

(1979) 01 KAR CK 0013
In the Karnataka High Court
Case No : WP 2003/77

Shankaranarayana Udupa

APPELLANT

Vs

Land Tribunal and Others

RESPONDENT

Date of Decision : 29-01-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48a

Citation : (1979) 2 KarLJ 277

Hon'ble Judges : Swami, J

Judgement

1. This petition is directed against the order passed by the Land Tribunal Thirthahalli, in LRF (7) AGR SKP 19/74-75, produced as Exhibit.-E in the writ petition, granting the occupancy right in favour of the 2nd respondent. in respect of the land bearing Survey No. 143 of Shankarapura village measuring 5 acres 3 guntas.

2. The case of the petitioner is that the land in question originally belonged to one Venkatagiriappa and the second respondent was cultivating the same as tenant. On 1-6-1965, the 2nd respondent purchased the said land under a registered sale deed from the said Venkatagiriappa for Rs. 1,500/- and in turn he sold the same in favour of Shantalaxmamma, the wife of the petitioner, for Rs. 3,000/- on the same day under a registered sale deed and that from that date, the wife of the petitioner was in possession of the land till her death which took place in the year 1967 and after her death, the petitioner and his son have been in possession of the land in question and have been cultivating the same personally and the name of the son of the petitioner has been shown in the cultivator's column in the record, of rights. According to the case of the 2nd respondent he did not purchase the land in question from the said Venkatagiriappa and the petitioner himself directly purchased the said land from Venkatagiriappa and the 2nd respondent was cultivating the land in question personally as a tenant as before irrespective of the sale effected by Venkatagiriappa in favour of the petitioner.

The petitioner, in support of his case, produced the extract of the record of rights from the year 1965-66 onwards and also produced the grain vouchers for having delivered the levy paddy and has also examined 6 witnesses in support of his case. The second respondent also examined 5 witnesses in support of his case and produced the sale deeds.

4. Shri T.S. Ramachandra, the learned Counsel appearing for the petitioner, contended before me that the Tribunal was in error in ignoring the entries in the record of rights and also other documentary and oral evidence produced by the petitioner before the Tribunal. He has also contended that the Tribunal has made out a new case in holding that the sale in favour of the second respondent as well as in favour of the wife of the petitioner was a preplanned sale and further holding that in spite of the said sale deed, the Second respondent continued to be in possession of the land as tenant. He further contended that it was not open for the Tribunal to go beyond the pleadings of the parties and that the second respondent has specifically stated in Form No 7 which is produced as Exhibit-A in the writ petition that the petitioner purchased the land from Venkatagiriappa and the said transaction was not known to him and that he continued to be in possession of the land as tenant even to this day and that the petitioner has taken "Edurnudi" from him. Mr. Ramachandra also contended that the son of the petitioner by name Subramanya Udupa, who has been in possession of the land in question and his name has been shown in the record of rights was an interested person and no notice, was issued to him by the Tribunal and the case has been decided without affording an opportunity to Sri Subramanya Udupa. It was also contended that Subramanya, Udupa, the son of the petitioner, has also inherited the title to the land in question on the death of his mother Smt. Shantalaxmamma. In view of the fact that the name of Subramanya Udupa has been shown in the Record of rights as the person cultivating the land in question, and further he has also inherited the title to the land in question, he was entitled to be heard and was entitled for the notice and as such, the order of the Tribunal is vitiated because of the fact that no notice was issued to Subramanya Udupa.

