

(2003) 04 KAR CK 0006

In the Karnataka High Court

Case No : Regular Second Appeal No. 708 of 1998

Smt. Sumathi and Another

APPELLANT

Vs

Vittala Kanchan

RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 (18), 48 A, 61

Citation : (2004) ILR (Kar) 131 : (2003) 3 KCCR 2334

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; Shetty and Hedge Associates, for the Respondent

Final Decision : Allowed

Judgement

Sreedhar Rao, J.—This appeal arises out of judgment and decree passed by Addl. Civil Judge, Sr.Divn. Udupi, Dakshina Kannada in R.A.No. 36/1988 arising out of judgment and decree passed by Addl. Munsiff and JMFC, in O.S.No. 225/84.

2. The appellants who are the plaintiffs filed a suit for delivery of possession of suit schedule house consisting of two tenements and recovery of mesne profits. The plaintiffs contended that the suit house situated in survey No. 64/2 of Ambalpady village in Udupi Taluk along with agricultural land was granted by the Land Tribunal in favour of the father of the plaintiffs by name Raju Poojary. The said house was leased in favour of the defendant on monthly rent of Rs. 10/-. During the life time, Raju Poojary executed a Will bequeathing the land and the said house in favour of the plaintiffs. Raju Poojary died on 21.7.1999. The plaintiffs issued a notice u/s 106 of T.P. Act, to seek possession of the same.

3. The defendant in the written statement denied the relationship of landlord and tenant contended that the rent deed produced is held to be forged and concocted. Further, contended that he is a tenant of agricultural land and he has filed Form No. 7 before the Tribunal for grant of occupancy rights, therefore the

suit is not maintainable.

4. The Trial Court on the basis of evidence adduced by the parties, rejected the contention of the defendant that the Civil Court has no jurisdiction to entertain the matter on the ground that Form No. 7 is filed for grant of occupancy rights. The relevant issues 6 and 7 have been decided as jurisdictional issues by order dated 21.1.1986. The Trial Court found as a fact that the defendant has failed to place necessary material to show the filing of Form No. 7 or 2(A) for grant of occupancy rights in respect of property in question. The documents to show filing of the application and acknowledgment given have not been produced. Thus, the Trial Court decided issues 6 and 7 against the defendant. It was contended before the Trial Court that the suit of the plaintiff is not maintainable, in view of the provisions of Section 61 of the Land Reforms Act (herein after referred to as "Act" for short). For convenient reference, the provisions of Section 61 of the Act, are extracted below:

61. Restriction on transfer of land of which tenant has become occupant - (1) Notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under this Chapter shall within (fifteen years) from the date of the final order passed by the Tribunal under Sub-section (4) or Sub-section (5) or Sub-section (5-A) of Section 48-A be transferred by sale, gift, exchange, mortgage, lease or assignment; but the land may be partitioned among members of the holder's joint family.

(2) Notwithstanding anything contained in Sub-section (1), it shall be lawful for the occupant registered as such or his successor - in -title to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government (a financial institution, a co-operative land development bank, a co-operative society) or a company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty one percent of the paid up share capital is held by the State Government or the State Government or both for development of land or improvement of agricultural practices and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan.

(3) Any transfer or partition of land in contravention of sub section shall be invalid and such land shall vest in the State Government free from all encumbrances and shall be disposed in accordance with the provisions of Section 77.

5. The Trial Court upheld the contention and found that the Will executed by Raju Poojary in favour of the plaintiffs is in contravention of the provisions of Section 61 of the Act, holding that the plaintiff has no title over the property and by consequences of the provisions of Section 61 of the Act, the lands stood vested in the Government. Therefore, found that the suit filed by the plaintiff for

possession is not maintainable. The Appellate Court confirmed the judgment and decree of the Trial Court and further held that the State Government is a necessary party in the proceedings. It is also held that the creation of tenancy in favour of the defendant is in contravention of Section 61 of the Act and found that the suit of the plaintiff is not maintainable.

6. The following substantial questions of law is formulated in this appeal;

" Whether the Courts below erred in holding that the creation of will in respect of the land by the deceased, Raju Poojary who was none other than the father of the appellants herein is hit by Section 61 of the Karnataka Land Reforms Act?"

