

(1987) 07 KAR CK 0049
In the Karnataka High Court
Case No : W.A. No. 199 of 1982

Timmakka Kom Venkanna Naik

APPELLANT

Vs

Land Tribunal

RESPONDENT

Date of Decision : 21-07-1987

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 2 A (34), 45, 48 A

Citation : (1987) ILR (Kar) 3336 : (1987) 2 KarLJ 337

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : T.S. Ramachandra, for the Appellant; S.V. Jagannath, Government Advocate for R-1 and 4; B.R. Patil, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—The owner of the lands in question has filed this Writ Appeal against the dismissal of her W. P. No. 6351/1976. The lands are Sy. Nos. 138/1 and 137/1 of Agsur village, Ankola Taluk, Uttar Kannada District. Admittedly the lands were leased in favour of one Hammi kom Somagouda. She died on 6-9-1972. It is an admitted fact that she left no heirs. However, the third respondent (Subba Ayugouda) claimed that there was a Will left by Hammi under which the tenancy right of the deceased was bequeathed to him. Basing his right under the Will, the third respondent filed O.S. No. 156 of 1973 in the Court of the Munsiff at Karwar for a permanent injunction against the petitioner in which there was an order of temporary injunction. Since the question of tenancy was involved, the said issue was referred to the Land Tribunal for determination. It is said that petitioner also filed an application before the Land Tribunal seeking registration as an occupant by mistake and the same was dismissed on 11-11-1975. Thereafter the petitioner received a notice of enquiry from the Land Tribunal, obviously arising out of the claim of respondents 2 and 3. They sought occupancy right u/s 48-A of the Karnataka Land Reforms Act in respect of four lands. The appellant is not concerned with the other lands except the two

referred above. The appellant objected to the claim of respondents 2 and 3. She also disputed the genuineness of the alleged Will, which was being relied upon by the 3rd respondent.

2. The Land Tribunal upheld the claim of respondents 2 and 3 on the ground that they were in continuous lawful possession as actual cultivators of the lands in question jointly. For this, the Land Tribunal relied upon the unregistered Will put forth by the 3rd respondent. A reading of the order of the Tribunal shows that the only basis for its finding was its reliance on the aforesaid unregistered will as conferring a right to the 3rd respondent as a legatee of the deceased tenant. Having come to the said conclusion, the Tribunal declared that respondents 2 and 3 are to be registered as occupants of the lands jointly. There was also an observation that the said order will govern the reference made by the learned Munsiff, Karwar, in O. S. No. 156 of 1973.

3. The appellant challenged this order of the Land Tribunal. The learned Single Judge held that admittedly the lands had been leased in favour of Hammi, who was in possession till her death on 6-9-1972. On her death 3rd respondent and his people started cultivating the lands in question. Therefore, the learned Single Judge proceeds on the assumption that "the Tribunal has done substantial justice between the parties" and therefore it is not a matter for interference in writ proceedings. There is a further observation that the finding of the Land Tribunal regarding the genuineness of the Will will not preclude the appellant from taking appropriate steps available in law to challenge the said finding and that the decision of the Tribunal "will be subject to the decision of that forum or authority competent to decide the question of the genuineness of the Will". Writ Petition was dismissed. The appellant has come up in appeal against this order.

4. The first question that arises for consideration is as to when a person can claim right u/s 45 of the Karnataka Land Reforms Act, 1961 for registration as an occupant. u/s 48-A only a person entitled to be registered as an occupant u/s 45 may make an application to the Land Tribunal.

5. As per Section 45, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully subject, such sub-tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant. The date of vesting as per Section 44 is 1-3-1974. u/s 44 all lands held by or in the possession of tenants immediately prior to 1-3-1974 shall vest in the State Government. Therefore, the condition precedent is the land should be in the possession of a tenant as on 1-3-1974.

6. "Tenant" means an agriculturist who cultivates personally, the land he "holds on lease", from a landlord, vide Section 2A(34). Of course, there are certain other categories of persons who are also included in the definition of "tenant" such as "deemed tenant" u/s 4 and a person who was protected from eviction earlier and a person governed by Section 5. But in all these cases the common ingredient is the lawful nature of the holding by the person who cultivates the

land. In other words, no person can be called a tenant unless he cultivates the land lawfully and the lawful nature will have to be substantiated by a lease or by the factors stated in Section 4 etc. A person who is not inducted lawfully, but cultivates the land, cannot claim the status of a tenant at all.

7. The next question is, whether the Land Tribunal can go into the question of the validity or applicability of the Will. When an application filed u/s 48-A of the Act comes up before the Tribunal, it has to necessarily examine the question as to whether the applicant is a tenant or not. u/s 112(B)(b), it is the duty of the Tribunal to decide whether a person is a tenant or not. There fore, it may be necessary for the Land Tribunal to go into the question of the genuineness or the validity of a Will whenever such a Will is the basis of a claim of a person, claiming to be a tenant. Here respondent-3 can succeed only on the basis of the Will and in fact the Tribunal granted the relief to respondents 2 and 3 solely on the basis of the Will. To that extent the Land Tribunal has to examine the validity, genuineness or applicability of the Will.

8. In this case it is not necessary to go into the question of genuineness of the Will. The real question is, whether respondent-3 can rely upon the will purporting to bequeath to him the right of a tenant in respect of the lands in question. If a tenant cannot bequeath his tenancy right, it is entirely immaterial whether the will is genuine or not. This question has not been considered by the learned Single Judge nor by the Land Tribunal.

