal was questioned by Inamdars in W.P. No. 7471/1982. This court allowed the writ petition and set aside the order passed by the Land Tribunal on 06.12.1981 and remanded the matter to the Land Tribunal for fresh disposal in accordance with law.

After remand, the Tribunal re-heard the matter and concluded that Kadams are not entitled for grant of occupancy rights inasmuch as they are not the lawful tenants over the property in question. The Tribunal has ruled that the possession of Kadams, if any, over the properties in question, is traceable to the lease granted by the receiver appointed by the Court. The order rejecting the application filed by the Kadams for grant of occupancy rights came to be confirmed by the impugned order by the learned Single Judge in W.P. No. 40890/2003 [LR] on 17.01.2013. The order passed by the learned Single Judge in W.P. No. 40890/2003 and the order passed by the Land Tribunal dated 28.04.2003, concurrently rejecting the applications filed by Kadams are questioned in these writ appeals.

8. Sri G.B. Shastri, learned advocate appearing on behalf of the appellants, taking us through the material on record, submits that Kadams entered into possession as a lessee on 29.05.1946; at that point of time, the receiver was not appointed under Section 145 of Cr.P.C. by the concerned Magistrate; Inamdars had obtained possession of the property after 26.01.1945 (i.e., after the order passed by the Debt Conciliation Board in Application No. PF-17/1353 (Fasli)) and Inamdars continued in possession of the properties for a brief period of 6 to 7 months and within the said period of 6 to 7 months, the properties were leased in favour of Kadams by Inamdars and therefore, the possession of Kadams is not traceable to the lease granted by the receiver, but is traceable to the lease

created by Inamdars. He further submits that the name of tenant continued from 1951 in the revenue records for about more than 15 to 20 years and that Kadams continued the possession of the property as tenants and thus, Kadams are entitled for grant of occupancy rights. He further draws attention of the Court that Inamdars have repeatedly made averments in the suit as well as in the sale deed executed in favour of Kadams to the effect that Kadams are tenants" under Inamdars. Thus, according to Mr. G.B. Shastry, Inamdars are estopped from denying leasehold rights of Kadams, inasmuch as the lease is created by Inamdars and not by the receiver. In other words, Sri G.B. Shastry submits that Inamdars shall not be allowed to approbate and reprobate on the same subject matter.

9. Sri A.P. Murari, learned advocate appearing on behalf of Inamdars, argued in support of the order passed by the learned Single Judge by submitting that the possession, if any., of Kadams is traceable to the lease granted by the Court receiver in the year 1950-51; the possession was never delivered by mortgagee (Hatrotas) in favour of Inamdars at any point of time, much less in the year 1945-46. Though, the order came to be passed by the Debt Conciliation Board on 26.01.1945 holding that the mortgage debt is extinguished and that the mortgagor (Inamdars) were entitled to have possession of the lands free from encumbrances, but the possession was never handed over in favour of the mortgagor i.e., Inamdars by the mortgagee i.e., Hatrotas; the possession continued with the mortgagee, even after 26.01.1945 till the receiver is appointed by the Magistrate on 22.07.1946 in the proceedings arising under Section 145 of Cr.P.C.

10. In the meanwhile, O.S. No. 12/1948 at Kagal Court was filed by Hatrotas against Inamdars questioning the order passed by the Debt Conciliation Board dated 26.01.1945. The said suit O.S. No. 12/1948 was re-numbered as O.S. No. 153/1950 on the file of Civil Court, Belgaum. In the said civil Suit, O.S. No. 153/1950, one Mr. R.H. Bhosle (Circle Officer) was appointed as receiver on 31.07.1950 by the Civil Court. The said receiver appointed by the Civil Court took possession of the lands on 29.06.1951 from Circle Officer who was appointed as a receiver under 145 Cr.P.C. proceedings. The receiver appointed by Civil Court continued in possession of the properties even thereafter till 1987, i.e., till the disposal of subsequently instituted suit i.e., O.S. No. 71/1972. Thus, according to him, Kadams are not in possession of the property at any point of time as tenants, lawfully inducted by Inamdars/landlords of the property.

