

(2012) 11 KAR CK 0137
In the Karnataka High Court
Case No : Writ Appeal No. 840 of 2009 (LR)

Smt. Ammayamma

APPELLANT

Vs

Muniswamy Since Deceased by his L.TD.

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) 1 KCCR 139

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : A. Krishna Bhat, for the Appellant; S.P. Shankar for Smt. Mamata G. Kulkarni for Respondent-1, Sri K. Krishna, Additional Government Advocate for Respondent-2 and Sri Jagadish D. Hiremath for Impleading Applicants, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—This appeal is preferred challenging the order passed by the learned Single Judge, who has upheld the order passed by the Land Reforms Appellate Tribunal granting occupancy rights in favour of the 1st respondent-Muniswamy. The subject matter of these proceedings is land bearing Sy. No. 100 situated in Chokkasandra Village, Anekal Taluk, Bangalore District. The said land measuring 4 acres was granted in favour of Late Ramaiah in the year 1936. He died leaving behind his second wife Smt. Ammayamma as his legal heir. The 1st respondent Muniswamy filed Form No. 7 on 30.12.1974 claiming occupancy rights in respect of the aforesaid land as well as Sy. No. 92. At column No. 8 he has mentioned that he has been cultivating the said land for the last 35 years. The second wife of Ramaiah, the appellant contested the claim denying the fact that he was a tenant in respect of the property in question and that the land in question was not a tenanted land. During the pendency of Form No. 7 Muniswamy died. His son Anneppa was brought on record and he prosecuted the application. By a majority opinion, they rejected the claim of the applicant over an extent of 4 acres in Sy. No. 100 and 4 acres 20 guntas in Sy. No. 92 of

Chokkasandra village as there is no relationship of tenant and land lord in this case. The Power of Attorney Holder to the applicant Sri Anneppa, who is also the son of the applicant, is the son-in-law of the respondent. Smt. Ramakka. Wife of the applicant and mother of Power of Attorney Holder is the sister of the respondent.

2. Aggrieved by the said order, a writ petition was filed by the L.Rs. of the said Muniswamy. The said order of the Land Tribunal came to be set-aside and the matter was remanded back to the Tribunal for fresh consideration. After such remand, after holding fresh enquiry, the Tribunal held that the land in question is a tenanted land. The RTC produced shows that Muniswamy was cultivating the land from the year 1971-72 onwards. The land vested with the Government as on 01.03.1974, he was in possession cultivating as a tenant. The Tribunal also held that after him, his son M. Anneppa was tenant as on 01.03.1974 and for previous years and was cultivating the land in question. Therefore, they proceeded to grant occupancy rights in respect of Sy. No. 92 measuring 4 acres 20 guntas and Sy. No. 100 measuring 4 acres of Chokkasandra village, Anekal Taluk, Bangalore District.

3. Aggrieved by the said order, Ammayamma, the appellant herein preferred writ petition before this Court in W.P. No. 8403/2003 challenging the grant of occupancy rights insofar as it related to Sy. No. 100 measuring an extent of 4 acres of land situated in Chokkasandra village, Anekal Taluk, Bangalore District. The learned Single Judge, on consideration of the order passed by the Land Reforms Tribunal and other materials on record, agreed with the finding of the Tribunal and dismissed the writ petition. Aggrieved by the said order, the present appeal is filed.

4. We have heard the learned Counsel appearing for the parties.

5. Form No. 7 filed by Muniswamy discloses that he sought for occupancy rights in respect of both Sy. No. 92 as well as Sy. No. 100. In Form No. 7, Second wife of Ramaiah was made respondent. In Form No. 7 he has categorically stated that he has cultivated the land for the last 35 years. Along with the said Form No. 7 he produced the RTC extracts to show the name of Ammayamma for the period from 1969-70, 1970-71 and 1971-72. In the year 1971-72, the name of Ammayamma is striked-out and the name of Muniswamy is written and his name continued till the year 1972-73 and 1973-74. In column No. 9 it is mentioned that it is a granted land. In column 13 it is mentioned as 1. This document, even if it is taken on its face value, would not show that Muniswamy was cultivating the land as a tenant. In fact after coming to know that the name of Muniswamy is entered in the records, Ammayamma preferred an appeal and got that entry set-aside.

6. It is the case of Muniswamy that he is cultivating the land for the last 35 years. He should have produced RTC to show that he was cultivating the land from 1935 onwards. On the contrary, RTC produced by him shows that in the

year 1969-70, 1970-71 and 1971-72 Ammayamma was cultivating the land. It is his case that he took the land on lease from Ramaiah. There is no material to substantiate the said case. If, in the year 1969-70 to 1971-72 Ramaiah was not alive and Ammayamma was cultivating the land, her name was entered in the mutation, he should have taken the land from her. That is not his case. That apart, the material on record shows Muniswamy's son Anneppa has married the daughter of Ramaiah through first wife Ramakka. It is in this context, it is obvious that an attempt is made to deprive the second wife of Ramaiah, the right to this property. Karnataka Land Reforms Act was enacted with an object to confer occupancy rights on the tillers of the land. If a tenant was cultivating the land for a considerable period or atleast three years prior to the date of vesting of the land with the Government, occupancy right was conferred on the tiller of the land. Keeping in mind the object, it is clear from the facts of this case a dispute regarding right of property between first wife and the second wife is sought to be resolved through the Land Reforms Tribunal. That is not the object of the Act and the Tribunal has no jurisdiction to decide the property disbursed among the family members. Even otherwise, the Tribunal has not looked into the records properly, so also, the RTC extracts produced along with them. It has not understood the significance of Column Nos. 9, 12 & 13 in the RTC. If only it had applied its mind, it would have known that the land in question is not tenanted land at all, it did not vest with the Government and the Tribunal has no jurisdiction to grant occupancy rights. Unfortunately, the Tribunal has not examined these aspects and hence, the finding recorded by Tribunal and the learned Single Judge is contrary to the material on record.

Therefore, it requires to be set-aside. Hence, we pass the following order:

- (a) Writ appeal is allowed.
- (b) The order passed by the learned Single Judge as well as the Land Tribunal is hereby set-aside.
- (c) It is declared that the land in question is not a tenanted land and Tribunal has no jurisdiction.
- (d) Liberty is reserved to the parties for adjudicating the matter in a Competent Civil Court regarding their right to the property.