

(1989) 12 KAR CK 0015
In the Karnataka High Court
Case No : W.P. No. 22350/89

State of Karnataka

APPELLANT

Vs

Lt, Hospet Taluk and Others

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 63(4)

Citation : (1990) 1 KarLJ 144

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

Judgement

Chandrakantharaj Urs, J.-This is a writ petition filed by the State of Karnataka challenging the legality and correctness of the order dated 29-12-1981 in proceedings bearing No. 104 of 1979-80 before the Hospet Additional Land Tribunal.

Three contentions have been put forward to question the legality and correctness of the impugned order. The first one is that there was no evidence as to the partition in the family of the declarant. That does not appear to be well-founded because the tribunal in its order refers to a memorandum of partition of 24-4-1972 by which partition had been effected in the family amongst father and the children. Next contention was that Muslims cannot divide the property. I do not think that has any sound basis. Muslims have their own personal laws under which if the property belongs to a deceased person, those eligible among the heirs both under Shia and Sunni laws in the proportion to which they are entitled may have a partition. In any event, that does not appear to be the case made out by the Counsel before the tribunal. Third contention advanced by the State of Karnataka is that partition itself does not absolve the declarant from being liable to have the land held by him jointly prior to partition from being included in the total quantum of the properties held by him. This argument overlooks sub-section 4 of Section 63 of the Karnataka Land Reforms Act. It is only when a member of a family holds land independently of the share to which he is entitled to in a joint family such share or extent of land which has fallen to his share in a partition would be added on to his personal holdings and the ceiling limit worked

out. That does not have any application to the facts of the present case. Section 63 as amended came into force on 1-3-1974. By then the partition in the family had been completed. Therefore, each member held the land in accordance with the deed or memorandum of partition and that is found to be less than the ceiling limit having regard to the class of land that has fallen to the shares of different members of the family.

Government has waken up to the situation nearly eight years after the Land Tribunal passed an order. There is no explanation whatsoever forthcoming as to why the order was not challenged in time. Even giving margin for the proverbial red-tapism of the Government, eight years is too long a period to re-open the matters which have been closed and parties have acted upon. It would be unjust, even if a case is made out to interfere in matters settled as long back as 1981.

Petition is without merit. It is dismissed.

Writ petition dismissed.