9. The real question for consideration is, whether Hammi (tenant) could have bequeathed her right of tenancy to the the third respondent under a Will ?

10. Mr. T. S. Ramachandra, learned Counsel for the appellant pointed out that Section 21 of the Act prohibits sub-division, sub-letting and assignment of any interest in the land held by a tenant. However, the second proviso to Section 21(1) makes the position very clear by declaring that when a tenant dies, his heirs or the surviving members of his family shall be entitled to the partition and sub-division) of the lands leased. Section 21(1) reads thus :-

"Sub-division, sub-letting and assignment prohibited--(1) No sub-division or subletting of the land held by a tenant or assignment of any interest therein shall be valid :

Provided that nothing in this sub-section shall affect the right, if any, of a permanent tenant;

Provided further that if the tenant dies,--

(i) if he is a member of joint family, the surviving members of the said family :
and

(ii) if he is Sot a member of a joint family, his heirs shall be entitled to partition and sub-divide the land leased, subject to the following conditions :

(a) each sharer shall hold his share as a separate tenant;

(b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the ease may be, according to the share allotted to them :

(c) the area allotted to each sharer shall not be less than a fragment;

(d) if such area is less than a fragment the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds.

(e) xx xx (omitted as unnecessary)".

11. The contention of the learned Counsel is that when there is a prohibition against assignment of any interest by the tenant, it follows that the said provision cannot be circumvented by bequeathing the said interest. In other words, the bar against the transfer of the tenancy right includes a bar against transferring such a right to be effective after the life time of the tenant. For the said proposition, Counsel relies on a passage from Mulla's Hindu Law (XV edn.) at page 483, para 368: It is stated therein that according to the Mitakshara Law, a Hindu cannot by will bequeath the property which he cannot gift *intervivos*. From this it follows that if a Hindu tenant cannot gift his tenancy interest, he has no right to transfer it by way of bequeathing it under a will so that the transfer may become effective on his death.

12. We are inclined to agree with this proposition. It is clear that, u/s 21(1) there is a bar against subdivision or sub-letting of the land held by a tenant or assignment of any interest thereunder. Any assignment contrary to the said bar is invalid. (Of course, there is an exception in the case of a permanent tenant.) This bar cannot be overcome by a tenant by creating a Will. What he cannot do during his life time cannot be held to be capable of being done immediately after his death. Second proviso to Section 21(1) highlights this aspect by conferring certain rights only on the surviving members of the family or on his heirs. If a tenant can Will away his interest or a portion thereof, then the second proviso also will be nullified by enabling the legatee to have the land partitioned in his favour. Section 24 of the Act states that "where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death". This statutory provision is also against the concept of bequeathing the tenant's interest by will, statute has peremptorily provided the succession which cannot be defeated by the tenant by bequeathing his interest.

13. Two decisions of the Supreme Court were also referred, in support of his contention by the learned Counsel. In *Jaspal Singh Vs. Additional District Judge, Bulandshahr and Others*, a question arose under U.P. Act 13/1972. There was a bar against transfer of the tenant's interest during his life time. Similarly, if a tenant sub leases the premises, he was liable to be ejected. Therefore, it was held that the scheme of the Act did not warrant the transfer of the tenancy right, to be effective after the life time of the tenant, Thus the claim of the nephew of the tenant who claimed the right under a Will executed by the deceased tenant was rejected.

14. In Bhavarlal Labhchand Shah Vs. Kanaiyalal Nathalal Intawala, the question was whether the tenant of a non - residential premises continuing in occupation after the period of contract is over, can bequeath his right of occupation by will. The Supreme Court negated such a contention. The Supreme Court approved the observations of the Bombay High Court in Anant Trimbak Sabnis Vs. Vasant Pratap Pandit, which were extracted as follows :-

"Bequest of tenancy rights in this context stands on the same footing as any other transfer by sub-lease, sale, assignment, gift, volition of the tenant in inducing uncontemplated strangers in the premises and thrusting them on the landlord. being the common element of these dispositions. It makes little difference to the invasion on the landlord's right whether such uncontemplated stranger is so induced by the tenant for gain or just as a favour invasion in either case having no nexus with the object underlying these protections. It is difficult to imagine why the legislature could have intended to exclude such bequests from the sweep of the prohibited assignments and transfers u/s 15, when bequest is pregnant with the same evils as other transfers. The words "transfer in any manner" in this context only go to signify inclusion of "bequest" also therein".

15. Having regard to the above decisions, we are of the opinion that the deceased Hammi could not have bequeathed the tenancy right in favour of respondents 2 and 3 or to any one of them. If so, any possession and cultivation by respondents 2 and 3, after the death of the original tenant Hammi, cannot be termed as lawful and they cannot be termed as tenants. It has also come on record that throughout there was protest by the appellant against registering the names of respondents 2 and 3 or any one of them as a tenant in the record of rights. Therefore, as on 1-3-1974 neither respondent-2 nor respondent-3 was cultivating the lands in question as a tenant and hence Sections 44, 45 or 48-A of the Act cannot govern their claim. The Land Tribunal erred in granting occupancy right in favour of respondents 2 and 3 on the basis of the alleged will and hence the same is liable to be set aside. In this view of the matter, the learned Single Judge should have reversed the order of the Land Tribunal. Therefore, the order of the learned Single Judge also cannot be sustained.

16. In the result, for the aforesaid reasons, we allow the appeal, reverse the order of the learned Single Judge and quash the order of the Land Tribunal dated 19-4-1976 passed in No. KLR. SR.51/110/7361 and KLR.SR.51/168/1089 etc.