11. Learned Government Advocate argued in support of the order passed by the Land Tribunal by producing the records.

12. The facts narrated above by us are not in dispute. It is not disputed that Inamdars are the owners of the property. It is also not disputed that Inamdars mortgaged the property in favour of Hatrotas in the year 1890 through the registered mortgage deed. So also, it is not in dispute that Inamdars filed an application under Kolhapur Debt Conciliation Act, 1943, for discharge of

mortgage debt before the Debt Conciliation Board on 22.06.1943, which came to be allowed on 26.01.1945. The Debt Conciliation Board has held that the mortgage debt is extinguished and that the mortgagors (Inamdars) are entitled for possession of the properties. However, there is nothing on record to show that the said order passed by the Debt Conciliation Board on 26.01.1945 was executed. Consequently, there is nothing on record to show that the mortgagors (Inamdars) got back the possession of the properties from the mortgagees (Hatrotas). However, the dispute arose with regard to the possession after 26.01.1945 i.e., after the order of Debt Conciliation Board. Accordingly, Hatrotas/mortgagees initiated proceedings under Section 145 of Cr.P.C. before the jurisdictional Magistrate in Misc. Case No. 7/1946, wherein the Circle Inspector was appointed as a receiver, who took the possession of the lands in question to manage them.

13. It is also not in dispute that the receiver (Circle Officer) i.e., appointed by the Magistrate under Section 145 of Cr.P.C., leased the properties every year. He leased the properties in favour of Sri Gundu Shivappa Jadhav for the year 1946-47, Sri Ramagowda Patil for the year 1947-48 and Sri Dattugovind Kalgatre for the year 1949-50 and in favour of Ganapathi Mahadev Kadam in the year 1950-51. Thus, the records make it amply clear that Ganapathi Mahadev Kadam (propositus of Kadams) entered into possession of the property only in the year 1950-51 as a tenant, that too under a receiver appointed by the Magistrate under Section 145 of Cr.P.C.

14. Subsequently, Kadams continued in possession of the property as tenants under the receiver appointed by the Civil Court in O.S. No. 153/1950. As aforementioned, Mr. R.H. Bhosle was appointed as a receiver in O.S. No. 153/1950 by the Civil Court. The Kadams possession over the property in question as a tenant from the year 1950-51 is evidenced by the entries in the revenue records as found in Annexure "B". Copy of the record of rights/Annexure "B" makes it amply clear that the possessor of the properties is the receiver appointed by the Court and name of the "receiver" appointed by the Court is entered in the revenue records as per Mutation Entry No. 238. Annexure "B" makes it further clear that Ganapati Mahadev Kadam entered into possession of the property as a tenant in the year 1950-51 for the first time and that the lease is for 10 years. However, his name came to be entered in the year 1954-55. It is no doubt true that the frame of Kadams continued in the revenue records from 1954-55 onwards till the disposal of the matter before the Tribunal. Thus, it is more than clear that Kadams entered into possession of the property as a tenant in the year 1950-51 for the first time, that too by virtue of a lease granted by the receiver appointed by the Court.

15. Though, it is the contention of Kadams that Kadams entered into possession of the property as a lessee under Inamdars on 29.05.1946, absolutely no records or materials are forthcoming to support the said fact. On the other hand, the records make abundantly clear that one Sri Gundu Shivappa Jadhav was a tenant

for the year 1946-47, Sri Ramagowda Patil for they year 1947-48 and Sri Dattu Govind Kalgatre for the year 1948-49. All these aforementioned three persons were yearly lessees under the receiver (Circle Officer) appointed under Section 145 of Cr.P.C. prior to the lease in favour of Kadams. In view of the same, the contention of Kadam that he entered into possession of the property as a tenant under the Landlord on 29.05.1946 is rightly not accepted by the Tribunal as well as by the learned Single Judge in the writ petition. As aforementioned, the lands never came back in possession of the landlord/Inamdars after the year 1890, much less in the year 1946.

16. In addition to the same, Sri Ganapati Mahadev Kadam-the alleged tenant has admitted in the statement of objections filed by him to I.A. Nos. 1 and 2 in Special Suit No. 153/1950 before the Civil Court, Belgaum, that he entered into possession in the year 1950-51 as a tenant under the receiver appointed by the Court.

