

(2000) 01 KAR CK 0020

In the Karnataka High Court

Case No : Land Reforms Revision Petition No. 5142 of 1988

Vimal Appayya Markal

APPELLANT

Vs

The Land Tribunal and Others

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 21, 21 (1), 24

Citation : (2000) 2 KCCR 1523

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Anantha Mandagi, for the Appellant; S.W. Arabathi and G.S. Visweshwara for Respondent 3, T.N. Raghupathy, for Respondent 5 and B. Krishnappa, High Court Government Pleader for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chinnappa, J.—One Bharmar Markal claiming to be the tenant of Sy. No. 55:2, 55:4, 55:5, 55:7, 528:9 of Halaga Village filed Form No. 7 prescribed under the Karnataka Land Reforms Act for granting occupancy rights before the Land Tribunal, Belgaum. In the meantime, the said Bharmar Markal died. Therefore, his wife came on record as his legal representative. After considering the case, the Tribunal rejected the claim by its order dated 28.9.1991. As against that order, the Petitioner herein preferred an appeal before the Land Reforms Appellate Authority (hereinafter referred to as "Authority") claiming occupancy rights on the ground that the deceased Bharmar Markal had executed a Will in his favour bequeathing all the right, title and interest in the property in his favour. The Authority by its order dated 4.10.1988 held that the Petitioner cannot maintain the appeal and accordingly the appeal was dismissed. Being aggrieved by that order, the Petitioner has preferred this appeal.

2. The learned Counsel for the Petitioner has vehemently argued that the Petitioner being the person in whose favour the said deceased Bharmar Markal

executed the Will is the legal representative and he is entitled to prefer an appeal claiming occupancy rights over the property. In support of his arguments, he placed reliance on a decision reported in *Dhareppa v. State of Karnataka and Ors.* reported in (1979) 1 Kar LJ 18 wherein it is held that Section 21 of the Act does not prohibit testamentary succession and that it does not amount to an assignment of interest by a tenant and hence a legatee can claim occupancy rights under the Act. Further in the said case, this Court has also followed the decision reported in (1978) 2 Kar LJ 41 wherein it is held that the Tribunal should not stop the proceedings on the death of a necessary party in a proceeding pending before it, but should proceed with the enquiry after bringing on record the L Rs of the deceased. In this case it is not that the deceased was not represented. On the other hand, the wife of the deceased *Bharma Markal* namely *Saraswatibai Bharma Markal* has effectively represented the interest of the deceased *Bharma Markal*. Therefore, the decision relied on by the learned Counsel for the Petitioner is not applicable to the facts of this case.

3. The learned Counsel for the Respondent placed reliance on a decision reported in *Timmakka Kom Venkanna Naik Vs. Land Tribunal*, wherein the Division Bench of this Court has held as follows:

Under Section 21(1) there is a bar against sub-division 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 lifetime cannot be held to be capable to 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 - Statute has peremptorily provided the succession which cannot be defeated by the tenant by bequeathing his interest.

4. Similar question arose for consideration before Their Lordships of the Hon'ble Supreme Court in *Sri Sangappa Kalyanappa Bangi (D) Through Lrs. Vs. Land Tribunal, Jamkhandi and Others*, wherein it is held as follows:

It is no doubt true that the meaning attributed to an heir could be so as to include the descendant and other persons related by legitimate kinship or otherwise who may be covered by a Will, but the true question to be decided in this case is if there is a devise of that nature is hit by Section 21 of the Act or not.

The Assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall outside the scope of the said provision inasmuch as such assignment disposes of or deals with the lease. When there is a disposition of rights under a Will though operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that event, there is an assignment of the tenanted land

but that right will come into effect after the death of the testator therefore

The object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e. to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. The deceased tenant can assign his rights only to the heir noticed in the provision and such heirs could only be the spouse or any descendants or who is related to the deceased tenant by legitimate kinship. It must be taken that a devise under a Will also amount to an assignment and, therefore, nor valid for the purpose of Section 21 of the Act. If Section 24 is read along with Section 21, it would only mean that the land can pass by succession to the heirs of a deceased tenant.

5. While holding as stated above, Their Lordships have discussed the law laid down in a decision reported in 1977 (1) KarLJ 146, 1979 (1) KarLJ 18, but not approved the principles enunciated therein. However, the decision in the case reported in Timmakka Kom Venkanna Naik Vs. Land Tribunal, referred to above is approved. Therefore, it is clear that the claim of the Petitioner is rightly rejected by both the Tribunal as well as the Authority. There is no reason whatsoever for this Court to interfere with that order as the Petitioner who claims to be a legatee cannot claim any right over the tenancy rights if any held by the deceased Bharma Markal as he is not related to the deceased tenant by legitimate kinship. Further, as stated above, the said deceased Bharma Markal was represented by his legal heir-wife and her claim also came to be dismissed. Against that order, she has not preferred any appeal or writ petition and as such the said order has become final. Such being the case, the Petitioner who is claiming right over the property cannot represent the estate of the deceased. Therefore, viewed from any angle this petition has no merit.

6. Accordingly, this petition is dismissed.