

(1977) 10 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 3144 of 1977

Ulavappa Bhimappa Hosur

APPELLANT

Vs

The Sub-Divisional Magistrate, Dharwar and Others

RESPONDENT

Date of Decision : 14-10-1977

Acts Referred:

Karnataka Debt Relief Act, 1976 — Section 3 (c), 3 (e), 4
Karnataka Land Reforms Act, 1961 — Section 133

Citation : AIR 1978 Kar 107

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : B.V. Deshpande, for the Appellant; B.B. Mandappa and N.Y. Hanumanthappa, for the Respondent

Judgement

1. This petition under Article 226 of the Constitution, is directed against the order made by the Sub-Divisional Magistrate, Dharwar, u/s 4 of the Karnataka Debt Relief Act, 1976, (called shortly "the Act").

Briefly stated, the facts are these A. Y. Choukinavar, respondent-3, is the owner of the land to an extent of 8 acres in Block No. 1000 of Aminabhavi village, Taluk Dharwar. He delivered possession of the land to the petitioner by receiving Rs. 5,000/- and executing a registered deed styled as "Illavatti", in favour of the petitioner. After coming into force of the Karnataka Land Reforms Act, 1961, the petitioner applied to the Land Tribunal, Dharwar, for occupancy rights in respect of the said land stating that he is in possession of it as a tenant and the deed executed by respondent-3 was a lease in his favour. That matter is still pending consideration before the Tribunal. In the meanwhile, the Karnataka Debt Relief Act, 1976, came into force, and respondent-3 moved the Sub-Divisional Magistrate u/s 4 of the Act, contending that he had mortgaged the land in favour of the petitioner and he is entitled to get back possession of the land as the mortgage debt has been extinguished by the operation of law.

The petitioner, while resisting the application of respondent-3, inter alia,

contended that he is in possession of the land as a tenant; that his application for occupancy rights is pending before the Land Tribunal, and the transaction relied upon by respondent-3 is not mortgage but lease deed. He also prayed that till the Tribunal gives its decision, the Sub-Divisional Magistrate should not proceed with the application of respondent-3.

2. The Sub-Divisional Magistrate, however, proceeded to hold an enquiry in the course of which respondent-3 produced four witnesses in support of his claim, and the petitioner in his turn also examined four witnesses to prove, in particular, that the total income of respondent-3 was less than Rs. 2,400/- per annum. Upon consideration of these evidence, the Sub-Divisional Magistrate concluded thus:

"The applicant has stated that his income is less than Rs. 2,400/- per annum. He has examined 4 witnesses on his behalf who stated that the applicant's only income is from what he earns by working as a coolie. They state that he earns Rs. 4/- to Rs. 5/-per day and that this is his only source of income. The 4 witnesses that the opponent has examined have stated that the applicant also sells grains. However, only one witness has stated that the applicant gets Rupees 300/- as monthly income. One witness has stated that the applicant gets Rs. 100/- to Rs. 150/- through his business. One has stated that now the applicant has stopped selling milk as he used to. The 4 witnesses state that the applicant sells grains, but that he does not know of the income the applicant gets. From the evidence on record. I am satisfied that the applicant's income is below Rs. 2,400/- per annum. Hence the order."

3. The validity of the aforesaid order is called into question in this petition.

4. It was urged for the petitioner that the order was perfunctory, contrary to law and evidence on record. It was also urged that the decision of the Tribunal on the question whether the deed is a mortgage or a lease would be binding on the Sub-Divisional Magistrate and, therefore, the latter ought not to have decided the question when the same question is pending before the Land Tribunal.

5. In order to appreciate the contentions, it may be necessary to refer to the scope of the definition of the word "debtor". Section 3 (c) of the Act defines "debtor" to mean:

"(i) a small farmer; or

(ii) a landless agricultural labourer; or

(iii) a person belonging to the weaker sections of the people." The "debtor" thus includes three categories of persons, (1) a small farmer;

(2) a landless agricultural labourer and (3) a weaker section of the people. "Small farmer" has been defined u/s 3 (e) to mean:

"a person who holds whether as owner, tenant, or mortgagee with possession or partly in one capacity and partly in another not more than one unit of land and

who has no income from any source other than agriculture."

A "Unit" has been defined u/s 3 (f), A "Landless agricultural labourer" has been defined u/s 3 (d) to mean:

"a person who does not hold any land and whose principal means of livelihood is manual labour on land." So also, "weaker sections of the people" has been defined u/s 3 (g). It provides:

" "weaker sections of the people" means persons not being small farmers or landless agricultural labourers whose annual income from all sources does not exceed two thousand and four hundred rupees."

From the above provisions, it becomes clear that if a debtor wants to be called "a landless agricultural labourer", he should not hold any land, and his principal means of livelihood should be only manual labour on land. There is, however, no limit prescribed for his income. If a debtor on the other hand, wants to be termed as a "small farmer", he should hold, whether as owner, tenant or mortgagee not more than one unit of land, and should not have any income from any other source other than agriculture. If he has income from any other source, he falls outside the category of "small farmer". The "weaker sections of the people", exclude both the small farmer and the landless agricultural labourer, but his income from all sources should not exceed Rs. 2,400/- per annum.

