

(1999) 03 KAR CK 0019

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 1478 of 1990

Smt. Kalavati alias Jayashree

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Land Reforms Act, 1961 — Section 121 A, 45, 48 A

Citation : (1999) ILR (Kar) 2445 : (1999) 6 KarLJ 136

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri R.G. Hegde, for the Appellant; Sri Visweswaraiah, High Court Government Pleader and Sri R.U. Goulay, for the Respondent

Judgement

1. This revision u/s 121-A of the Karnataka Land Reforms Act, 1961 by R-3 in appeal R.A. No. 115 of 1988 before the Land Reforms Appellate Authority, Chikodi is directed against the order of the Appellate Authority dated 27-2-1990 in the said appeal.

2. R-3 herein (in the revision) made an application u/s 45 read with Section 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as "the Act") in Form No. VII before the Land Tribunal, Gokak claiming occupancy right in respect of the land admeasuring 21 acres and 37 cents of Dhupadal Village. Tribunal, by majority (Chairman of the Tribunal recorded the dissent), by order dated 10-5-1988 rejected the application. Aggrieved by the said order of rejection, R-3 herein filed appeal before the Land Reforms Appellate Authority, Chikodi in R.A. No. 115 of 1988. Appellate Authority, by order dated 27-2-1990 allowed the appeal, set aside the order of the Land Tribunal dated 10-5-1988, granted occupancy right in favour of R-3 and further directed the Secretary, Land Tribunal, Gokak to issue necessary certificate in Form No. X. It is this order that is under challenge in this revision.

I shall refer to the contesting parties as they are shown in the revision, R-1 and

R-2 are the State of Karnataka and the Land Tribunal, Gokak respectively.

3. Facts relevant for the disposal of this revision may be stated thus:

The dispute centres round the land admeasuring 21 acres and 37 cents in Sy. No. 146 of Dhupadal Village. Revision petitioner Kalavati @ Jayashree is the granddaughter of one Yamuna Bai Ramachandra Yardi who died in the year 1980 by her daughter M. Anandi Bai. R-3 Yamunawa is the granddaughter of one Thippanna Yellappa Holar who died on 16-4-1962 by daughter Laxmawa.

It is undisputed that deceased Yamunabai Ramachandra Yardi was the owner of the land in dispute. Thippanna Yellappa Holar was the tenant of this land for over decades. R-3 claims that she is the daughter of Laxmawa, the only daughter of deceased Thippanna and she died when she was aged about 5 years and therefore she continued to live with Thippanna and Thippanna brought her up, looked after her welfare. It is her further case that after the death of Thippanna in the year 1962 she continued to cultivate the land personally and at no point of time her possession was interfered. On 23-12-1974 she made an application u/s 45 read with Section 48-A of the Act in Form No. VII before the Land Tribunal, Gokak claiming occupancy right in the said land. Revision petitioner's case in substance is that the land in question was never under the cultivation of any tenant, her grandmother cultivated the land and after her death she being her legal heir came in possession of the land and cultivated it personally. However, she makes a statement in her deposition that she did not know Thippanna cultivating the land at any time.

After enquiry, Tribunal on 19-10-1981 allowed the application, granted occupancy right in favour of R-3. Aggrieved by the said order, revision petitioner approached this Court in W.P. No. 24422 of 1981 under Articles 226 and 227 of the Constitution of India and sought for setting aside the order of the Land Tribunal. Grievance of the petitioner was that no sufficient opportunity was given to her to adduce evidence. This Court, by order dated 14-9-1984 allowed the writ petition, set aside the order of the Land Tribunal dated 19-10-1981 and remitted back the matter to the Tribunal with a direction to proceed to dispose of the matter afresh in accordance with law after affording opportunity to both the parties to lead their evidence. After the remand, R-3 and the revision petitioner were examined and another witness (RW-2) in support of the case of the revision petitioner. Certain documents were marked by both the parties. The Tribunal after hearing both the parties and considering the evidence, by majority rejected the application. Members of the Tribunal concluded that R-3 failed to establish the alleged tenancy and that she cultivated the land on 1-3-1974 and just prior to it. But the Chairman disagreed and held that R-3 was cultivating the land as tenant on 1-3-1974. However, aggrieved by the said order of rejection, R-3 appealed before the Land Reforms Appellate Authority in R.A. No. 115 of 1988. Appellate Authority after hearing the learned Counsel for both the parties elaborately, concluded that the evidence on record establish beyond a ray of doubt that Thippanna continued to cultivate the land as tenant for over decades till his

death and thereafter R-3 being his only surviving legal heir continued to cultivate the land, there is no valid surrender of land at any time. The entries in the revenue records subsequent to 1964-65 are not worthy of acceptance and the revision petitioner's claim that the land was not tenanted at any time is not supported by any evidence worthy of acceptance. Accordingly, Appellate Authority allowed the appeal and granted occupancy right.

