

(2012) 08 KAR CK 0356

In the Karnataka High Court

Case No : Writ Petition No. 12336 of 2004 (LR-)

Venkateshachar

APPELLANT

Vs

The State of Karnataka and Kuro Balindrappa

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 133

Citation : (2012) 08 KAR CK 0356

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Rajendra and S. Ankalkoti, for the Appellant; Shashidhar S. Karmadi, HCGP for R1 and 2 and Sri H.S. Sureshappa, for R3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil

1. Order dated 12.02.2004 passed by the land Tribunal, Soraba granting occupancy rights in favour of the 3rd respondent is called in question in This writ petition. Land bearing Sy. No. 106 totally measuring 9 acres 5 guntas was an ham land. Deceased Kuroparasappa the adoptive father of the 3rd respondent was the tenant of the said land under one Neelakant Rae Nadigar. Occupancy rights came to be granted in favour of the tenant as per the order passed by the Deputy Commissioner for In am abolition to an extent of 3 acres 6 guntas. This order was unsuccessfully challenged before the Appellate Tribunal. Subsequently, Kuroparasappa sold 3 acres 6 guntas of land in favour of his brother's son Kuro Basavannyappa on 23.11.1963. However, the revenue entries continued in the name of Kuroparasappa.

2. It is urged by the petitioner that as objections were raised by the adoptive father of the 3rd respondent for changing the entries in the name of the purchaser Kuro Basavannyappa, the records continued in the name of the Kuroparasappa. It is relevant to notice that Kuro Basavannyappa sold, the

property in favour of the present petitioner-Venkateshachar on 04.11.1966. Even after the purchase by the petitioner, the name of Kuroparasappa, the adoptive father of the 3rd respondent continued in the revenue records showing him as cultivator.

3. It is alleged by the petitioner that as the possession of the petitioner was disturbed by the 3rd respondent herein, he was constrained to file a suit in O.S. No. 565/1966 against the 3rd respondent and his adoptive father Kuroparasappa seeking a decree of permanent injunction. The said suit came to be decreed on 23.09.1972. Aggrieved by the same, the 3rd respondent preferred an appeal in R.A. No. 162/1972. The same was also dismissed on 09.11.1973 recording a finding that the petitioner was in possession of the property and that the entries were wrongly continued in the name of the adoptive father of the 3rd respondent even after the sale deed executed by him.

4. It is necessary to notice here that the 3rd respondent had filed TNC VR 154/74-75 claiming occupancy rights in respect of the land in question asserting that he was cultivating the same as tenant. This was resisted by the petitioner. The land Tribunal passed an order dated 27.09.198F conferring occupancy rights in favour of the 3rd respondent. This was challenged in W.P. No. 30645/1993. This Court vide order dated 10.01.2002 allowed the writ petition and remanded the matter for fresh consideration in accordance with law. This Court has observed that the entries in the revenue records no doubt had presumptive value u/s 133 of the Land Revenue Act but the presumption was rebuttable one, In this context, this Court has further observed as under:

Without considering the rebuttable evidence led by the petitioner in the form of the judgment of the Munsiff in O.S. No. 565/1966 or in R.A. No. 169/1972 the grant of occupancy rights in respect of the 3rd respondent by the Tribunal only on the basis of mutation entries are not proper. The Tribunal is required to consider the basis question required as to whether as on the appointed date the respondent was cultivating the land in question as a tenant

5. After remand, the Tribunal has passed the impugned order again conferring occupancy rights in favour of the 3rd respondent. It is this order that is called in question in this writ petition.

6. I have heard the learned counsel for the parties and perused the entire materials placed on record.

7. It is seen from the impugned order that the Tribunal has failed to take note of the judgment rendered in the civil suit in O.S. No. 565/1966 as affirmed in Appeal No. 169/1972. This is contrary to the direction issued by this Court earlier while remanding the matter (W.P. No. 30645/1993).

8. Learned counsel for the petitioner is right in bringing to the notice of this Court a Division Bench judgment of this Court in the case of CIIKKEPUTTAGOWDA V. GURURAJA RAO in W.P. No. 3642/1977 dated

22.07.1982 reported in 1982(2) Kar.L.J. SHORT NOTES OF CASES 29 to contend that in deciding the question whether the petitioners were in possession as tenants prior to 01.03.1974, a decree of Civil Court passed on 21.04.1973 granting permanent injunction in their favour and against respondents in respect of the land in dispute in the suit filed way back in the year 1968 would be relevant. The observations made in the said decision of the Division Bench stating that the decree dates back to the date of suit and it follows that the Civil Court had come to the conclusion that the plaintiffs in their suit were in possession of the lands in dispute as on the date of suit and that the defendants in that suit must be deemed not to have been in possession as on that date will be relevant. It is further held in the said judgment that if the I. and Tribunal why not taken into consideration the said important piece of evidence, its order would be vitiated.

9. In the present case also despite a direction issued by this Court while remanding the matter and inspite of reliance placed on the judgment of the Civil Court affirmed in Appeal by the Appellate Court which are passed prior to 01.03.1974 where findings are recorded with regard to the possession of the property by the petitioner, the Tribunal has not taken note of the same.

10. It is no doubt true that any finding recorded regarding the issue of tenancy will not be binding on the Tribunal as it is the Tribunal alone which has to decide that question based on the materials on record and the Civil Court's decision in this regard cannot operate as a bar for the Tribunal. But this is different from saying that the order passed by the Civil Court granting an order of permanent injunction in a suit instituted way back in the year 1966 has no relevance to the case on hand. As adverted to herein above, the Division Bench of this Court has held that such findings in civil suits are relevant for the purpose of deciding the issue of actual possession of the tenant. Therefore, the Tribunal has seriously erred in not taking note of the direction issued by this Court while remanding the matter and in ignoring the legal position in this regard. Hence, the petitioner is entitled to succeed. The matter requires reconsideration. The order passed by the land Tribunal is, therefore, set aside. The matter is remanded for fresh consideration to the Tribunal keeping in mind the observations made above by affording opportunity to both parties.

The writ petition is allowed in terms stated above.