

(1991) 04 KAR CK 0016
In the Karnataka High Court
Case No : R.S.A. No. 205/1989

Sombappa Basappa Kerannavar (Since Deceased) by L.Rs.	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226

Citation : (1992) 1 KarLJ 147

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

Judgement

1. This appeal is by the plaintiff, who failed to obtain possession of a little over 12 acres of land in Survey No. 65 of Hebli village in Dharwad taluk. The suit filed by him was decreed as prayed for despite resistance by the first defendant-State of Karnataka as well as the second defendant saranjamdar.

2. Plaintiffs case was, simply stated, he was a tenant of saranjamdar. On abolition of saranjam in 1952, he paid the occupancy-price to the Government and entered upon possession as an occupant and therefore, his dispossession in the year 1961 was illegal and as such was entitled to restoration of possession. The first defendant-State of Karnataka, in its written statement, denied the correctness of the assertions made by the plaintiff in his plaint. It set out the facts as it was aware of from the records. It pointed out that in the year 1949 itself, the saranjamdar had initiated proceedings under the Bombay Tenancy and Agricultural Lands Act, 1947 to resume the land terminating the tenancy of the plaintiff and that an order came to be passed by the Tenancy Court in 1951 itself directing resumption and affirming the termination of the tenancy. It was thereafter that the Saranjam Abolition Act came to be passed. In other words, what was manifest was that tenant was not a tenant of the Saranjam land when it was abolished. In any event, the matter went up to the Bombay Appellate Tribunal which gave an order in favour of the second defendant who made the very same point in his written statement reiterating the facts which had already been stated by the first defendant. The second defendant's contention was that

soonafter order in his favour, in the year 1954, by the Bombay Appellate Tribunal, he moved the Revenue Authorities for possession of the land and it was given to him in 1961 by the Revenue Authorities. Therefore, he contended, the suit was not maintainable. The trial Court, however, on such pleadings, framed as many as ten issues:

- 1) Whether the plaintiff proves that he has secured occupancy rights-in the suit property by virtue of the order in WTNSR 778(1) 202, dated 16-6-1959 ?
- 2) If "Yes" on issue No. 1, whether the said order is binding on the 2nd defendant?
- 3) Whether the plaintiff proves that the 2nd defendant was illegally put in possession of the suit-property in 1961 January?
- 4) Whether this Court has no jurisdiction to try the suit for the reasons stated in para 6 of the written statement of the 1st defendant?
- 5) Whether the suit is barred by the principle of res judicata and estoppel?
- 6) Whether the suit is barred by time?
- 7) Whether the notice given to the 1st defendant is not proper? If so, what is its effect?
- 8) Whether the plaintiff is entitled to the reliefs of declaration and possession prayed for?
- 9) Whether 2nd defendant is entitled to contemporary costs?
- 10) Whether the valuation of the suit and the Court-fee paid thereon is proper?

On all issues it found in favour of the plaintiff and decreed the suit. Second defendant, who, by then had passed away, by L.Rs. preferred the appeal in R.A. No. 66/1972 on the file of the Principal Civil Judge, Dharwad. When the appeal was pending before the Civil Judge, Dharwad, the application was made by the appellant to produce additional evidence. That additional evidence-was Exhibit D-7, an order passed by the Government of Karnataka in the year 1969 cancelling the occupancy granted in favour of the plaintiff and making a grant of 75 acres of land including the land of the plaintiff in favour of the saranjamdar in terms of the policy of the Government to re-grant saranjam land for the benefit of the members of his family on account of the abolition of the saranjam. The appellate Court, acting upon that additional evidence, allowed the appeal. But the same was questioned in this Court in R.S.A. No. 933/1976. The learned Single Judge of this Court allowed the appeal of the plaintiff and remanded the matter solely on the ground the Court could not have proceeded to take notice of the 1969 order of the Government as per Exhibit D-7 merely because it had allowed an application under Rule 27 of Order 41. He further observed Rule 28 of the said order was mandatory and like any other evidence, additional evidence should also be received. Thus the matter was remanded. On remission,

defendants examined an additional witness (being one of them) and through him, got the certified copy of Government Order marked as Exhibit D-7.

3. Considering the history of the case and the fact that the plaintiff was a party to the proceeding under the Bombay Agricultural Land-and Tenancy Act of 1947 and the order in favour of the saranjamdar by the Bombay Appellate Tribunal in 1954 and possession having been given by the Revenue Authorities in 1961, allowed the appeal placing reliance on the 1969 order of the Government. He also held that under the provisions of the Saranjam Rules of 1962, the suit concerning the rights of occupancy and tenancy was barred and therefore the suit was not maintainable. Aggrieved by the same, second defendant has preferred the appeal in this Court.

4. Mr. Albal, learned counsel for the appellant, has strenuously contended that the 1969 order was not binding on him as it was passed behind his back and without hearing him. But his counsel, in the course of his submission before lower appellate Court, fairly conceded that though he has aware of the 1969 order, he had not challenged the same. He was a party before 1952 and before the Bombay Appellate-Tribunal may not be in doubt. That he was dispossessed in 1961 by the Revenue Authorities and possession was handed-over to the defendant also could not be disputed because it is in the plaint averments. It is in that circumstance, the appellate Court has allowed the appeal of the defendants.

5. In the light of the undisputed facts, no question of law as such falls for consideration in this second appeal much less a substantial question of law. The only question which really would have arisen was if the plaintiff had challenged the 1961 order whenever he came to be aware of it.

6. It is to be noticed from the records and in the evidence adduced by the defendant that the plaintiff had challenged in proceedings under Articles 226 and 227 of the Constitution, in this Court earlier, the order of the Bombay Appellate Tribunal which had concluded issue of resumption of the land of which he was a tenant. That was the matter which the learned Munsiff had totally over-looked. What had been concluded by the Revenue Authorities under the relevant law could not have been re-opened in a civil suit by the same party more so after he had failed to secure in this Court under Articles 226 and 227 of the Constitution any relief against the order of the Bombay Appellate Tribunal in regard to the same land measuring little over 12 acres in Survey No. 65 of Hebli village.

7. In that view of the matter, the only question which could have arisen for consideration has stood concluded by the Judgment of this Court in a proceeding under Articles 226 and 227 of the Constitution. Therefore, this appeal is misconceived and it is rejected, but after notice to the opposite parties.