

(1979) 03 KAR CK 0022
In the Karnataka High Court
Case No : WPs. 5878 & 5077/77

Sharanappa Channabasappa

APPELLANT

Vs

Land Tribunal Haveri and Others

RESPONDENT

Date of Decision : 27-03-1979

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 21

Citation : (1979) 2 KarLJ 178

Hon'ble Judges : Swami, J

Judgement

1. In these petitions under Art. 226(1)(b) and (c) of the Constitution, the petitioners have challenged the correctness of the order passed by the Land Tribunal, Haveri in case No. TVN.OCP.SR.6+47+155/75-76, dated 31-3-1977, in so far as it pertains to the rejection of their claims. Hence both the petitions are disposed by a common judgment.

2. In Writ Petition No. 5077 of 1977, the petitioner No. 1 is the father of the second petitioner. It is not in dispute that the lands Survey Nos. 324 and 325 of Haveri, originally belonged to the 3rd respondent (Sri Shivaputradevaru Guru Rudradevaru Hondadamath of Byadgi). It is also not in dispute that these two lands were leased to the first petitioner under a registered lease deed dated 21-5-1953 for a period of 99 years. The case of the petitioners in WP 5077 of 1977 is that the petitioners No. 1 and 2 being the father and son respectively both were living together and the lease created in respect of the aforesaid lands was a joint family lease, and while enjoying the lease-hold properties as members of the joint family, petitioners 1 and 2 came to be divided, and in the said division between the two, the land survey No. 324 came to be allotted to the share of the 1st petitioner and the other land came to be allotted to the share of the 2nd petitioner and in accordance with the division they have been enjoying these two lands. On coming into force of the Karnataka Land Reforms Act, as amended by Act 1 of 1974 (hereinafter referred to as the "Act"), the petitioner No. 1 filed an application in form No. 7 claiming occupancy right in respect of lands bearing Survey Nos. 324, 325 and 168 of Haveri. The petitioner No. 2 also

filed a separate application in Form No. 7 claiming to be registered as an occupant of the land bearing Survey No. 325. One more person by name Sharanappa Channabasappa Huralikopi of Haveri-petitioner in WP. No. 5878/77, also filed an application in Form No. 7 claiming to be the tenant of 3 acres of land in Survey No. 168. All these applications were clubbed together and a common enquiry was held by the Land Tribunal, Haveri and a common order was passed.

3. The Land Tribunal has rejected the claim made by the petitioners in WP. No. 5077 of 1977 in respect of the land Survey No. 325 on the ground that it was not at all open for the first petitioner to sub-let the land Sy. No. 325 to the 2nd petitioner and in view of this sub-letting, the first petitioner was not cultivating the land Sy. No. 325 personally on 1-3-1974 and the cultivation of the said land personally by the second petitioner was not as a lawful tenant in view of the fact that his possession was not lawful and therefore, he was also not entitled to be registered as an occupant. Consequently, the claim made by the petitioners in respect of Survey No. 325 came to be rejected. As far as the claim of the first petitioner in respect of the land Survey No. 168 is concerned, the Tribunal has partly allowed that claim and has ordered that the first petitioner should be registered as an occupant of the said land to the extent of 17 acres 11 guntas and has rejected his claim in respect of 3 acres. The claim made by Sri Sharanappa Channabasappa Huralikopi the petitioner in WP. No. 5878/77, in respect of 3 acres of land in Sy. No. 168 has also been rejected on the ground that the land in question was originally cultivated by the first petitioner in WP. No. 5077/77 as a tenant and the 4th respondent in WP. 5077/77 (Sri Karimsab) on behalf of the Mosque obtained possession of 3 acres of land out of Survey No. 168 from the first petitioner in Writ Petition No. 5077/77 for personal cultivation and that being so, it was not at all open for the 4th respondent to lease the same to respondent No. 5 Sri Sharanappa Channabasappa Huralikopi, in view of the bar contained in S. 19 of the Act. The contention of the first petitioner in WP. No. 5077/77 in this regard, is that even though there was an order for taking possession of 3 acres of land out of Sy. No. 168 in favour of the 4th respondent Sri Kashimsab, but nevertheless, the first petitioner was not dispossessed of that portion and the possession was not taken from him and in spite of that order, he continued to cultivate the land as a tenant and he was paying the rent Therefore, on 1-3-1974, the first petitioner was cultivating personally the entire land comprised in Sy. No. 168 and hence, it is his further case that the rejection of the claim made of the 1st petitioner to the extent of 3 acres in Sy. No. 168, is not tenable.

