

(2011) 11 KAR CK 0361
In the Karnataka High Court
Case No : Writ Petition No. 2181 of 2009 (LR)

Smt. Shivamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 77 A

Citation : (2011) 11 KAR CK 0361

Hon'ble Judges : Ajit J Gunjal, J

Bench : Single Bench

Advocate : H.R. Anantha Krishna Murthy and . Assts, for the Appellant; R.V. Jayaprakash, for C/R4 and R5 and Sri. Sridhar S. Karamadi, HCGP for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J Gunjal

1. One G.N.Nanjundaiah claiming to be a tenant in respect of the lands in question filed Form No. 7A for grant of the lands. The relationship inter se between the petitioners as well as the respondents is not disputed inasmuch as G.N.Nanjundaiah original applicant is the brother of Ramalingappa, who is the owner of the land. The total extent would be 9 acres 23 guntas. According to the petitioners all the Revenue records would disclose the name of G.N.Nanjundaiah. The competent authority granted the application of Nanjundaiah.

2. On appeal by the respondents. the same is set-aside. The order of the Tribunal was the subject matter of a writ petition before this Court in W.P. No. 10369/2003 and connected matter. This Court pursuant to the order dated 2nd July 2004 allowed the writ petition and remitted the matter to the Tribunal for fresh disposal. On remission, the Tribunal has once again allowed the appeal and has set-aside the order passed by the competent authority and dismissed the application of the petitioners. Hence, this writ petition. Incidentally, it is to be

noticed that during this interregnum, the original applicant G.N.Nanjundaiah has died and the present petition is by the widow and the children of deceased Nanjundaiah.

3. Mr. H.R. Anantha Krishna Murthy, learned counsel appearing for the petitioner vehemently submits that the Revenue records would clearly disclose the name of the original applicant as a cultivator. He further submits that the correspondence inter se between the said Ramalingappa and original applicant discloses that they were sharing the crops. Hence, in the circumstances as on 01.03.1974 the original applicant was cultivating the land as a tenant so also as on the date when the application was made.

4. Mr.R.V.Jayaprakash, learned counsel appearing for the contesting respondents supports the order of the Tribunal. He submits that at no point of time, the lands were tenanted. He further submits that the petitioners are not in possession of the land. Another contention raised by him is that a suit was filed by the original applicant in O.S.No. 251/1996 for declaration of title on the ground that they have perfected title by adverse possession. Hence, in the circumstances, the question of entertaining the application in Form No. 7A would not arise.

5. I have perused the order passed by the Tribunal. The relationship inter se between the original applicant and that of the contesting respondents is not disputed inasmuch as the original applicant was the brother-in-law of Ramalingaiah. The original applicant had married his sister by name Smt. Vimalamma, who was his first wife. The original applicant was working in the Railway Department as police. The land is situated at a distance of about 30 kms from the land of Ramalingaiah. Therefore he requested G.N.Nanjundaiah to look after the lands in question. Thus, the name of the original applicant appeared in the revenue records. The Revenue records would disclose the mode of cultivation as a personal cultivation. The mode of cultivation ought to have been altogether different. If it were to be the case of the original applicant that he was a tenant and cultivating the land as on 01.03.1974, he certainly would not have filed a suit for declaration on the ground that he has perfected his title by adverse possession. In fact the petitioners have burnt their bridges by filing such a suit incidentally, it is to be noticed that the suit was filed in the year 1996 and Section 77A was inserted by Act 23/1998 on 15.02.1999. The filing of the suit itself belies the fact that he was cultivating the land as a tenant. It is also brought to my notice by the learned counsel for the petitioner that as against the dismissal of the suit, an appeal is filed which would further aggravate the matter for the petitioner inasmuch as they would persist with the fact that they have perfected their title by adverse possession.

6. Indeed before entertaining the application u/s 77A of the Act, twin conditions are required to be satisfied. One is that the land should vest with the Government as on 01.03.1974 and the applicant should be in possession as on the date when he makes an application. Indeed there is nothing on record to show that the original applicant or for that matter the petitioners were cultivating

the land as a tenant more so having regard to the suit filed by them. Thus if one of the twin conditions were not satisfied, the question of the petitioners claiming grant u/s 77A of the Act would not arise. Having said so, I am of the view that this is not a case, which would warrant interference.

Petition stands rejected.

7. Mr. Shashidhar S. Karmadi, learned HCGP appearing for the respondents 1 and 2 is permitted to file memo of appearance within four weeks.