

(2001) 03 KAR CK 0046

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 957 of 1989

Venkamma and Others

APPELLANT

Vs

B. Babu Poojary and Others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 121 A

Citation : (2001) ILR (Kar) 2708 : (2002) 1 KarLJ 227

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : S.S. Sripathy, for the Appellant; M.V. Shamanna, Government Advocate, K.I. Bhatta and Ravi G. Sabhahit, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. In this revision petition filed u/s 121-A of the Karnataka Land Reforms Act (hereinafter referred to as "the Act"), the petitioners have called in question the correctness of the order dated 30th April, 1988 made in L.R.A.A. No. 463 of 1988 passed by the Additional Land Reforms Appellate Authority, Puttur, Dakshina Kannada (hereinafter referred to as "the Appellate Authority"), confirming the order dated 16th August, 1976 made in No. LRY/15/74-75 by the Land Tribunal, Belthangady (hereinafter referred to as "the Tribunal"), granting occupancy rights in favour of the deceased first respondent-late Babu Poojary

2. Few facts, which are not in serious dispute and which are relevant for the disposal of this petition, may be stated as hereunder:

(a) The first petitioner is the mother and petitioners 2 to 8 and respondent 4, one Chandrashekar Bhangera are the children of the first petitioner-Venkamma. The subject-matter of dispute in this petition is land measuring 60 cents in Survey No. 81/2 of Thannirpantha Village, Belthangady Taluk. By means of mortgage deed dated 13th May, 1968 registered in the Office of the Sub-

Registrar, Belthangady, the petitioners and the aforesaid Chandrashekar Bhangera mortgaged the land referred to above, in favour of one Anthamma as a security for sum of Rs. 2,000/- advanced by the said Anthamma to the mortgagors. As per the terms of the mortgage deed, the mortgagee was put in possession of the land in question and she was allowed to continue to be in possession of the land in question for a period of 11 years from the date of the mortgage. The deceased first respondent-Babu Poojary is the son-in-law of the said Anthamma.

(b) On coming into force of the amending Act by means of Act No. 1 of 1974, the deceased first respondent filed Form 7 claiming occupancy right in respect of the land, referred to above, as provided u/s 48-A of the Act read with Rule 19 of the Rules. In Form 7 filed by him, the said Babu Poojary made only the 4th respondent, the aforesaid Chandrashekar Bhangera as a party to the proceedings. The petitioners, in this petition, though they were the mortgagors of the land in question, were not made as parties to the proceedings before the Tribunal. However, Chandrashekar Bhangera, who was served with the notice of the proceedings by the Tribunal, contested the claim made by the said Babu Poojary and contended that the claim made by the said Babu Poojary that he is a tenant in respect of the land in question as on 1-3-1974 and immediately prior to it, is totally false and baseless. However, the Tribunal, by means of its order dated 16th August, 1976, conferred occupancy right in respect of the land in question in favour of the said Babu Poojary.

(c) Aggrieved by the said order, the petitioners filed Writ Petition No. 8426 of 1979 before this Court. Consequent on the establishment of the Appellate Authority, the said writ petition stood transferred to the Appellate Authority. Thereafter, the Appellate Authority allowed the request made by the petitioners to lead additional evidence. In the course of the proceedings before the Appellate Authority, the first petitioner examined herself as P. W. 3 and examined one Lakkanna Kille as P. W. 1 and one Deekayya Poojary as P.W. 2. P.Ws. 1 to 3 have stated in their evidence before the Appellate Authority that the land in question was given on lease by the said Anthamma in favour of deceased Babu Poojary. However, the Appellate Authority rejected the appeal on three grounds, firstly, on the ground that the appeal filed by the petitioners was not maintainable; secondly, on the ground that the appeal filed by the petitioners was liable to be rejected on the ground of inordinate delay on the part of the petitioners in filing the writ petition; and finally on the ground that since the land in question was given on lease by a mortgagee in possession, the said Babu Poojary would be a deemed tenant.

3. During the pendency of this petition, the said Babu Poojary having expired, his legal heirs are brought on record as respondents 1(a) to 1(i).

4. Sri Sripathy, learned Counsel appearing for the petitioners, challenging the orders impugned, submitted that the order impugned passed by the Appellate Authority is totally illegal and liable to be set aside by this Court. It is his

submission that the finding recorded by the Appellate Authority that the appeal, which came to be registered on the file of the Appellate Authority consequent upon the transfer of the writ petition, was not maintainable, is wholly misconceived in law. It is his submission that the Appellate Authority also has seriously erred in law in taking the view that the appeal is liable to be rejected on the ground of delay in filing the writ petition. He pointed out that when this Court did not deem it fit to reject the writ petition on the ground that the writ petition was filed after a lapse of reasonable time and transferred the matter for consideration to the Appellate Authority, it was not permissible for the Appellate Authority to dismiss the appeal on the ground that the appeal filed by the petitioners requires to be rejected on the ground of unreasonable delay in filing the writ petition. He also drew my attention to Section 19 of Act No. 19 of 1986 wherein a power is conferred on this Court to transfer all the pending proceedings to the Appellate Authority by condoning the laches or delay, if any, on the part of the parties in filing the writ petition. Therefore, he submitted that from the very fact that the matter was transferred to the Appellate Authority by this Court, it must be held that this Court had condoned the delay or laches, if any, on the part of the petitioners in filing the petition and, therefore, it was not permissible for the Appellate Authority to go into that question. Finally, he submitted that while, in law, a person who obtains a lease of a land from a mortgagee in possession, would be a deemed tenant, the Appellate Authority has failed to consider the question as to whether the land in question was actually leased by the said Anthamma in favour of late Babu Poojary. According to the learned Counsel, the crucial question the Appellate Authority was required to consider, was whether, in the light of the contention raised by the petitioners and the said Chandrashekar Bhangera, that the land in question was never leased by the said Anthamma in favour of Babu Poojary, the Appellate Authority should have considered the evidence adduced by the parties in that aspect of the matter and recorded a finding as to whether the land in question was leased by Anthamma in favour of Babu Poojary.