4. The case of the petitioner in WP. No. 5878/77 is that the lease in his favour was lawful and that his name has been entered in the records for the years 1966-67 and that being so, the Tribunal was not right in holding that the petitioner was not a lawful tenant and as such, the rejection of his claim is unsustainable. Having regard to these contentions of the petitioners and the respondents, the questions that arise for consideration are:

(1) Whether the Tribunal was right in holding that there was a subletting by the first petitioner in WP. No. 5077/77 to the second petitioner therein of the land Sy. No. 325 and as such, the petitioners in WP. 5077/77 were not entitled to be registered as occupants?

(2) Whether the Tribunal has considered the case of the 1st petitioner in WP. 5077/77 and the petitioner in WP. 5878/77 pertaining to 3 acres of land in Sy. No. 168?

5. It is undisputed that the lands comprised in Sy. Nos. 324 and 325 were leased to the first petitioner in WP. 5077/77 who is no other than the father of the 2nd petitioner therein under a lease deed during the time when the petitioners 1 and 2 were living together as members of the Hindu Undivided Family. It is also not disputed by the 3rd respondent that there was such a lease and in pursuance of the said lease, the petitioners were cultivating the lands Sy. Nos. 324 and 325 and it was also not disputed by the 3rd respondent that they were entitled to be registered as occupants. But the Tribunal has rejected the application of the first petitioner as well as the 2nd petitioner in respect of the land Sy. No. 325 on the ground that the first petitioner cannot be said to have cultivated the land personally because in the partition the land Sy. No. 325 was given to the second petitioner in the year 1970 and as far as the 2nd petitioner is concerned, the reasoning of the Tribunal was that in view of the bar contained in S. 21 of the Act, the sub-letting was not lawful as the sub-letting was prohibited and therefore the possession of the 2nd petitioner was not lawful and hence, he was not entitled to be registered as an occupant.

6. Sri K.I. Bhatta the learned Counsel for the petitioners, submitted that the Tribunal has committed an error in holding that there was any sub-division or sub-letting. The two lands were leased to the father of the 2nd petitioner and out of the two lands, one land was being enjoyed by the father and another one by the son, as a result of partition between them and in such a case, there is no question of sub-letting or sub-division. The lands have also not been sub-divided. According to him, the prohibition contained in S. 21 of the Act, is with regard to the sub-division or sub-letting of the land held by a tenant or assignment of any interest therein and it does not relate to the division of leasehold rights between the tenants The relevant portion of S. 21(1) of the Act, reads as follows:

"No sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid."

Partition of the lands between the first petitioner and the second petitioner does not amount to either sub-letting of the land or assignment of an interest therein inasmuch as, each one was having the equal share or interest in the lands in question; therefore, there was no question of assignment. In order that there should be an assignment of an interest, the assignee must not have possessed any right or interest in the land which he gets by way of assignment, whereas, in the instant case, it is not so.