17. It is no doubt true that the Inamdars, being the owners of the property, have contended in the litigations against Hatrotes that, Kadams were tenants under Inamdars; that they had leased the property in favour of Kadams in the year 1946 after taking the possession for a brief period of 6 to 7 months after the decision by the Debt Conciliation Board. In this context, Sri G.B. Shastry, learned advocate for the appellants submitted that Inamdars are estopped from contending that Kadams are not the tenants under them. Merely because the owners have contended so in the civil litigations in favour of Kadams, the same cannot be the basis to conclude that Kadams are lawfully inducted tenants by the Inamdars. Voluminous records as mentioned supra clearly depict that Kadams were inducted as tenants by the receiver appointed by the Court in the year 1950-51 and never earlier thereto. Moreover, the tenants themselves knew that they entered into possession of the property as tenants in the year 1950-51 pursuant to the lease granted in their favour by the Court receiver. The person concerned knowing true position relating to title in the property, cannot plead that he is induced to hold erroneous belief by reason of conduct of real owner of that property [See the judgment in the case of R.S. Madanappa and Others Vs. Chandramma and Another, .

18. Moreover, there cannot be estoppel against law. There cannot be any dispute that estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute or by the Court's order. In the case on hand, Kadams own admission, as mentioned supra, in O.S. No. 153/1950 (in objections filed to I.A. Nos. I & II) clearly reveal that Kadams have entered into possession as tenants over the suit property under the Court receiver in the year 1950-51 and would take away the defence of the tenants that they are the tenants over the property. As aforementioned, an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute or by the Court order. In view of the same, the contention of Mr. G.B. Shastry that Inamdars are estopped from contending that Kadams are not tenants, cannot be

accepted under the facts and circumstances of the case.

19. As aforementioned, Hatrotes (mortgagees) filed Civil Suit No. 12/1948 at Kagal Court against the mortgagors (Inamdars) for declaration that order passed by the Debt Conciliation Board against the mortgagees in application No. PF-17/1353 is bad in the eye of law. The said suit was later re-numbered as Special Suit No. 153/1950 and the matter was transferred to Civil Court (Sr. Dn.), Belgaum. In the said suit, an order came to be passed on 31.07.1950 making it clear that the Magistrate has attached the lands on 22.07.1946 under the provisions of Section 145 of Cr.P.C.

It is further observed in the order dated 31.07.1950 passed in O.S. No. 153/1950 that the Debt Conciliation Board has not ordered delivery of possession of the lands to the Inamdars and that the Board has only declared that the debt of mortgagees (Hatrotes's) had been extinguished and therefore, Inamdars did not obtain possession of the lands lawfully. Such finding of fact is on record from 31.07.1950 itself. The said suit came to be decreed on 27.08.1954. The judgment passed in the Special Suit No. 153/1950 further clarifies that since the Inamdars started denying Hatrotes rights in the year 1946, Hatrotes approached the Chief Police Officer of Kagal Jahagir on 25.06.1946 and the dispute was referred on 22.07.1946 to Magistrate under Section 145 of Cr.P.C. and the properties were attached and taken into Court's custody. In Special Suit No. 153/1950, it is held that Hatrotes are in possession of the properties. As aforementioned, the judgment passed in Special Suit No. 153/1950 is confirmed by the First Appellate Court as well as by this Court in R.S.A. No. 206/1963. The relevant observations made during the course of judgment in Special Suit No. 153/1950 are as under:-

"21. It is also worth noting that Defendants have not shown any legal origin for their possession, which they claim to have got 5-6 months before the attachment under Section- 145. The mere circumstance that the Board wiped out the debt did not entitle the Defendants to possession. As a matter of fact, the Board never passed an order for deliver of possession. Even though the Magistrate came to the conclusion that the defendants were in possession at the date of the suit, the defendants have not shown that they came into possession of the lands by some process of Law. It is also not the case of the defendants that Plaintiffs surrendered possession to them or that they got possession from plaintiff tenant. The possession of defendants, if at all they had any would at the best be considered wrongful. Moreover, as mortgagees, the plaintiffs are entitled to remain in possession without any disturbance from the mortgagor so long as the mortgage is not extinguished by an act of the parties or by operation of law. So long as there is no decree for redemption and possession, and in view of the fact that the wiping out of the debt by the Board is held to be illegal, the mortgage subsists. The order of the Magistrate under section 145 does not extinguish the possessory mortgage of the Plaintiff and so long as the mortgage subsists, the mortgagor is legal bound to allow peaceful enjoyment of the suit land to the

mortgagee. The Magistrate's finding in Ex. 104, is therefore, of no avail as against plaintiffs, who have a title to possession on superior to that the defendant.

