

(2012) 06 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal No. 1537 of 2007 (LR)

Sri P. Ganapathi Bhat and Others

APPELLANT

Vs

Sri Koraga Sapalya and Others

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 38, 48 A

Citation : (2012) ILR (Kar) 3918 : (2012) 6 KarLJ 205

Hon'ble Judges : V. Suri Appa Rao, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Rameshchandra, for the Appellant; M. Sudhakar Pai and Sri M. Keshava Reddy, AGA For R2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed in W.P.No. 52317/2003 and W.P. No. 41931/2003 by the learned Single Judge on 11.07.2007 is called in question in these appeals. The appellants are the legal heirs of one P. Ganapathi Bhat, who was the owner of Sy.No. 84/8, measuring 25 cents in Kairangala Village. One Koraga Sapalya, the deceased first respondent had filed an application in Form No. 7 u/s 48-A of The Karnataka Land Reforms Act (herein after referred to as "the Act" for short) claiming Occupancy Rights as a tenant of Ganapathi Bhat. The Land Tribunal, Bantwal rejected Form No. 7 filed by Koraga Sapalya on 31.01.1979 on the ground that he was not a tenant under the deceased appellant.

2. Later on, Koraga Sapalya again filed an application in Form No. 2-A u/s 38 of the Act, 21/2 years after rejection of his claim against Ganapathi Bhat claiming to be an agricultural labourer.

3. The owner of the land contested the case on the ground that Koraga Sapalya was only a wood cutter and was never an agricultural labourer and that Koraga Sapalya was a tenant in respect of a residential house and therefore, requested

the Tribunal to reject the claim of Koraga Sapalya. The Tribunal by its order dated 25.06.2002 granted ownership right of land to Koraga Sapalya as an agricultural labourer with a direction to Ganapathi Bhat to provide 3 ft. pathway for ingress and egress to his residential house. This order was questioned by Ganapathi Bhat contending that the granting of ownership of 5 cents to Koraga Sapalya by the Tribunal is bad in law and similarly, Koraga Sapalya, also filed a writ petition stating that he was entitled to entire 25 cents and not for 5 cents.

4. Both the writ petitions were heard together and the writ petition filed by Koraga Sapalya was allowed in part holding that he is entitled to 10 cents of land and dismissed the writ petition filed by Ganapathi Bhat. Being aggrieved by the orders passed in the aforesaid two writ petitions, these appeals are filed.

5. We have heard Mr. Rameshchandra, learned Counsel for the appellants and Mr. M. Sudhakar Pai, learned Counsel appearing for the LRs of respondent No. 1 and the learned Addl. Government Advocate for respondent Nos. 2 and 3.

6. The main contention of Mr. Rameshchandra, is that the Tribunal as well as the learned Single Judge did not consider that, to file an application in Form No. 2A u/s 38, one shall be an agricultural labourer and in the instant case, on an earlier occasion, Koraga Sapalya had filed tenancy right in filing Form No. 7 u/s 48-A of the Act, and which application had been rejected by the Tribunal. He further contends that when once the Land Tribunal had rejected the claim made by Koraga Sapalya in Form No. 7 as a tenant cannot become an agricultural labourer later. According to him, Koraga Sapalya was only a wood cutter and never an agricultural labourer. There is nothing on record to show that he was an agricultural labourer.

7. Taking us through the evidence of the applicant and Ganapathi Bhat, he contends that when the evidence of the landlord has not been challenged by Koraga Sapalya before the Land Tribunal, when land owner had contended that Koraga Sapalya was not an agricultural labourer and he was a wood cutter, the Tribunal could not have granted ownership to an extent of 5 cents. He further submits that the Single Judge has committed serious error in allowing the writ petition of Koraga Sapalya in part and dismissing the writ petition of Ganapathi Bhat without considering the legal position. Therefore, he requests the Court to allow both the appeals.

