

Paramashivaiah and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Apr-03-2000

Reported in : ILR2000KAR4830; 2001(1)KarLJ442

Judge : Ashok Bhan and ;V.G. Sabhahit, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 2(33), 4 and 48-A

Appeal No. : Writ Appeal Nos. 8221 to 8223 of 1999

Appellant : Paramashivaiah and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri A. Nagarajappa, Additional Government Adv., ;Sri S.A. Kalagi, ;Sri H.N. Nagamohan Das and Associates, ;Sri Jayakumar S. Patil, ;Sri G. Nagarajulu Naidu and ;Sri Mahabaleswar Goud, Advs.

Advocate for Pet/Ap. : Sri K. Suman, Adv.

Judgement :

1. Aggrieved by the order passed by the Single Judge dismissing the writ petitions (Paramashivaiah and Others v State of Karnataka) thereby confirming the order Annexure-L passed by the Land Tribunal, Bangalore South Taluk, Bangalore (hereinafter referred to as 'the Tribunal'), rejecting the claim for conformant of occupancy right in respect of land measuring 26 acres 29 guntas in Sy. Nos. 72,

73, 74, 75, 82 and 83 of Chikkayellur Village, Tavarekere Hobli, Magadi Taluk, the appellants have come up in these appeals.

FACTS

Basavaiah alias Basavegowda, father and predecessor in interest of the appellants was the owner of the land bearing Sy. Nos. 72, 73, 74, 75, 82 and 83 in all measuring 26 acres 29 guntas. He agreed to sell the land in favour of one Hanumayya (now deceased), father and predecessor in interest of respondents 3(a) to (h) by an agreement of sale dated 10th of February, 1966. Since the said Basavaiah refused to execute the sale deed in pursuance to the agreement of sale, Hanumayya filed suit O.S. No. 39 of 1969, on the file of the Court of Principal Civil Judge, Bangalore, for specific performance of the agreement to sell. The suit came to be decreed on 30th of March, 1971. Thereafter, in Execution Case No. 343 of 1971, the sale deed dated 15th of November, 1971 came to be executed in favour of said Hanumayya. On 14th of December, 1971, it appears that possession of the lands in question was also delivered to the said Hanumayya.

3. Thereafter the appellants and some others, on 12th of December, 1974, filed O.S. No. 133 of 1974 for setting aside the judgment and decree dated 30th of March, 1971 in O.S. No. 39 of 1969. Prayer was also made to set aside the proceedings in Execution Case No. 343 of 1971 and for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs in the suit land. O.S. No. 133 of 1974 was dismissed by the Principal Civil Judge, Bangalore City. The same was called in question in appeal R.A. No. 8 of 1978, on the file of the Third Additional District Judge, Bangalore City. Appellate Court, by the judgment and decree dated 10th July, 1979, dismissed the appeal thus confirming the judgment and decree passed by the Trial Court.

4. During the pendency of the suit in O.S. No. 133 of 1974 appellants who were plaintiffs 4, 3 and 2 respectively in the said suit filed Form 7 claiming occupancy rights as provided under the provisions of the [Karnataka Land Reforms Act, 1961](#) (hereinafter referred to as 'the Act'). In Form 7 appellant 1 claimed occupancy rights in respect of land measuring 8 acres in Sy. Nos. 72, 73 and 74; the second appellant claimed occupancy rights in respect of 6 acres of land in Sy. Nos. 74, 73

and 72; and the third appellant claimed occupancy rights in respect of land measuring 8 acres in Sy. Nos. 74, 75, 82 and 83. Land Tribunal, by its order dated 3rd of June, 1982 granted occupancy rights in favour of the appellants in respect of the various items of land for which they had made their claim. Against the order of Land Tribunal, landowners respondents 3(a) to (h) filed W.P. No. 20360 of 1982. Single Judge accepted the writ petition and quashed the order of the Land Tribunal. While doing so Single Judge also quashed Form 7 filed by the appellants.

5. Aggrieved by this, the appellants filed Writ Appeal No. 1524 of 1996. The Division Bench by its order dated 11th of December, 1998, modified the order of the Single Judge to the extent he had quashed Form 7 filed by the appellants. The case was remitted to the Land Tribunal for fresh consideration.

6. After remand the Land Tribunal by its order dated 30th March, 1999, Annexure-L rejected the claim of the appellants. This order was called in question by filing the writ petitions which have been dismissed by the order impugned before us.