5. I have been taken through the order passed by the Appellate Authority and also the evidence on record. Having elaborately heard the learned Counsel for the petitioners, I find considerable force in all the three submissions made by the learned Counsel for the petitioners. Admittedly, the petitioners are the mortgagors of the land in question. This is clear from the mortgage deed dated 13th May, 1968 which was produced and marked as Exhibit A before the Appellate Authority. When the petitioners are the mortgagors of the land in question along with the said Chandrashekar Bhangera, it cannot be said that the petitioners have no interest in the land in question. If the petitioners are able to show that the lease of the land in question sought to be made out by late Babu Poojary is unsustainable in law, the petitioners are entitled to seek redemption of the land in question from the mortgagee, the aforesaid late Anthamma or her legal heirs. Therefore, I am of the view that the finding recorded by the Appellate Authority that the petitioners were not entitled to maintain the appeal, is totally

erroneous in law. Similarly, the finding recorded by the Appellate Authority that the appeal filed by the petitioners is also required to be dismissed on the ground that there was delay in filing the writ petition before this Court, is also unsustainable in law. Section 19 of the Karnataka Act No. 19 of 1986 relied upon by Sri Sripathy reads as follows:

"19. Transfer of pending proceedings.--The High Court may, if it deems fit, transfer to the Appellate Authority having jurisdiction, a writ petition preferred to it against an order passed by the Tribunal, under the Karnataka Land Reforms Act, 1961, or under any other law, either before or after the coming into force of the Karnataka Land Reforms (Amendment) Act, 1986, in which rule has been issued by it after condoning the laches, if any and any appeal preferred against the orders passed in such writ petition and admitted by it, pending before it. On such transfer, the writ petition or as the case may be, the writ appeal shall, notwithstanding anything contained in this Act, be deemed to be an appeal filed before the Appellate Authority and the parties thereof may be permitted to amend their pleadings in such manner as they deemed fit".

From the said provision, it is seen that a discretion is conferred on this Court to transfer all the pending proceedings to the Appellate Authority. The said provision also confers power on this Court in appropriate cases, even if there is delay in filing the writ petition, to condone the delay or laches in filing the writ petition and transfer the matter to the Appellate Authority. Admittedly, the writ petition came to be transferred to the Appellate Authority. From that, one can infer that this Court had found it fit to transfer the writ petition to the Appellate Authority to be considered on merits. It must be held in the circumstances that this Court had condoned the delay or laches, if any, caused in filing the writ petition. Under these circumstances, when once the matter was transferred to the Appellate Authority, it was not permissible for the Appellate Authority to dismiss the appeal on the ground that there was delay on the part of the petitioners in filing the writ petition.

6. Now, the only question that remains to be considered is whether the Appellate Authority was justified in proceeding on the basis that late Babu Poojary would be a deemed tenant in respect of the land in question? No doubt, if the land in question was given on lease by late Anthamma in favour of late Babu Poojary, late Babu Poojary would be a deemed tenant within the meaning of Section 4 of the Act. But, it is necessary to point out that in the entire order, the Appellate Authority has failed to apply its mind with regard to the question whether there has been a lease of the land in question by Anthamma in favour of her son-in-law, late Babu Poojary. The Appellate Authority and the Tribunal cannot overlook the fact that late Babu Poojary is the late son-in-law of Anthamma. Under these circumstances, the Tribunal and the Appellate Authority were required to apply their mind with regard to the question whether the lease set up is a genuine lease or it is only an attempt made to deprive the mortgagor of his right of redemption of the land in question. P.Ws. 1 to 3, in their evidence, have

specifically stated that the land in question was not leased by Anthamma in favour of Babu Poojary and he was not in possession of the land as on 1-3-1974. In fact, Chandrashekar Bhangera, who had appeared before the Tribunal, also has disputed the claim made by Babu Poojary that the land in question was given to him on lease. It is their evidence that the said Babu Poojary is residing at a place known as Dhari Padpu of Tenkakajekar Village. Section 4 of the Act intends to confer occupancy right on the person who was lawfully cultivating the agricultural land as on 1-3-1974. The object of the legislation is not to deprive a mortgagor his right of redemption of the land which was given on mortgage. It is only in case of genuine lease of a land, the lessee would be entitled to be registered as a deemed tenant of such agricultural land. An attempt made by the mortgagee in possession to deprive the right of redemption of the mortgagor, cannot be lightly approved either by the Tribunal or by the Appellate Authority. It is only a person who is lawfully cultivating the land who would be entitled to be registered as a deemed tenant. This aspect of the matter has been overlooked both by the Tribunal and by the Appellate Authority. The Appellate Authority has not considered the evidence of the parties on this aspect of the matter. Therefore, the impugned orders are liable to be set aside.

7. In the light of the discussion made above, I make the following:

ORDER

(i) Order dated 30th April, 1988 made by the Land Reforms Appellate Authority at Puttur and the order dated 16th August, 1976 made by the Land Tribunal at Belthangady are hereby set aside.

(ii) The matter is remitted to the Tribunal for fresh consideration. The Tribunal is directed to reconsider the matter afresh as expeditiously as possible and at any event of the matter, not later than six months from the date of receipt of a copy of this order.

(iii) The parties are also reserved liberty to lead evidence, if they so desire.

8. In terms stated above, this petition is allowed and disposed of.

9. Sri Shamanna, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from today.