4. Sri R.G. Hegde, learned Counsel for the petitioner argued that the Appellate Authority committed an error in recording that R-3 is the legal heir and continued to cultivate the land personally even on 1-3-1974 or just prior to it. Appellate Authority had no jurisdiction to go into that question and that question ought to have been decided only by a Civil Court. His further argument is that the entries in the revenue record supported the case of the revision petitioner that the land was never tenanted at least after 1963-64 and in such circumstances, Appellate Authority erred in interfering with the order of the Land Tribunal. In other words, he argued that even if Thippanna was held to be a tenant of the land, tenancy ceased the moment he died since he did not leave behind him any L.Rs and the land reverted back to the owner and the owner continued to be in possession till her death and after her death in the year 1980 revision petitioner continued to be in possession by cultivating it personally. All other observations of the Land Reforms Appellate Authority in rejecting the entries in the revenue records are not correct and do not stand the test of judicial scrutiny. Appellate Authority exceeded in its power and therefore the order of the Appellate Authority is not sustainable in law.

Per contra, Sri Chandrakanth, learned Counsel for R-3 contended that the entries in the revenue records more particularly in the pahani patra upto the year 1963-64 establish overwhelmingly that the land was tenanted, deceased Thippanna cultivated the land personally and after his death his only legal heir R-3 cultivated the land and in fact on 1-3-1974 and just prior to it, applicant R-3 cultivated the land. The majority view of the Tribunal not being supported by any reason as required under law was rightly interfered by the Appellate Authority. The Tribunal and the authority alone had the jurisdiction to decide the relationship of landlord and tenant, whether the land in question was tenanted land and therefore there is no substance in the arguments that the question of relationship of landlord and tenant should have been decided only by the Civil Court. He further argued that the scope of revision u/s 121-A of the Act being limited, it does not permit re-appreciation of evidence, there are absolutely no grounds to interfere with the order impugned. Learned High Court Government Pleader supports the order of the Appellate Authority.

5. It may also be noted here that the mutation entry came to be changed on an application by R-3 and numbered as M.E. 1431. It would appear that the change in the mutation entry came to be made on the report of the Village Accountant. The owner of the land challenged its correctness before the Assistant Commissioner and the claim of the owner was rejected. Aggrieved by the order

of rejection, he went in appeal before the Deputy Commissioner and that order was set aside and the matter was remitted back to the Assistant Commissioner for deciding the matter afresh. Deputy Commissioner however made it clear that whatever order that is likely to be made by the Assistant Commissioner is subject to the order of the Land Tribunal and also of the High Court. This observation perhaps is made because the writ petition was pending before the High Court. After the remand, Assistant Commissioner appears to have negated the case of the tenant. She therefore approached this Court under Articles 226 and 227 of the Constitution of India in W.P. No. 19001 of 1984 and that writ petition came to be dismissed on 30-11-1984 with an observation that an order of the Revenue Official is not conclusive and it is open to the party aggrieved to institute a suit for establishing title.

6. In view of the rival submissions, points that would arise for consideration are:

1. Whether the Appellate Authority erred in deciding the relationship of landlord and tenant between the parties?

2. Whether the order impugned suffers either from illegality or irregularity?

7. Elaborate narration of history of the case demonstrates that the dispute is pending over 25 years. Argument of Sri R.G. Hegde is that the Appellate Authority committed an error in deciding the question of relationship of landlord and tenant between the contesting parties. On a close examination of the material, I find no merit in this argument. In the last 25 years, at no point of time as I could see from the records, revision petitioner has questioned the relationship of R-3 with deceased Thippanna. Appellate Authority has in fact formulated a question as to whether R-3 is the heir of deceased Thippanna and records a finding that R-3 is the L.R. of deceased Thippanna. In view of the vehemence with which the argument was advanced, I went through the earlier records carefully and nowhere the revision petitioner has questioned or challenged the relationship of R-3. In appeal before the Appellate Authority revision petitioner has filed objections to I.As. I and II and even there not even a whisper is made about the relationship of R-3 with the deceased. Even in the earlier writ proceedings no such plea is advanced. Whatever that may be, it is now settled that whenever a dispute arises as to whether a person holds the land as a tenant or not, it is the Tribunal- and the Tribunal alone has the jurisdiction to decide u/s 48-A read with Section 133 of the Act. Apex Court in Mudakappa Vs. Rudrappa and others, . Considering the scope and object of Section 48-A and 133 of the Act makes this declaration which reads thus:

