

(1991) 01 KAR CK 0065
In the Karnataka High Court
Case No : C.R.P. No. 5996/1990

Smt. Venkamma and Others

APPELLANT

Vs

D. Shiva Rao and Others

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121A
Karnataka Land Reforms Appellate Authority Rules, 1986 — Rule 8(2)

Citation : (1991) 1 KarLJ 385

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-This revision has been presented by the petitioners, namely, Smt. Venkamma, D. Nonappa Gowda and D. Krishnappa Gowda claiming to be the legal representatives of Deyyakku Hengsu who was granted occupancy rights under Section 48-A of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as the Act) on her application in Form No.7. Aggrieved by the said order, the 1st respondent-landlord D. Shiva Rao filed a writ petition in this Court, which, in the light of the amendments made to the Act came to be transferred to the Appellate Authority constituted under Section 116-A of the Act inserted by Act No. 19/1986 with effect from 6-12-1985. Therefore, it was numbered by the Appellate Authority as L.R.A.A.No. 339/1986 as a deemed appeal. Even during the pendency of the writ petition in this Court, the respondent-tenant in whose favour the order had been made by the Land Tribunal, Sullia, had passed away. Application under Order 22, Rule 2 of the C.P.C. had come to be made. Before the Tribunal, it was noticed that the notice issued had been returned with the shara that the said Deyyakku Hengsu had left no. L.Rs. and that the address given was not correct and as such the notice was refused to be accepted by those who were stated to be the L.Rs. In that circumstance, the counsel for the appellant did not press I.A.I to bring the L.Rs. on record. It was dismissed as not pressed.

2. It is evident from the order of the Appellate Authority that it proceeded to dispose of the same under sub-rule (2) of Rule 8 of the Karnataka Land Reforms

Appellate Authority Rules, 1986 (since repealed). Sub-rule (2) of Rule 8 of the rules provides as follows;

"(2) If, on the date fixed for hearing or any other subsequent date to which the hearing may be adjourned, the respondent does not appear in person or by his agent or pleader when the case is called on for bearing, the Appellate Authority may decide the same on merits after hearing the appellant or petitioner or his agent or pleader."

3. I am satisfied that the Appellate Authority totally misunderstood the provision made therein, deliberately, despite the knowledge that the respondent was dead and it was impossible for such respondent to appear before the Appellate Authority. Rule 27 of the rules specifically provides for application of the provisions of the Code of Civil Procedure in respect of matters for which no specific provision is made in the said rules. No provision is made to bring L.Rs. on record in the Rules. Therefore, Order 22, Rule 2 of the C.P.C. was attracted and in fact the Appellate Authority was aware that such an application had been made under Order 22, Rule 2 of the C.P.C. and it had dismissed that application, as not pressed.

Therefore, the order under revision is not merely illegal but deliberate abuse of the power conferred on the Appellate Authority. It is a surprise that despite a judicial member being on the Appellate Authority, this procedure has been adopted.

4. Nevertheless, the question still remains as to whether the petitioners before this Court under Section 121-A of the Act are the L.Rs. of the deceased Deyyakku Hengsu claiming to be the children of the second wife of Deyyakku Hengsu's children. No evidence as such has been produced as to what had happened to their parents one of whom would be a child or children of the second wife. No evidence that she or he is dead is produced. On that ground no specific relief may be granted to the petitioners who have not established before this Court by any reasonable evidence their right to be treated as heirs of deceased Deyyakku Hengsu or her legal representatives.

5. But having regard to the wide powers conferred on this Court by Section 121-A of the Act, this Court has the power to call for records of any case before the Appellate Authority in order to satisfy itself that the order is in accordance with law and proper. In that view of the matter, notwithstanding the fact that the petitioners may or may not be the legal representatives of the deceased Deyyakku Hengsu, occupant registered by the Land Tribunal, Sullia, by its order dated 13-4-1981 a certified copy of which is produced along with the revision petition, the order under revision is liable to be set aside as illegal and without jurisdiction as the appeal before the Appellate Authority had abated the moment I.A.No. I was dismissed as not pressed.

6. In the result, the revision petition is allowed and the order under revision is set aside.

7. However, I must add that since the filing of this revision petition, by amendment Act 18/1990, the Appellate Authority has been abolished and that gives room for a doubt whether in certain cases the matter which is required to be remanded, this Court will have jurisdiction to pass any order, as no Appellate Authority exists to which the matter may be remitted.

8. There will be no order as to costs. Petition allowed.