7. Though, sub-sec. (1) of S. 21 prohibits the sub-division or sub-letting of the land, but in the instant case, the land Sy. No. 325 has not been sub-divided. Further, there is no sub-letting of the said land inasmuch as it is not in dispute that the lease was created in respect of the lands in Sy. Nos. 324 and 325 when the petitioners were the members of the Hindu undivided family and the lease was taken in the name of the first petitioner being the father of the second petitioner. Thus, both the petitioners became the holders of lease-hold rights. In such a case, there is no question of sub-letting to the 2nd petitioner by the 1st petitioner. In pursuance of the partition, the first petitioner started cultivating one land and the other land was cultivated by the 2nd petitioner. Further, the partition between them cannot be said to be prohibited under S. 21 of the Act. Further, in the case of sub-letting, the person who sub-lets will be doing so by way of contract entered into between him and the other person in pursuance of the payment of an agreed amount of consideration by the other person to the person who agrees to sub-let. Whereas, in the case of partition there is no question of payment of any consideration nor there is any transfer as such, each one is entitled for the lease-hold rights; therefore, the partition will not result in subletting. In the instant case, there is no sub-division of the land Sy. No. 325 inasmuch as the entire land has fallen to the share of the 2nd petitioner. Hence, the Tribunal has proceeded on an erroneous basis that the cultivation of the land by the second petitioner in pursuance of the partition between him and the 1st petitioner amounted to sub-letting and sub-division of the land in question. Therefore, the order passed by the Tribunal in so far as it pertains to the rejection of the claim made by the second petitioner in respect of the land Sy. No. 325 is concerned, is not sustainable and the same is liable to be quashed.

8. The Tribunal has rejected the claim made by the petitioner in WP. No. 5878/77 on the ground that the lease in his favour was unlawful being opposed to the provisions of S. 19 of the Act, and the claim made by the first petitioner in WP. No. 5077/77 in respect of the aforesaid 3 acres of land in Sy. No. 168 has been rejected on the ground that there was an order of resumption made in favour of the 4th respondent and therefore, he (the petitioner No. I in WP. 5077/77) cannot be said to have personally cultivated the said portion of the land in question on 1-3-1974.

9. The contentions of Sri K.I. Bhatta the learned Counsel appearing for the petitioners in WP. 5077/77 and Sri Suresh S. Joshi, the learned Counsel appearing for the petitioner in WP. No. 5878/77, are that the Tribunal has failed to consider the case of both the petitioners in respect of the aforesaid 3 acres of land in Sy. No. 168. The case of the first petitioner in WP. No. 5077/77 is that in spite of the order of resumption, he continued to be in possession of the land in question and cultivated the same personally as tenant inasmuch as the possession of the land was not obtained by the 4th respondent. Further, this aspect of the case was also conceded by the 4th respondent when he was examined before the Tribunal. On the contrary, the case of the petitioner in WP. No. 5878/77 is that after obtaining possession of the land by the 4th respondent,

the same was leased to him and the said lease was in accordance with law inasmuch as the 4th respondent-land holder, was entitled to lease the land irrespective of the provisions contained under S. 19 of the Act and further the provisions contained under S. 19 of the Act, did not apply as it was a case of surrender and not a case of resumption. Further case of the petitioners was that they were also not given full opportunity to adduce evidence in respect of their claim in so far as it related to 3 acres of land in Sy. No. 168 in question. It is not necessary for me to go into the correctness of these contentions as far as this land is concerned as the Tribunal has not considered the evidence on record and has failed to give due opportunity to the petitioners to prove their respective cases put-forth by them. A reading of the order of the Tribunal makes it clear that the aforesaid questions have not been considered by the Tribunal. The Tribunal has not adverted to the evidence adduced in the case by the 4th respondent. Consequently, the order of the Tribunal in so far as it relates to the rejection of the claim made by the second petitioner in WP. 5077/77 in respect of Sy. No. 325 is concerned is hereby quashed and also the rejection of the claim made by the first petitioner in WP. 5077/77 and also that of the petitioner in WP. No. 5878/77 in respect of 3 acres of land in Sy. No. 168 is concerned, is also hereby quashed. The cases of all the three petitioners now stand remitted to the Land Tribunal with a direction to decide the case of the petitioner in WP. No. 5878/77 and also that of the first petitioner in WP. No. 5077/77 afresh in accordance with law in so far as it pertains to the 3 acres of land in Sy. No. 168; and in the light of the observations made in this order and after affording an opportunity to the parties to adduce evidence and after hearing them. The Tribunal is also directed to decide the case of the second petitioner in WP. No. 5077/77 afresh in respect of the land Sy. No. 325 after holding an enquiry in accordance with law and in the light of the observations made in this order and after affording an opportunity to the parties to adduce evidence and after hearing them. No order as to costs.