"8. It is seen that the words "tenant", "the Tribunal" and "the joint family" have been defined under the Act. If one of the members of the family cultivates the land, it is for and on behalf of the joint family. Under these circumstances, pending the suit, when the question arose whether the appellant or joint family is the tenant, that question should be decided by the Tribunal alone u/s 48-A read with Section 133 and not by the Civil Court. It is needless to mention that when

the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine the rival claims, it should record the evidence and decide the matter so that its correctness could be tested either in an appeal or by judicial review under Article 226 or under article 227, as the case may be. But that cannot, by necessary implication, be concluded that when rival claims are made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject of the decision once over by the Civil Court. It is clear from Section 48-A(5) and Section 112-B(bbb) read with Section 133, that the decision of the Tribunal is final u/s 133(1)(iii). The Civil Court has power only to decide other issues. It is, therefore, difficult to accept the contention that the rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the Civil Court".

Appellate Authority after considering the relevant material made available records its finding that R-3 is the legal heir of deceased Thippanna. Revision petitioner or her witness Nemanna does not say anything about R-3's relationship with deceased Thippanna. Over and above, R-3 has produced certified copy of a registered document dated 22-8-1961. It is styled as "Bakshish Patra" executed by Thippanna Yellappa Harijan and it is relevant to note a statement made in that document which reads thus:

The donor has given certain properties under this document in favour of R-3. This document is of the year 1961 viz., 30 years old and it is a registered document. Certified copy of which is produced by R-3. Therefore, a presumption would arise regarding its genuineness in view of Section 90 of the Indian Evidence Act. When we read this document keeping in view the provisions of Section 90 read with Section 32(5) of the Indian Evidence Act and it would make it clear that the claim of R-3 that she is the granddaughter of deceased Thippanna Yellappa Holar stands proved. It also establishes that Thippanna Yellappa Holar did not leave behind him any other heir. The other document which I would presently advert to also establishes that the deceased cultivated the land in dispute till his death. In the premises, I find hardly any ground to fault the finding of the Appellate Authority in this behalf.

8. R-3 claims to have cultivated the land after the death of her grandfather Thippanna Yellappa Holar. The word "tenant" is defined in Section 2(34) of the Act. The expression "permanent tenant" and "protected tenant" are defined under sub-sections (23) and (27) of Section 2 of the Act respectively. Section 4 of the Act defines as to who are the deemed tenants. It defines that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family etc. R-3's claim is that she is the only legal heir of deceased Thippanna Yellappa Holar who was the tenant of the land and after his death in the year 1962 she succeeded to his estate and in particular cultivated the land in dispute personally. "Protected tenant" means a tenant of any land if he has held it continuously and cultivated it personally for a period of

not less than 12 years prior to the appointed day. The appointed day would be 2-10-1965, the day on which Act, 1961 came into force. It also includes certain other persons. R-3's claim is that her grandfather cultivated the land for over decades just prior to his death viz., in the year 1962. Suppose there is evidence to establish that the land was cultivated by Thippanna Yellappa Holar for over decades and subsequently R-3 cultivated the land, she would very well come within the definition of the protected tenant. Appellate Authority after considering both oral and documentary evidence elaborately holds that the material would establish that R-3 continue to cultivate the land on 1-3-1974 and just prior to it.

