

(1971) 09 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No's. 557 of 1971 and C/W C.R.P. No. 715 of 1971

Thattessara Subbaraya

APPELLANT

Vs

Chinne Gowda and Others

RESPONDENT

Date of Decision : 21-09-1971

Acts Referred:

Limitation Act, 1963 — Section 52

Mysore Land Reforms Act, 1962 — Section 42, 42 (4)

Citation : AIR 1972 Kar 213

Hon'ble Judges : H.B. Datar, J

Bench : Single Bench

Advocate : P. Vasudeva Aithal, for the Appellant; K. Swami Rao, for the Respondent

Final Decision : Allowed

Judgement

H.B. Datar, J.—These revision petitions raise similar questions under the provisions of the Mysore Land Reforms Act, hereinafter called the Act. Therefore, arguments in both these petitions were heard together and they are disposed of by this common judgment.

2. In C. B. P. No. 557 of 1971, the landlord is the petitioner and he filed an application for recovery of rent for the year 1967-68 at 15 pallas of paddy, 14 maunds of areca and 500 bundles of hay or its value Rs. 2575/-from the respondent-tenant. The learned Munsiff, N. R. Pura who heard the said proceedings, by his order dated 31-3-1970 held that the petition filed for recovery of rent was barred by limitation. The learned Judge however fixed the fair rent at 12 1/2 quintals of paddy and 6 maunds & 6 seers of areca. The correctness of this order was challenged by the landlord before the court of the District Judge at Chickmagalur. The learned District Judge by his order dated 2nd December 1970 has dismissed the same. The learned Appellate Judge has held that the court awarding rent is not competent to determine the fair rent. It was

also held that the claim of the landlord for recovery of rent for the year 1967-68 was barred by limitation. It is this order that is challenged in this revision petition filed u/s 115 of the Code of Civil Procedure.

3. The courts below have rejected the claim of the landlord as being barred by limitation as the application filed for recovery of rent for the year 1967-68 has been filed on the 7th of February 1969. The relevant provision of the Act dealing with regard to recovery of rent is Section 42. In that section it has been provided that "Notwithstanding anything contained in any agreement or in any law for the time being in force, no suit or other proceedings shall lie in any court or before any other authority for recovery of any rent payable by a tenant, except as provided in this section". By that section the landlord claiming payment of rent from tenant is entitled to file an application for an order directing tenant to pay the rent due to the landlord. By Sub-section (4) of Section 42 it is stated that "for the purpose of the Limitation Act, 1963, an application under this section shall be deemed to be a suit for arrear of rent, but the period of limitation shall be one year". Under Article 52 of the Limitation Act of 1963, the period of limitation starts when the rent becomes due and the question is when the rent becomes due under the provisions of the Land Reforms Act? Section 8 of the Act merely provides that rent payable by a tenant shall be paid annually and the maximum that the landlord is entitled to recover has also been provided. For the purpose of determination of the gross produce or its value, it is provided in Sub-section (2) of Section 8 that gross produce per acre in any year of any land in each local area specified by the State Government by notification shall be the average yield for that year of the principal crops grown on that class and grade of land in that local area published under Sub-section (4). Sub-section (4) provides for publication of the average yield determined under Sub-section (3).

The other sections which are relevant for the purpose of consideration are Sections 9 and 22 of the Act. u/s 9 it is provided that "where the rent payable is a share of the gross produce, it shall be payable to the landlord at the village where the land is situated, before the date notified by the State Government in respect of the local area in which such village is situated". Therefore, under this section, it is clear that no provision has been made stating as to when the rent becomes payable, if the rent is payable in cash. The notification issued under this section by the State Government provides that so far as Chickmagalur is concerned, that the rent shall be payable so far as Kharif crop is concerned on the first of January; so far as other crops are concerned as also for payment of arecanut and hay etc., are concerned, no notification has been issued by the State Government.

If a tenant does not pay the rent which he is required to pay. then u/s 22 of the Act, non-payment of rent has been made a ground for eviction. It is stated therein that a tenant if he has failed to pay the rent of the land on or before the due date and if notice is given within three months after due date, the tenant will be deemed to have failed to pay the rent for the year. The explanation given to

that section is very material and it is set out below:

"Explanation-- A tenant shall be deemed to have failed to pay rent payable by him to the landlord for any year, if he does not pay it before the end of June next after the expiry of the year".

Failure means that there is an omission on the part of the person to do something which it is possible for him to do. The tenant on account of having held the land belonging to the landlord, is required to pay the rent. u/s 22 of the Act, tenant will be deemed to have failed to pay the rent if he does not pay it before the end of June next after the expiry of the year. Therefore whether the end of the year is 31st March or 31st June as stated in the Land Revenue Code, it is clear that so far as the payment of rent is concerned, the tenant is deemed to have failed to pay it, only when it is not paid till the end of June next after the expiry of the year. The rent, therefore, becomes due to the landlord by the end of June and if it is not paid by then, the cause of action for institution of the proceedings for recovery of rent arises. The application has therefore to be filed, in my view, within one year after the end of June. As stated earlier, if only the dates specified by the notification issued u/s 9 is taken into consideration, then for the purpose of recovery of Khariff crops the limitation will start from the date specified in the notification. So far as the payment of cash rent, it will have to be another date and for the purpose of other crops a third date. Such construction would lead to considerable difficulty in instituting proceedings either for recovery of rent or for eviction. The landlord's right to start proceedings for eviction u/s 22 (a) or for rent u/s 42 are based upon the same cause of action i.e. non-payment of rent. I am, therefore, persuaded to hold on a consideration of these provisions of the Act, that a landlord can file an application for recovery of rent u/s 42 (4) of the Act within one year from the end of June. In the present case, rent for the year 1967-68 became payable and the tenant is deemed to have committed default only by the end of June 1968 and the application filed on 7-2-1969 is therefore within the limitation.

4. The revision petition is therefore allowed, orders passed by both the courts below are set aside and the proceedings are now remitted back to the trial court for determination of rent that the landlord is entitled to recover.

5. In the circumstances, parties will bear their own costs.

6. In C. R. P. No. 715 of 1971, the only difference is that the landlord is the same but the tenant is a different person. The application for recovery of rent is for the year 1967-68 and it was filed on 7-2-1969. The trial court has rejected the application on the ground of limitation and that has been confirmed by the appellate court. Having regard to the view expressed by me in C. R. P. No. 557 of 1971, it has to be held that the orders passed by both the courts below even in this case is erroneous and accordingly they are set aside. The learned trial Judge is now directed to determine the rent that the landlord will be entitled to recover and dispose of the proceedings in accordance with law. In the circumstances of

the case, parties will bear their own costs.