

(2008) 01 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No. 17807 of 2007

Shivaputrappa Bharamappa Maneda

APPELLANT

Vs

The Head Quarters Assistant, Sri. Linganagouda
Neelappagouda Hucchanagoudar @ Patil and The State of
Karnataka

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 21, 21 (1)

Citation : (2008) ILR (Kar) 900 : (2008) 3 KarLJ 171 : (2008) 1 KCCR 265

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Mahantesh S. Hosmath, for the Appellant; Vighneshwara S. Shastri,
for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This petition coming on for preliminary hearing, is heard for final disposal on merits, having regard to the question of law on which the petition turns.

2. The brief facts of the case are as follows:

The petitioner's cousin sister Savantrawwa, claimed to be the tenant of the land in survey No. 148 to an extent of 1 acre 28 guntas, of Betagiri, Gadag Taluk. It is contended that Savantrawwa was inducted as a tenant under a registered deed dated 8.1.1970. As the said Savantrawwa had no legal heirs, she had bequeathed the said land, the right of tenancy in favour of the petitioner, who is the son of the maternal aunt of Savantrawwa. Savantrawwa had not filed any claim for occupancy rights with the coming into force of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act" for brevity). The petitioner however, had filed an application in Form 7A to claim occupancy rights by virtue of the bequest under the will after the death of Savantrawwa in the year 1997. This application having been allowed, respondent No. 2. claiming an

interest in the land has preferred on appeal before, the Karnataka Appellate Tribunal. The Tribunal has found that the petitioner was not a full brother of the deceased tenant and hence, there could not be a valid, assignment or bequest of the tenancy in his favour. The Tribunal has relied on the judgement of the Supreme Court in the case of Jayamma v. Maria Bai ILR 2004 Kar 3975 in interpreting the bar u/s 61 of the Act. It is this which. is under challenge in the present petition.

3. The Counsel for the petitioner seeks to urge that the Tribunal has not afforded an opportunity of hearing on the question of law involved. It is contended that the Tribunal had overlooked the proviso to Sub-section 1 of Section 21 of the Act, which saves the rights of a beneficiary under a will.

4. Having regard to the admitted circumstance that the petitioner, could not claim to be a member of a family of the deceased tenant and in terms of Section 61 of the Act, which in the view of the Supreme Court in Jayamma's case supra, would permit a transfer of agricultural land with occupancy rights, only in favour of one of the heirs who would be entitled to claim partition of land and not others, While also taking note of the observation in an earlier judgement, in Sri Sangappa Kalyanappa Bangi (D) Through Lrs. Vs. Land Tribunal, Jamkhandi and Others, that the meaning attributed to an heir could include the descendant and other persons related by legitimate kinship or otherwise who may be covered by a will, the object of Section 21 being to confine the rights of tenancy only to those known under law as heirs, assignment to strangers was barred.

5. In the case on hand, the argument sought to be canvassed that the petitioner would fall under an exception contemplated u/s 21 and hence, the Tribunal was required to consider the said aspect, is not tenable. There is no case made out for consideration. The case is fully covered by the judgement of the Supreme Court in Jayamma's case supra.

6. Hence, the writ petition is rejected.