
(2002) 10 KAR CK 0006
In the Karnataka High Court
Case No : Writ Appeal No. 5509 of 2000

Smt. Basavva (deceased) by L.R.	APPELLANT
Vs	
Parameshwarappa Mallappa Halli and Others	RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Citation : (2003) 3 KarLJ 184 : (2003) 1 KCCR 9 SN

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : T.R. Subbanna, for C.S. Patil, for the Appellant; Mahesh Wodeyar, for Mohan Shantanagoudar, for Respondent-1 and Vidyadhar B. Godse, for Respondent-3, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—We have heard the learned Counsels for the contesting parties as also the learned Government Advocate on merits. The question as to whether this Court should entertain an appeal against the order of remand has often been debated, one view being that where a learned Single Judge has exercised his discretion that the Division Bench should ipso facto refuse to entertain an appeal against such an order. It has however been pointed out that in the field of land reforms cases where habitual remands have been the style for the last about twenty years, that there are a good percentage of instances when a remand is thoroughly unjustified and it can be said in favour of the grievance that the opposite party is not only exposed to the trauma, turmoil and expenditure of another long session of litigation before the Tribunal but what it is also exposed to is the grave risk of not knowing what the outcome is going to be, having regard to the quality of the orders that are being turned out by the Tribunals. Successive Division Benches have found that in those of the instances where a remand is contra-indicated or unjustified or a valid order is lightly or loosely set aside on some hair-splitting super technicality or unjustified allegations relating to breach of procedures, that the interests of justice are seriously subverted

because it is not only a question of adding to the load of litigation on the forums but the more important aspect of curbing the unwarranted interference. The Courts have over a period of time evolved a formula whereby a remand will only be permitted if deep-seated and manifest injustice has resulted. Sometimes, having regard to conditions in rural areas, if a case has genuinely and bona fide gone by default and the consequences to the party are going to be so disastrous, that the principles of justice would compel another opportunity being given; but in all these instances, it is very essential for the High Court to do a very careful analysis of the entire record irrespective of the grounds pleaded and to come to the conclusion that the party seeking the remand has a good and fair chance of success if the remand is granted. Remands for academic reasons or remands for the sake of remands are not situations that pass judicial scrutiny.

2. In the present instance, the solitary ground on which the learned Single Judge has remanded the case to the Tribunal on the second occasion is that the petitioner contended that he had no opportunity to cross-examine the landowner. This had happened once before and obviously the learned Single Judge who viewed the grievance from the twofold angle that the petitioner has not had an opportunity of testing the veracity of the landowner's evidence and that the deprivation of the right to cross-examine would involve a breach of the deep-seated rules of natural justice, directed a remand. On this occasion, once again the same grievance was represented and once again with the same result. We have taken cognizance of the fact that absolutely nothing else was pleaded and furthermore that the Court did not ascertain as to what the likely result of the so-called cross-examination could yield and whether or not, it would make any appreciable or substantial difference to the earlier decision. It was obviously for these reasons that the appeal against the cryptic order of the learned Single Judge was admitted and when the appeal was heard by us, not surprisingly, the appellant's learned Counsel demonstrated to the hilt from the record that the ground itself was incorrect. The record indicates that the power of attorney holder of the landlady was examined and that the applicant had an opportunity of cross-examining, that this opportunity was offered and that it was declined. In this background, the very basis for the remand gets completely obliterated and on this ground alone, the remand order would have to go. Our attention was drawn to an earlier Division Bench decision on Gurusiddamma Vs. Hanumanthappa and Others, , wherein this Court had occasion to observe that where the High Court extends indulgence to a party, by remanding a case for a particular purpose, and the party does not avail of the facility, comes back to the High Court with the same; grievance that the High Court would disqualify the party from reagitating this ground. The High Court was applying the doctrine of finality which is very very necessary particularly in this field of law.