7. With regard to the proposition of law, involved in the point raised is no more res-integra. This Court in KARAGAPPA GOWDA v. JINNAPPA GOWDA AND ORS. ILR 1998 403 and in C.C. Devasia Vs. The Karnataka Appellate Tribunal, Bangalore and Others, , has held that the bequest by way of Will is not prohibited u/s 61 of the Act and it does not amount to contravention. Therefore, the contention of the counsel for the respondent that the allegations in the plaint ex-facie indicate the contravention of Section 61 of the Act, is an untenable contention.

8. Counsel for the respondent placing reliance on the findings of the Appellate Court, argued that the lease executed in favour of the defendant by Raju Poojary is equally bad in law and hit by Section 61 of the Act Counsel further contends that when there is transfer of the granted property, contrary to the terms of Section 61(1) of the Act, as an inevitable consequence, the granted land would be vested in the State Government free from all encumbrances and the same is to be disposed of in accordance with the provisions of Section 77 of the Act.

9. Counsel for the respondent relied on the rulings of the Supreme Court in SANGAPPA KALYANAPPA BANGI v. LAND TRIBUNAL JAMKHANDI AND ORS. ILR 1999 KAR 863. In the said decision, it is held that assignment of any interest by way of Will is invalid u/s 21 of the Act. The Supreme Court, has followed and approved the view laid down in THIMMAKKA KOM VENKANNA NAIK v. LAND TRIBUNAL ILR 1987 Kar L.J. 337. This Court in LAZARUS FERNANDES v. S. GERALD FERNANDES, MFA 2738/1996 has distinguished the ratio laid down in THIMMAKKA's case, held that the said ratio is laid down with reference to the provisions of Section 21 of the Act does not apply to the cases covered u/s 61 of the Act, Section 21 of the Act comes into play before grant of occupancy rights, whereas Section 61 of the Act comes into play after the grant of occupancy rights. I am of the view that the ratio laid down in KARAGAPPA GOWDA'S case and the ratio laid down LAZARUS FERNANDES v. S. GERALD FERNANDES (Supra), the contention of the respondent that the transfer by Will made in favour of the appellants by Raju Poojary is invalid, is an untenable one. I am in respectful agreement with the view expressed by my learned brother M.P. CHINNAPPA, J, the ratio laid down in THIMMAKKA's case would not apply to the provisions of Section 61 of the Act. In that view, the decision of the Supreme

Court does not apply to the facts of the case, accordingly, the formulated substantial question of law is answered in affirmative.

10. Counsel for the appellants contends that u/s 61 of the Act, the prohibition of transfer within the period of 15 years is made applicable only to the lands Section 2(18) defines the land in following manner:

"Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pastureland, plantation and tope but does not include house -site or land used exclusively for non agricultural purposes;

11. It is contended under Ex.P3 that, only two tenements of house was leased and no agricultural land has been leased in favour of defendant. Therefore, the lease of house is not hit by Section 61 of the Act. Counsel for the respondent on the other hand contends that the agricultural land is also leased along with the house. However, this submission is made for the first time in this proceedings. The definition of the "land" excludes house sites and land used exclusively for non agricultural purpose. According to plaintiff, the house in question is leased for the purpose of dwelling. The abutting agricultural land has not been leased. No material has been placed to substantiate the contention of filing of Form No. 7 or 2(a) for grant of occupancy rights in respect of property in question. On the other hand, the plaintiff has shown that only the dwelling house is leased. The definition of the land under the Act excludes house sites and land used for non-agricultural purposes. Obviously, a dwelling house not a part of an agricultural land nor connected with agricultural activities of land would not come within the purview of the definition of land under the Act. Therefore sole and exclusive lease of a dwelling house without reference to the agricultural land shall not come within the purview of Section 61 of the Act. However, the question whether the lease of house with the land is to be determined by the authorities under the Land Reforms Act and it is not for the Civil Court to adjudicate. In that view of the matter, I find that the Trial Court as well as the Appellate Court grossly erred in coming to the conclusion that there is contravention of provisions of Section 61 of the Act and as such, the plaintiff was not entitled to the relief. Therefore, the judgment and decree of the Courts below are set aside.

The appeal is allowed and the suit of the plaintiff is decreed as prayed for.