It was urged for the petitioner that "all sources of income" referred to in the definition of "weaker sections of the people", must be other than the sources of income of small farmer and landless agricultural labourer. It was also urged that a person who holds land more than one unit automatically falls outside the category of "weaker sections of the people", and his income from agriculture even if it falls below Rs. 2,400/-, is not relevant,

6. I do not think that there is any justification to curtail the scope of the words "all sources" in the definition of "weaker sections of the people", The intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal and grammatical meaning. The words "all sources" plainly and grammatically mean all sources of income that are available to a person belonging to "weaker sections of the people". It means, in other words, "every source of income", be it agricultural, manual labour or from any other avocation. If that meaning is not given, a person who holds land more than one unit with an income of less than Rs. 2,400/- from all sources, would be deprived of the relief under the Act. Likewise, a landless labourer whose means of livelihood is partly on land and partly on other avocations, will be denied of the rights conferred although his total income falls below Rs. 2,400/-. The suggested construction which produces such unreasonable and undesirable consequences cannot and should not be accepted.

7. I shall now proceed to consider the legality of the finding recorded by the Sub-Divisional Magistrate on the status of the petitioner. From the impugned order, it

is clear that the Sub-Divisional Magistrate has briefly considered the evidence adduced by both the parties and reached a conclusion that the income of respondent 3 from all sources was less than Rs. 2,400/-. The order, although brief, is supported by reasons on objective consideration of the evidence adduced by the parties. The order is therefore in conformity with the procedure prescribed by summary enquiry and the said finding cannot be stated to be illegal or contrary to law.

8. This takes me on to the other contention urged for the petitioner. It was urged that since the deed in question relied upon by respondent-3 is pending consideration before the Land Tribunal, the Sub-Divisional, Magistrate ought not to have expressed any opinion whether it is a mortgage or lease deed.

The contention, in my view, is very wide in its terms, and requires a careful scrutiny of the respective duties of the Land Tribunal and the Sub-Divisional Magistrate. Under the Karnataka Land Reforms Act, by Section 112-B, the Land Tribunal has exclusive jurisdiction to decide the question whether a person is a tenant or not. Section 133 prohibits civil or criminal court, officer or authority from deciding in any suit, case or proceedings concerning a land, whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land, notwithstanding anything in any law for the time being in force. The said section also provides that such court or officer or authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision.

Under the Karnataka Debt Relief Act, every debt advanced before 21st October, 1975, including the amount of interest, if any, payable by the debtor to the creditor has been wholly discharged, and every mortgage executed by the debtor in favour of the creditor shall stand redeemed and the mortgaged property shall be released in favour of such debtor. When the creditor fails to do so, the Sub-Divisional Magistrate having jurisdiction over the place where the mortgaged property is situate may, suo motu or on application of the debtor put the debtor in possession of the mortgaged property after holding such enquiry as he may deem fit. u/s 5 (5), the Sub-Divisional Magistrate shall determine which of the debtors are entitled to the relief under the Act, and direct the creditor to make an endorsement of discharge on the mortgage deed and deliver the same to the debtor. If the creditor fails so to do, the Sub-Divisional Magistrate shall himself record the fact of discharge and issue a certificate to that effect to the debtor and also deliver possession of the property to the debtor.

The two statutory authorities have thus got two different duties and responsibilities. The Land Tribunal is not concerned with the problem of creditor and debtor, and the Sub-Divisional Magistrate is not concerned with the question of landlord and tenant. The Sub-Divisional Magistrate is charged with the duty to determine which of the debtors are entitled to the relief and direct the delivery of mortgaged property to the debtor. He would be, therefore, failing in his duty if he does not proceed with the matter brought before him and give relief to the

debtors to whom that relief has been denied by the creditors. His statutory duties should not unnecessarily be denied, if he genuinely feels on the unimpeachable evidence on record that the relationship between the parties is one of creditor and debtor. If, however, the terms of the dispute or the transaction between the parties is already pending adjudication before the Land Tribunal on the question of tenancy pleaded by one party, and the matter is not free from doubts, or the question raised is of complicated nature, it would, I think, be proper for the Sub-Divisional Magistrate to stay the proceedings before him, and await the decision of the Land Tribunal. The Sub-Divisional Magistrate by adopting this procedure, would be avoiding conflicting decisions on the same subject-matter.

9. With that, I will now turn to the document in question. It has been styled as "Illavatti". In order to ascertain the real character of the transaction recorded in the document, one must look at the recitals therein. The relevant recitals are in the following terms:

[x x x x x] (The recitals in original script are omitted for purpose of this report--Ed.)

It was urged by Sri B. V. Deshpande, learned counsel for the petitioner that although the document is styled as "Illavatti", it is really in the nature of an advance loan, i. e., "Agava Lavani". That contention is seriously disputed by Sri N. Y. Hanumanthappa, learned counsel for respondent-3. He said that, in the Bombay Karnataka area, where the parties to this case hail from, "Illavatti" has got a special connotation and has always been accepted as a mortgage deed. In support of his contention, he relied upon the decision of Venkataramaiah, J., in *Veerappa Rudrappa Alagawadi v. The Land Tribunal* (1976) 1 Kant LJ 98.

It is true that the observations made by my learned brother in that case lend support to the contention urged for respondent-3. But, it seems to me that the case on hand is not free from doubt and requires a careful consideration of all the evidence and circumstances of the case. It is, therefore, proper that the Sub-Divisional Magistrate should await the outcome of the proceedings before the Land Tribunal in the concerned matter.

10. In the result, the rule is made absolute. The finding of the Sub-Divisional Magistrate, so far as it relates to the nature of the deed in question, is quashed while keeping undisturbed the finding on the income of respondent-3 from all sources. The matter stands remitted to the Sub-Divisional Magistrate with a direction that he should dispose of the application of respondent 3 after the decision of the Land Tribunal, Dharwar, in the concerned case.

In the circumstances of the case, I make no order as to costs.

11. Order accordingly.