5. Shri M.S. Gopal, the learned Counsel appearing for the 2nd respondent is an illiterate person not knowing the wordly affairs; that the petitioner and Venkatagiriappa have duped him in getting sale deed executed in favour of the 2nd respondent and another sale deed executed in favour of the wife of the petitioner; that these sale deeds were sham and nominal sale deeds and as such, the same did not have any effect on the tenancy right of the petitioner, consequently, inspite of the said sale deeds, the 2nd respondent continued to be the tenant of the land in question. He also contended that Shankaranarayana Udupa was a creditor to respondent-2 and Venkatagiriappa, and that being so, the petitioner exploited the position of the 2nd respondent to his advantage being the creditor of both of them. He further relied upon the evidence of Erappa Gouda who has been examined on behalf of the 2nd respondent and whose evidence is to the effect that the 2nd respondent is cultivating the land in question as a tenant. Mr. Gopal also contended that the findings recorded by the

Tribunal being the findings of fact are not liable to be interfered with in exercise of the jurisdiction under Article 226(1)(b) and (c) of the Constitution.

6. The Tribunal, while coming to the conclusion that the 2nd respondent is entitled to be registered as an occupant of the land in question has held that the sale deeds were nominal and were pre-planned and the entries in the record of rights are normally made in the name of the owner and therefore, the same cannot at all be relied upon and the 2nd respondent was the tenant of the land in question and he has got the agricultural establishments and therefore, it can be held that he was cultivating the land in question. The Tribunal has also further held that the petitioner is residing about 5 miles away from the place where the land is situated and it is not possible for the petitioner to reach the land in question from his residence for cultivating purposes and it was the 2nd respondent who was cultivating the land in question as tenant.

7. In view of the respective contentions of the entries, the questions that arise for consideration in this case are:

What is the effect of the sale deed executed in favour of the 2nd respondent by Venkatagiriappa and also the sale deed executed by the 2nd respondent in turn in favour of Smt. Shantalaxmamma, the wife of the petitioner?

(ii) Whether the order of the Tribunal is vitiated because of the fact that it has ignored the entries in the record of rights and other documents produced, by the petitioners?

(iii) Whether the notice was necessary to Subramanya Udupa, the son of the petitioner?

(iv) Whether the findings of the Tribunal are liable, to be interfered with in exercise of the jurisdiction under Article 226(1)(b) & (c) of the Constitution?

8. The second respondent, admittedly was a tenant of the land in question and was cultivating the same in that capacity on 1-6-1965. Before 2-10-1965 the taluk of Thirthahalli was governed by the provisions of the Mysore Tenancy Act. Second respondent being the tenant of the land in question was entitled to purchase the said land. Accordingly he purchased the same under a registered sale deed for a sum of Rs. 1,500/- from one Venkatagiriappa who was the owner of the same. It cannot be disputed that the tenancy right is an inferior right to that of the right of ownership. By reason of the sale deed, the 2nd respondent acquired the higher title of ownership in the land in question, consequently the inferior right of tenancy came to be merged in the superior right of ownership and the 2nd respondent became the owner of the land in question. The 2nd respondent, thus having become the owner of the land in question was entitled to alienate the same. As stated above, he did alienate the land in question in favour of the wife of the petitioner under a registered sale deed on 1-6-1965. That being so, the wife of the petitioner purchased the land in question from its owner namely the 2nd respondent and as per the recitals contained in the sale