22. It was further argued that the possession that the possession of defendant cannot be disturbed now as the remedy is barred under Art. 47 of the Limitation Act and under section 28 of the Limitation Act, to plaintiffs right to possession is permanently extinguished. The Magistrate's Order has certainly not the effect of extinguishing the mortgage. This suit is for a declaration that the mortgage subsists and the plaintiffs are entitled to remain in possession as mortgagees till redemption or extinguishment of the debt in due course of law. It is also to be borne in mind that the possession at the date of suit was that of the Magistrate and not of any party. Subsequently, the possession came to be handed over to the Receiver appointed by this Court, and it is clear that the Court's possession enures for the benefit of the rightful claimant. As the mortgage still subsists, plaintiffs is the person entitled to possession. If he gets a declaration to that effect, it is sufficient. As held in *K. Sundaresa Aiyar Vs. The Sarvajana Sowkiabivirdhi Nidhi Limited*, by Secretary P.S. Manikkam Chettiar, , it was not necessary for the appellant to ask for anything more than a mere declaration, in a case where the property is in possession of a Magistrate. In that case the jewels were in the possession of the Magistrate at the time of institution of the suit, and were, therefore, in custodia legis, and the Court must deliver them to the person who shows a title. The suit for mere declaration and injunction is sufficient and is, therefore, tenable in its present, form. I answered issue 7 in the affirmative.

23. As the possession of the Magistrate was for the person with title, it must be taken to be plaintiffs possession and in that sense. I answer issue 8 in the affirmative...."

(Emphasis supplied)

20. The Civil Court on facts has concluded that Kadams never entered into possession of the property as tenants under Inamdars, but have entered into as tenants firstly under the receiver appointed by Magistrate under Section 145 of Cr.P.C. and thereafter, continued under the receiver appointed by the Civil Court.

21. Sri G.B. Shastri, learned advocate for the appellants, submitted that the Kadams were not parties in the Special Suit No. 153/1950 and therefore, the findings and observations made in the said suit are not binding on Kadams.

The said contention also cannot be accepted inasmuch as, all through, the Inamdars have fought the litigation contending that they had come in possession of the property for a brief period of 6 to 7 months and during the said period, they leased the properties to Kadams. Which means that, Inamdars virtually fought the litigations against Hatrotas, supporting the contentions of Kadams, that they are tenants under Inamdars. But, said contentions are not accepted by the Civil Courts and by this Court. In addition to the same, the Kadams

themselves had filed statement of objections in Special Suit No. 153/1950 opposing I.A. Nos. 1 and 2 wherein, they had contended that they had entered into possession as tenants over the suit properties through Court receiver in the year 1950-51. Hence, it cannot be said that Kadams did not participate in Spl. Suit No. 153/1950. Ultimately, the said I.A. Nos. 1 and 2 in Spl. Suit No. 153/1950 are decided against the tenants and in favour of the mortgagees by concluding that, undisputedly the lands in question were placed under the custody of the receiver by the order of the District Court, Belgaum and that the present tenants were inducted as tenants by the receiver appointed by the Court.

22. In the very order passed on I.A. Nos. 1 and 2 in Spl. Suit No. 153/1950, the Civil Court has ruled that the provisions of Bombay Tenancy Act, 1956, are not applicable to such leases that were created by receiver who was in possession and management of the lands as per the orders of the competent Court.

23. From the aforementioned, it is clear that though the Inamdars/landlords contended that Kadams are the tenants inducted by landlords, the said contention or, facts was not accepted by the Courts at any point of time. Even otherwise, the material on record also is sufficient to conclude that the Kadams are the tenants not duly inducted in possession of the suit properties by the landlords but they are inducted in possession of the properties by the receiver appointed by the Court.

At the cost of repetition, it is to be observed that, the contention of the tenants (Kadams) in Special Suit No. 153/1950 that they entered into possession of the properties as tenants in the year 1951 through the receiver is accepted by the Civil Court in the said suit. Since, the admission of the tenants themselves that they are inducted as tenants by the receiver in the year 1951, is accepted by the Civil Court, the contention of the landlords that the tenants are inducted by the landlords need not be accepted, more particularly, when the material on record clearly reveal that the tenants are inducted by the Court receiver in the year 1951 as lessees.