3. Mr. Subbanna, learned Counsel who represents the appellants submitted that the reason why this was the only technicality pleaded before the learned Single Judge was because, according to him, this is a case in which the then tenant had appeared before the Competent Authority viz., the Mamletdar who by an order,

dated 1-6-1965 has in terms indicated that the tenant had voluntarily expressed his desire to surrender the tenancy. Strangely enough, the authority mentions that he explained to the tenant the consequences of the action and after satisfying himself that the surrender was genuine and that it was voluntary has only then passed the order. This order is now thirty-seven years old and has not been challenged by the tenant or the legal heirs at any time. The order has then crystallised into Mutation Entry No. 12922, dated 4-7-1965, wherein again, there is a detailed recording of the fact that the tenant has surrendered the land and that the landlord has taken possession and that the entries have been reversed. This entry has also not been called into question at any time in the course of the last thirty-seven years. We refer to this aspect only in order to illustrate that assuming that there was something wrong with this transaction, that in the course of the several proceedings over the last nearly four decades these vital documents would have been challenged and if the transactions were either unfair or improper or illegal, necessary corrective steps would have been initiated. Nothing of this sort has been done and in the light of this position, it is very clear that even assuming that the applicant had availed of his full opportunity of cross-examination, that absolutely nothing of consequence could have emerged. This is one of the aspects which the Court needs to consider because even in situations where technicalities are pleaded the Court is required to do a responsible projection of the likely outcome of the proceeding and as indicated earlier, unless it is most probable that it would result in a favourable decision to the aggrieved party a remand would be totally worthless. The appellant's learned Counsel drew our attention to a decision of this Court in *Siddamma and Another Vs. State of Karnataka and Others*, , in support of his proposition that irrespective of the application made for the grant of tenancy rights if there is an order accepting the surrender of tenancy which has become final, that the tenancy ipso facto comes to an end, the land does not vest in the Government and the application for the grant of occupancy rights is not maintainable. We do not really need to go into any of these finer aspects of the law because on the state of the present record, we are more than satisfied that not even a zero purpose would have been served through a remand in the present case and that the order to this effect was thoroughly unjustified.

4. The respondents' learned Advocates put forward the usual plea of ignorance etc., attributable to the tenant and he also submitted that when this Court is exercising writ jurisdiction that it should not exercise appellate powers, that the scope of these proceedings is limited and this is the reason why whenever there was an arguable case made out both on facts and in law, that a remand was rightly resorted to. Reliance was placed on the decision of *R. Venkatarao Vs. Munivenkatappa and Others*, and the additional submission canvassed was that in the present instance, a remand would certainly further the aims of justice because the applicant would get the opportunity of being able to establish the circumstances under which the two documents that we have referred to came into existence. He submitted that it is true that it is rather late in the day but,

that the respondent-applicant is a small and a weak person and that his rights have been transgressed upon and that he has been subjected to pressures which was why he was not able to plead his case properly and lead his evidence and he drew our attention to some reference in the appeal memo filed before the Appellate Authority. We find that in the present instance this plea was unjustified and in any event as of now we are concerned with the limited issue relating to why the respondent did not avail of the opportunity to cross-examine the landowner despite an earlier remand by this Court. The learned Advocate submitted that it was under the same pressures and duress, but in our considered view, this answer is untenable because if anything of that sort had happened the grievance would have been made before the Tribunal and that would have been the first ground pleaded, and even when the case came back to this Court it was not done. Again the usual submission was canvassed that no prejudice would be caused to either side through a remand, but we have already dealt with that aspect by pointing out that prejudice is manifest when the remand is unjustified.

5. At this stage, the learned Government Advocate submitted that the High Court must be discriminating in all cases where a remand is asked for and that the remands must be confined to the rarest of rare cases where it must be first demonstrated to the High Court that there has been a virtual failure of justice and that through a remand, the position could be reversed. The learned Government Advocate is right when he draws our attention to these principles which in our considered view are the chief guiding factors in cases of this type.

6. Having very carefully reassessed the position both in law as also on facts in our considered view, no case for a remand is made out. The order passed by the learned Single Judge is set aside.

The appeal succeeds and stands disposed of. No order as to costs.