deed, the possession of the land was also delivered to her. Thus the wife of the petitioner became the owner of the land in question and also came into possession of the same as per the recitals contained in the sale deed. The Tribunal has brushed aside these material facts on record, on the ground that the registered sale deed was a pre-planned one and the same was sham and nominal. It may be pointed out here that the sale deeds in question having been executed in accordance with law that governed the transaction and the same having not been challenged by adopting the process known to law could not have been brushed aside by the Tribunal. Further, it was not at all open for the Tribunal to hold that the registered sale deeds were preplanned and as such, the same did not have any effect upon the tenancy right of the 2nd respondent. This finding is not only without jurisdiction inasmuch as it is not open for the Tribunal to decide the question as to whether a particular sale deed was sham or nominal and pre-planned; but the finding was clearly opposed to law. When once the 2nd respondent became the owner of the land in question, his tenancy right came to be merged in his higher right of ownership and as such, he was entitled to transfer his ownership right in favour of Shantalaxmamma through a registered sale deed. Accordingly, the sale deed executed by the 2nd respondent in favour of Smt. Shantalaxmamma conveyed full right of ownership to her and the 2nd respondent ceased to have any right whatsoever in the land in question. It is not the case of the 2nd respondent that after he sold the land in question to the wife of the petitioner, there was a fresh tenancy created by Shantalaxmamma. On the contrary, it is his case in Form, No. 7 as well as in the evidence adduced before the Tribunal that he was not at all aware of the aforesaid transaction and the sale transaction was not between himself and the wife of the petitioner and it was between Venkatagiriappa and the wife of the petitioner directly. Thus, it was not at all the case of the second respondent that there was a fresh tenancy created after the sale transaction. Thus, my finding on the 1st question is that the sale deed executed by Venkatagiriappa in favour of the 2nd respondent had the effect of putting an end to the tenancy of the 2nd respondent by reason of the merger of the inferior right of tenancy in the higher right of ownership and the effect of the sale deed executed by the 2nd respondent in favour of Smt. Shantalaxmamma was to make her the absolute owner free from the right of tenancy of the 2nd respondent.

9. Having regard to the facts and circumstances of this case, it was incumbent upon the Tribunal to decide the question as to whether after the execution of the sale deed by the 2nd respondent in favour of Shantalaxmamma, there was a fresh tenancy created in favour of the 2nd respondent. This question, the Tribunal has failed to raise and determine.

10. From the reading of the order of the Tribunal, it is clear that it has brushed aside the entries in the record of rights which stand in the name of the owner of the land in question. The entries in the record of rights have got presumptive value under Section 133 of the Karnataka Land Revenue Act. The Tribunal was required to take into consideration the presumptive value of the entries in the

record of rights. As far as the other documents such as grain vouchers etc. are concerned, there does not appear to be any Survey number mentioned in the same and hence much value cannot be attached to the same. The failure on the part of the Tribunal to consider the entries in the record of rights as per Section 133 of the Karnataka Land Revenue Act has vitiated the order of the Tribunal. The second question is answered accordingly.

11. In view of the fact that the Tribunal has not taken into consideration the presumption arising out of the entries in the record of rights and has also failed to determine an important question as to whether subsequent to the execution of the aforesaid sale deed in question in favour of the wife of the petitioner by the 2nd respondent, there was any fresh tenancy created, the finding recorded by the Tribunal that it was the 2nd respondent who was in possession of the land and was cultivating the same as tenant cannot at all be sustained. Mere possession is not sufficient to claim the right of tenancy. The existence of relationship of landlord and tenant is required to be established by the 2nd respondent between the petitioner and the 2nd respondent before he could claim the occupancy right.

12. Subramanya Udupa was entitled for notice in view of the fact that his name has been shown as the person cultivating the land in question and further on the death of Smt. Shantalaxmamma he became, one of the heirs of Smt. Shantalaxmamma and as such, he has got right of ownership in the land in question. Failure to issue notice to him has vitiated the order of the Tribunal.

13. In view of the conclusions arrived at by me the findings recorded by the Tribunal suffer from errors apparent on the face of the record and the same are liable to be interfered with.

14. For the reasons stated above, this writ petition is entitled to succeed and the same is accordingly allowed,. The order of the Tribunal is hereby quashed and the matter stands remitted to the Tribunal with a direction to determine the question as to whether subsequent to the execution of the sale deed dated 1-6-1965 by the 2nd respondent in favour of the wife of the Petitioner, there was any creation of tenancy in favour of the 2nd respondent by Shantalaxmamma. The Tribunal is also directed to issue notice to Sri Subramanya Udupa the son of the petitioner. The, Tribunal must afford an opportunity to both the parties including Sri Subramanya Udupa to adduce evidence in support of their cases and to decide the case in accordance with law and in the light of the observations made in this order and after hearing all the parties.

15. Parties are directed to bear their own costs.