7. Tribunal in its order Annexure-L recorded a finding that the appellants were not the tenants in respect of the land in question. Case of the appellants in the writ petition was that the finding recorded by the Tribunal to the effect that the appellants were not tenants was erroneous and suffered from an error apparent on the face of the record. Elaborating this submission it was pointed out that the finding recorded by the District Judge in R.A. No. 8 of 1978, dated 10th of July, 1979, while considering Issue No. 6 and the affidavit filed by the landowners by this Court in Contempt Petition C.C.C. (Civil) No. 842 of 1997 shows that the appellants continued to be in possession of the lands in question and therefore, appellants must be held as 'deemed tenants' within the meaning of Section 4 of the Act. As against this, the case of the respondents was that on undisputed facts the appellants were not entitled to the grant of occupancy rights in respect of the land in question on the ground of being 'deemed tenants'. It was their submission that since admittedly the appellants were claiming right, title and interest in respect of the land in question through their deceased father and predecessor Basavaiah against whom a decree for specific performance was passed in O.S. No. 39 of

1969 and the said decree having been executed and also the subsequent suit filed by the appellants for staying the execution of the said decree having been dismissed, the appellants were not entitled to claim the status of 'deemed tenant'.

8. Learned Single Judge on consideration of the submissions made by the respective Counsel for the parties, by an elaborate and well-reasoned order dismissed the writ petitions holding that the appellants could not be taken to be the deemed tenants. Apart from the facts of the present case to which reference has already been made, learned Single Judge relied upon a decision of this Court in Chokkannagari Narayanappa v Land Tribunal, Chintamani and Another, to come to the conclusion that the appellants could not be taken to be the 'deemed tenants'. The case-law relied upon by the appellants in Mohan Balaku Patil and Others v Krishnoji Bhaurao Hundre (dead) by L.Rs and of this Court in Thimmaiah and Others v Smt. Khatumbi and Others and Venkatappa Ningappa v State of Karnataka and Others, was distinguished and held not applicable to the facts of the present case.

9. Counsel for the parties have been heard at length and with their consent the appeal is taken up for final disposal. The points raised before us are the same/similar which had been raised before the Single Judge.

10. The only point which falls for determination is 'whether on the facts and circumstances of this case the appellants could be taken to be the 'deemed tenants' of the land in dispute?'

11. Tenancy has been defined under Section 2(33) of the Act to mean the relationship of landlord and tenant. Section 2(34) defines the 'tenant' to mean the agriculturist who cultivates personally the land he holds on lease from a landlord and includes.--

(i) a person who is deemed to be a tenant under Section 4.

Section 4 which defines 'deemed tenants' reads:

'Persons to be deemed tenants.--A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated

personally by the owner and if such person is not.--

(a) a member of the owner's family; or

(b) a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of owner's family; or

(c) a mortgagee in possession:

Provided that if upon an application made by the owner within one year from the appointed day.--

(i) the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal; or

(ii) the (Tribunal) refuses to make such declaration but its decision is reversed on appeal.

Such person shall not be deemed to be a tenant'.

12. From the reading of Section 4 it is evident that only a person lawfully cultivating any land belonging to another person, would be deemed to be a tenant, if such land is not cultivated personally by the owner and if such person is not.--

(a) a member of the owner's family; or

(b) a servant or a hired labourer on wages payable in cash or kind and not in crop share cultivating the land under the personal supervision of the owner or any member of owner's family; or

(c) a mortgagee in possession.

The emphasis for becoming a 'deemed tenant' is that the cultivation of the land by a person claiming to be 'the deemed tenant' must be a 'lawful cultivation'. In other words, a trespasser or a person who is in illegal possession of the land belonging to another person on the appointed date i.e., 1st of March, 1974, cannot be treated as a 'deemed tenant' for the purposes of Section 4 of the Act. The cultivation of a

land belonging to the other person can be lawful only if the cultivation is with the consent or permission of the landowner. Forcible occupation against the will and wish of the landowner cannot be considered to be the lawful cultivation.