9. Statement of the revision petitioner makes it clear that she did not know whether Thippanna cultivated the land at any time. Her statement is that her grandmother cultivated the land till her death, she had no male issues and she being the only legal heir continued to cultivate the land after her death. R.W. 2 Nemanna makes a general statement that Yamuna Bai cultivated the land and after her death Kalvati, revision petitioner cultivated the land. Further he states that Thippanna Yellappa Holar did not cultivate the land at any time and the land was not tenanted. The entries in the revenue records admittedly contradicts the evidence of these two witnesses. The entries in the pahani patrike from the year 1941-42 to 1963-64 reveal that the land was cultivated by deceased Thippanna Yellappa Holar. In addition, petitioner has produced certain documents indicating that tobacco was grown in that land under licence from the Inspector of Central Excise. The licence at the first instance is issued on 16-11-1951 and it is being renewed from year to year. Upto the year 1971-72 and 1973-74, survey number of the land is shown as 146. There is also a licence in Form No. L-1 dated 3-11-1969 issued by the Inspector of Central Excise, Hukkeri and it is in the name of Yamunawa. Survey number of the land is shown as 1946 and the date of renewal is shown as 27-12-1971. It is renewed for the years 1971-72, 1972-73 and 1973-74. Suffice it to say that these documents in particular have come in existence even prior to the dispute between the parties which arose in the year 1974. Application for grant of occupancy right is filed on 23-12-1974. These documents and oral evidence of R-3 put beyond doubt that her grandfather cultivated the land and after his death she cultivated the land. In fact, the Tribunal examined these documents and the minority view is that the land was tenanted. The Appellate Authority after re-appreciating the evidence comes to the conclusion that the land was tenanted and on 1-3-1974 and just prior to that date R-3 cultivated the land, the land was never under the cultivation of the owner at any time. On a careful scrutiny of whole of the evidence, I hardly find any ground to interfere with the said finding of fact based on proper appreciation of evidence. I find merit in the contention of Sri Chandrakant, learned Counsel for R-3 that the order of the Tribunal is not in accordance with Rule 17 of the Karnataka Land Reforms Rules, 1974. Sub-rule (9) of Rule 17 requires the order of the Tribunal to be speaking order and it should have raised points for decision and the reasons for the decisions thereof. The Tribunal by majority rejects the application of R-3. A plain reading of the

order makes it clear that the Chairman who constituted minority recorded his reasons in detail but the majority has not recorded any reason in concluding that the tenant has not established that she cultivated the land on 1-3-1974 or just prior to it. The relevant portion of the order reads thus:

10. Sri R.G. Hegde, learned Counsel, lastly contended that even if one were to say that deceased Thippanna Yellappa Holar cultivated the land till his death in the year 1962, the other evidence would establish that he died issueless and therefore land reverted back to the owner and the owner cultivated the land and after her death revision petitioner being her legal heir continued to cultivate the land. This argument merits no consideration. Undisputably, the land is in the Bombay Area and the law that was applicable to that area was Bombay Tenancy and Agricultural Lands Act, 1948. Apex Court considering the scope and object of Section 5 of the said Act and Rule 2 of Bombay Tenancy and Agricultural Lands Rules, 1956 in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , has declared that surrender of tenancy of a tenant in order to be valid and effective must fulfil certain requirements. The relevant observation reads thus:

"It will be seen from a combined reading of these provisions that a surrender of tenancy by a tenant in order to be valid and effective must fulfil these requirements: (1) It must be in writing. (2) It must be verified before the Mamlatdar. (3) While making such verification to Mamlatdar must satisfy himself in regard to two things, viz., (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary. (4) The Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender".

In the instant case, revision petitioner has not placed any material worth the credence to indicate that there was a valid surrender. Recently, Apex Court considering the intendment of tenancy laws in general and Section 5 of the Karnataka Tenancy Act in particular in *State of Karnataka and Another Vs. Uppegouda and Others*, , has declared as to how a surrender by the tenant has to be established and the declaration reads thus:

"10. In this case, the landholder has merely asserted that the tenant had surrendered the land and entries in revenue records were received in support thereof. It is easy to have the entries made with the assistance of patwari who had exclusive custody of the records. The object of the Tenancy Act is to protect the tenants to remain in possession and enjoy it subject to compliance of the provisions of the Tenancy Act. Contracted tenancy comes to an end and statutory tenancy sets in operation and so he would be liable for ejectment only on proved grounds of statutory contravention, the entries of revenue records are self-serving. There was no order of a competent authority of eviction of tenant for contravention of the above-mentioned grounds. The proviso, though enables a landlord to obtain possession on surrender, it must be proved strictly, as several devices would be used to circumvent the beneficial provision and illiteracy and

ignorance of the tenant would be taken advantage of. There is no proof of eviction of the tenant. The stand taken by the landholder is not supported by legal setting. The High Court committed grave error of law. Accordingly the judgment of the High Court is not correct in law and stands set aside".

It is therefore clear that even in case where the landlord asserts surrender, burden is on the landlord to prove it strictly. In the instant case, there is absolutely no evidence worthy of acceptance at the first place to say that there is surrender, secondly that surrender was valid and in accordance with law. Even if there are certain entries or dispute regarding entries in the mutation register, as observed by the Apex Court, that would not serve the purpose in the absence of any other acceptable evidence establishing valid surrender.

11. The Appellate Authority has considered every aspect of the matter and has rightly concluded that the order of the Tribunal is not based on proper appreciation of material on record. In the circumstances, I hardly find any grounds to interfere with the impugned order. Hence revision petitioner fails.

12. In the result, this revision is dismissed. However, in the peculiar circumstances of the case, parties are directed to bear their own costs.