8. Per contra, Mr. M. Sudhakar Pai, learned Counsel for the legal representatives of the deceased respondent No. 1 Koraga Sapalya contends that the learned Single Judge as well as the Tribunal were justified in holding that Koraga Sapalya was an agricultural labourer and was entitled for ownership and requests the Court to dismiss the appeals.

9. Having heard the learned Counsel for the parties what is to be considered by us in these two appeals is

(i) Whether the Land Tribunal was justified in granting ownership considering

Form No. 2A filed u/s 38 of the Act by Koraga Sapalya when his application u/s 48-A in Form No. 7 had been rejected by the Tribunal ?

(ii) Whether in the absence of proof to show that Koraga Sapalya was an agricultural labourer, an application filed u/s 38 could be granted by the Land Tribunal ?

10. It is not in dispute that Form No. 7 u/s 48-A of the Act can be filed to grant of registration certificate within the stipulated time in respect of an agricultural land. It is not in dispute that Koraga Sapalya had filed an application for grant of Occupancy Rights in respect of 25 cents of land under Ganapathi Bhat as a tenant, which application came to be rejected by the Tribunal by an order dated 31.01.1979. 21/2 years later Koraga Sapalya has filed an application in Form No. 2A u/s 38 of the Act to grant ownership in respect of dwelling house as an agricultural labourer.

11. Section 38 of the Act reads as under:

Dwelling houses of agricultural labourers, etc - (1) (a) If, in any village, an agricultural labourer is ordinarily residing in a dwelling house on a land not belonging to him, then, notwithstanding anything contained in any other law, but subject to sub-sections (2) and (3), such dwelling house along with the site thereof and land immediately appurtenant thereto and necessary for its enjoyment, 3 (x x x x) shall, on the date of publication of the Karnataka Land Reforms (Amendment) Act, 1978 in the official Gazette, vest absolutely in the State Government, free from all encumbrances and the agricultural labourer shall be entitled to be registered as owner thereof.

12. From a reading of Section 38 of the Act, it is clear, in order to consider an application u/s 38, a person who is ordinarily residing in a dwelling house in any Village as an agricultural labourer on a land not belonging to him, then he can make an application in Form No. 2-A u/s 38 of the Act. Earlier, the Land Tribunal had rejected the application of Koraga Sapalya filed in Form No. 7 on the ground that he was not a tenant but he was a tenant in respect of a dwelling house as per the rent note dated 01.01.1957 which was executed in favour of the Shankar Bhat, who was the father of Ganapathi Bhat. When the Land Tribunal after appreciation of evidence had rejected Form No. 7 stating that he is a tenant in respect of a residential house, the next question would be whether he was an agricultural labourer or not?

13. On perusal of the deposition of Koraga Sapalya and Ganapathi Bhat, no Court can hold that Koraga Sapalya was an agricultural labourer, and on the contrary, it was contended by the deceased appellant that Koraga Sapalya was only a wood cutter and never worked as an agricultural labourer. But unfortunately both the Tribunal as well as the learned Single Judge without considering the crucial evidence available on record have erroneously passed the order.

14. Therefore, we are of the opinion that the order of the Tribunal as well as the

order passed by the learned Single Judge are perverse and not based on the proper appreciation of evidence available on record and also on the ground that Koraga Sapalya in the previous proceedings did not call himself as an agricultural labourer but he claimed as a tenant of Ganapathi Bhat. Therefore, Koraga Sapalya cannot blow hot and cold before the same Tribunal under two different proceedings. Having lost the battle in the earlier proceedings claiming to be tenant, he cannot make an application in Form No. 2A u/s 38. In the circumstances, these appeals are allowed. The application filed by Koraga Sapalya before the Land Tribunal, Bantwal, in Form No. 2A is hereby rejected, by quashing the order passed by the Land Tribunal, Bantwal dated 25.06.2002 in DHAL 91/1981-82 and the order passed by the learned Single Judge in the aforesaid writ petitions are also set aside.