24. Section 88 of the Bombay Tenancy Act is almost akin to Section 108 of the Karnataka Land Reforms Act, 1961. It is relevant to note the provisions of Section 108 of the Karnataka Land Reforms Act, 1961, which reads thus:

108. Lands taken under management of the Court of Wards, etc--Subject to the provisions of Section 110, nothing in the provisions of this Act except Section 8 shall apply to lands taken under the management of the court of wards or of a Government officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or to the lands taken under management temporarily by the civil, revenue or criminal courts by themselves or through the receivers appointed by them during the period of such management; Provided that--

a) in the case of a tenancy subsisting on the date of taking over the management [the provisions of section 44 shall apply and the land shall vest in

the Government.]

b) in the case of a tenancy created during the period of management, when the land is released from such management, the tenant shall be dispossessed and the possession of the land shall be delivered to the person lawfully entitled to such possession;

c) with effect from the date on which such land is released from such management, all the provisions of this Act shall apply to such land [x x x x x]."

(Emphasis supplied)

25. The aforementioned provision makes it amply clear that the provisions of the Karnataka Land Reforms Act, 1961 are not applicable to the lands taken under the management of the court of wards or of Government officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890, or to the lands taken under management temporarily by the civil, revenue or criminal courts by themselves or through the receivers appointed by them during the period of such management.

26. As has been held by the Division Bench of this Court in the case of Bhimappa Channappa Kapali (Deceased) by L.Rs and Others Vs. Bhimappa Satyappa Kamagouda and Others, , the essence of lawful cultivation is that one should enter possession of the land under some colour of right and cultivate the land as a matter of right, otherwise it cannot be said that he is in lawful cultivation of the lands in question.

In the matter on hand, the records reveal that, since 1946, the receivers appointed by the Courts are in possession of the property continuously. There is nothing on record to show as to when and how the mortgagors/Inamdars got possession of the property after the order passed by the Debt Conciliation Board. However, the dispute arose between the parties with regard to possession after the order passed by the Debt Conciliation Board and hence, the receiver was appointed by the Magistrate under Section 145 of Cr.P.C. Therefore, the properties were under the Court management all through and therefore, Kadams cannot contend that they should be granted occupancy rights, particularly, when there is a bar under section 108 of the Karnataka Land Reforms act, 1961.

It is also relevant to note that in case of Huvappa Mahadev Mense Vs. Land Tribunal, , this Court considering the effect of Section 108 of the Karnataka Land Reforms act, 1961, concluded that in case of any tenancy created through the receiver, such tenant has no right to claim occupancy rights. There cannot be any dispute that the tenancy must be created in the manner recognised by the law, in order to attract the provisions of the Karnataka Land Reforms Act, 1961.

27. In the matter on hand, the receiver was appointed by the Magistrate in the year 1946 itself and he continued in possession of the properties for managing the properties and handed over the possession and management of the properties in favour of another receiver appointed by the Civil Court in the year

1951, who continued to manage the properties continuously till the present day. The facts also make it clear that Kadams entered into possession of the property in the year 1950-51 as tenants under the receiver appointed by the Court for the first time. If it is so, Kadams cannot be held to be lawful tenants under the original owner and consequently, he is not entitled to grant of occupancy rights in view of Section 108 of the Karnataka Land Reforms Act, 1961.

28. Sri G.B. Shastry, however, argued that no sufficient opportunity was granted to the tenants (Kadams) to substantiate their case before the Land Tribunal.

The said submission cannot be accepted. It is relevant to note that the very submissions, made before the learned Single Judge also, were aptly answered to by the learned Single Judge on verifying the order-sheet maintained by the Land Tribunal.

The materials on record reveal that the inquiry was held even after remand of the matter to the Land Tribunal by this Court on the earlier occasion. The learned Single Judge, on verification of the order-sheet maintained by the Land Tribunal, has categorically, on facts, observed in paragraph No. 42 of the impugned judgment that sufficient opportunities were given to the parties, however, the same were not made use of by the tenants. Both parties have filed their written arguments. Therefore, we do not find any ground to accept the contention of the Kadams that they did not have sufficient opportunity to present their case before the Tribunal. Moreover, in the matter on hand, as we have observed supra, the entire case of both the parties mainly depends upon the documents. The oral evidence of the parties play little role in this matter, inasmuch as the question, as to whether the tenancy is created while the properties were under the Court management are not, is to be decided based on the voluminous documents on record. Hence, the said contention of Mr. G.B. Shastry fails.

29. We find that the Tribunal as well as the learned Single Judge are justified in concluding that the tenant is not entitled to grant of occupancy rights, as such, no interference is called for.

In the result, the appeals fail and the same stand dismissed.