13. Admittedly in the present case, the predecessor in interest of respondents 3(a) to (h) became the owner of the suit land in pursuance to the sale deed executed in his favour in execution of the Court decree passed in the suit for specific performance. The sale deed was executed on 15th of November, 1971 through the Court Commissioner in favour of the deceased Hanumayya. Deceased was put in possession of the land. Subsequently, suit O.S. No. 133 of 1974 was filed by the appellant along with others which was dismissed by the Trial Court. The order passed by the Trial Court was later on upheld in the appeal. In the said suit, the Courts found that deceased Hanumayya, father of respondents 3(a) to (h) was in possession between the years 1969 to 1974. Appellants and others were found to be in possession of the land in question only during the year 1974-75 and 1975-76. In paragraph 15 of the judgment a specific finding was recorded that the possession of the appellants on the land in dispute was illegal. Paragraphs 10 and 15 of the judgment read as under:

'10. The plaintiffs claim to be in possession of the lands and in support of their case they have examined P.W. 1-Lakshminarayana Rao, P.W. 2-Ramachandra Rao and P.W. 4-Byrappa. These three witnesses who are stated to be adjacent landholders have stated in their evidence that the suit lands have been in possession of Basappa and after his death of his sons, i.e., the plaintiffs, and that Hanumayya or defendants 2 to 5 were never in possession of the suit lands. The defendants on the other hand have contended that T. Hanumayya was in possession of the suit land from the date of the agreement and that after his death they have been in possession of the suit lands. The defendants have examined D.W. 2-Madava Rao, the previous Shanbogue of the village apart from two of the defendants D.W. 2 has stated in his evidence that after the execution of the agreement Hanumayya was in pos-session and that after his death his children are in possession of the suit lands. The defendants have produced the RTC extracts for the period from 1970-71 to 1973-74, to prove that Hanumayya was in possession of the suit lands. Exs. D-15 to D-26, the RTC ex-tracts show that the

suit lands were in the possession of Hanumayya from 1970-74. The evidence of the plaintiffs witnesses that Hanumayya was never in possession of the suit lands cannot be believed, not only in view of the entries in the RTC extracts but also in view of the admission by the plaintiffs in the petition filed by them in Mis. No. 16 of 1972. Ex. D-1 is the certified copy of that petition. It has been filed on 3-1-1972. In that petition the present plaintiffs have categorically admitted that Hanumayya took forcible possession of the suit land on or about 28-11-1969 and that since then he has been in possession enjoying the income from the lands. In fact in that petition the plaintiffs have sought for possession of their share in the suit lands. It is therefore clear that Hanumayya must have been in possession of the suit lands between 1969-1974. The fact that after the death of Hanumayya the plaintiffs have again come in the possession of the suit lands is admitted by the defendants witnesses themselves. D.W. 3, the 7th defendant admits in his evidence that about one year back the plaintiffs forcibly took possession of the lands. D.W. 2 states in his evidence that after Hanumayya's death the plaintiffs are in possession of the suit lands. The evidence no doubt would show that on the date of the suit the plaintiffs were in possession of the suit lands. The plain-tiffs have also produced the RTC extracts Exs. P-5 to P-13 which show that the plaintiffs have been in possession of the suit lands in 1974-75 and 1975-76. I will therefore, answer Issue No. 6 in the affirmative.

15. Though the plaintiffs are found to be in possession of the suit lands, it is seen that they have no title to those lands. The predecessor-in-title of defendants 2 to 5 has acquired valid title to the suit lands and he was also in possession of the suit lands. The plaintiffs have come into possession of the suit lands after the death of Hanumayya and their possession is patently illegal. As the defendants 2 to 5 have title to the suit properties, the plaintiffs are not entitled to a permanent injunction against them. I therefore, answer Issue No. 8 in the negative'.

(emphasis supplied)

14. The findings recorded in O.S. No. 133 of 1974 and thereafter in the appeal have become final. In view of the findings recorded above, it cannot be held that the possession of the appellants was lawful or permissive. Possession and

cultivation has to be permissive and lawful in order to create a relationship of landlord and tenant. Any forcible occupation of land belonging to another and its cultivation against the will and wish of the owner cannot be considered as lawful cultivation. In view of the undisputed facts the appellants are not entitled to claim that they are 'deemed tenants' in respect of the land in question. As per Section 2(33) tenancy' means the relationship of landlord and tenant. 'Rent' has been defined to mean money paid or payable by a tenant on account of the use and occupation of the land held by him. Persons specified in clause (23)(a) to (d) of Section 2 of the Act by virtue of the relationship are required to pay the rent. If that be so, the 'deemed tenant' would also be required to pay the rent. Where the occupation is forcible and no rent is being paid then such a person cannot be held to be in lawful cultivation or possession of the land belonging to another person.

