
(2001) 12 KAR CK 0041
In the Karnataka High Court
Case No : Writ Appeal No. 357 of 2001

Sri Siddaiah deceased by LR

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 1 KCCR 532

Hon'ble Judges : M.F. Saldanha, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : K.T. Mohan, for the Appellant; K. Nagaraj, A.G.A. for Respondent 1 and 2 and Amaresh A. Angadi, for Respondent 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—We have heard the learned Advocates on both sides as also the learned Additional Government Advocate for Respondents 1 and 2 on merits, the reason for this is because IA. I is for condonation of delay of 78 days in filing the appeal. The usual reasons are given viz., that the appellant is an old lady and that she had certain economic difficulties. Invariably this Court prefers to evaluate the case on merits rather than shut out the party on the ground of limitation or other technicalities and, we have exercised our discretion in favour of the appellant in this regard. IA-I is allowed. The delay is condoned.

2. Since the contesting Respondents have seriously disputed the validity of the grounds on which the appeal has been filed which is inter-related to the aspect of condonation of delay, we have heard the learned Advocates at considerable length. Mr. Mohan submitted that this is a case in which the Tribunal has granted occupancy rights on the same record, on as many as on three occasions and it is his submission that the learned Single Judge was in error in having nonsuited the appellant on the solitary ground that the signature that is affixed to the Gutha Receipt dated 5.1.1969 does not tally with the signature on the vakalat. The learned Counsel submitted that this is a matter of evidence and furthermore, it was his case that if the Court expresses any doubt with regard to the malafides

of the case of the appellant, that an opportunity be afforded to adduce supportive evidence. As regards his last submission, we hold that, at this very late stage, there can be no question of any further remands for the purpose of leading supportive evidence such as statements of adjoining holders etc., because, that evidence will necessarily be extremely weak evidence. We cannot overlook the fact that the position as on 1.3.1974 is material and that we are now in the year 2001.

3. On merits, Mr. Mohan submitted that the document referred to above by us is sufficient to establish alongwith some of the old revenue records that the appellant was in fact in possession in the capacity of a tenant. We find that with regard to the appointed date, there is no conclusive evidence and that admittedly there are two mortgage transactions that have taken place and the cumulative effect of these is that from the record before us, it would be impossible to hold that the appellant could at all qualify for the grant of occupancy rights. This being the state of the record, no purpose whatsoever would be served by remanding the proceeding for one more round of litigation. This Court has repeatedly observed that the practice of mechanically remanding the cases is an incorrect one but more importantly, that the remands must be confined to those of the cases wherein the interests of justice would justify it insofar as situations where the Tribunal has grossly erred and has overlooked material parts of the record on where the case was virtually gone by default, a party has not been heard or a party has been deprived of the right of producing available evidence and the present situation does not admit to any of those instances.

4. Under these circumstances, having very carefully evaluated all conceivable aspects of the case, we hold that no interference is called for with the order passed by the learned Single Judge.

The appeal accordingly fails on merits and stands dismissed. No order as to costs.