15. Till the year 1979 the appellants were claiming an adversetorial title to the land. A tenant cannot claim to be the owner of the land. In the circumstances it defies comprehension as to how it is permissible for the appellants to claim tenancy rights in respect of the land in question. The view taken by the Single Judge finds support from the judgment of this Court in Chokkanagari Narayanappa's case, supra. In paragraphs 9 and 10 of the judgment it has been held:

'9. Section 4 intends to protect the interest of persons lawfully cultivating the land. In Commissioner of Income-tax, Bombay Presidency v Bombay Trust Corporation Limited, it is held that when a person or thing is 'deemed to be' something, the only meaning possible is that he or it is not in reality that something, the Act of legislature requires him or it to be treated as if or it were. Thus the expression 'deemed to be a tenant' intends to confer a status by legal fiction on persons other than those referred to clauses (a) to (e) of Section 4 but for which a person could not be a tenant in law. The phrase 'deemed to be' raises a presumption in favour of the person lawfully cultivating the land and it is a rebuttable presumption. To be a 'deemed tenant' one must lawfully cultivate the land belonging to another person. The word 'lawfully' implies, possession has a rightful origin and is capable of being defended successfully. Relying on the decision of this Court in Muniyallappa v Krishnamurthy B.M. and Others, it was contended that he must be

considered as a deemed tenant. But at page 402, this Court, after extracting the relevant portion of the judgment of the Supreme Court, has stated 'It is unnecessary for the purpose of disposal of this appeal, to lay down as to who are the persons entitled to be status of 'deemed tenant''. However, Sri Subba Rao relying on the portion extracted from the decision of the Supreme Court submitted that the consent of landlord was not necessary to consider his claim as a deemed tenant. It is true, if consent is there, it becomes a contractual right. Though it is not possible to exhaust the list of persons as to who could be considered as deemed tenants, for the purpose of examining the rival contentions, a few illustrations which have a bearing on the point are set out. A vendee in possession of the property on deferred payment of consideration in instalment, cannot be considered as a 'deemed tenant'. Likewise, vendor remaining in possession of the property till the payment of entire consideration cannot be deemed to be a tenant. A vendor who continues to be in possession of the property even after the execution of the sale deed with an understanding to harvest the crop standing on the date of the conveyance cannot be treated as a 'deemed tenant'. So also the vendor who has failed to deliver property cannot take advantage of his laches and claim to be a 'deemed tenant'. It is only to overcome the situation like this, the Legislature has categorically stated that it must be a lawful cultivation. 'Lawful' though not concomitant with the word 'concurrence', in view of tenancy laws, the possession must still be capable of being defended successfully if action is taken.

10. 'Tenancy' means the relationship of landlord and tenant. 'Rent' means money paid or payable by a tenant on account of the use and occupation of the land held by him. Persons specified in clauses (ii) to (iv) of Section 2(34) of the Act by virtue of their relationship, no doubt are required to pay rent. Likewise, the deemed tenant should also pay rent. A person lawfully cultivating the land belonging to another must necessarily pay the rent for use and occupation. Otherwise, there will be no distinction between a person in possession of the property without the concurrence of the landowner and a trespasser. There is no material regarding the payment of rent. A person cultivating the land claiming it as his own is not lawfully cultivating the land belonging to another. It is a case of dispute relating to title. The finding regarding possession as on 1-3-1974 is against him. His case is, he never parted with possession. He claims to remain in possession as owner. His plea cuts

at the very root of deemed tenancy under the respondent. As rightly pointed out there is no basis for his claim'.

(emphasis supplied)

16. Counsel for the appellant relying upon the proviso to Section 4 contended that as the owner had failed to make an application within one year from the appointed day for a declaration that the appellants were not the tenants, it be deemed that the appellants were the tenants of the land in dispute. The submission made is farfetched and erroneous. The appointed day is First of March, 1974. On that date the deceased Hanumayya was found to be in possession. There was no occasion for him to move an application within one year from the appointed date to get a declaration that the appellants were not the tenants in the land in dispute. The application for claiming tenancy rights was filed much after the expiry of the period of one year from the appointed day. No negative presumptions can be raised against respondents 3(a) to (h) simply because they failed to file an application to get a declaration that the appellants were not the tenants of the land in dispute. Till the expiry of one year from the appointed date the creation of tenancy was not in the contemplation of either of the parties. Appellants had never asserted themselves to be the tenants. Nowhere in suit O.S. No. 133 of 1974 it had been stated that the appellants were the tenants on the land in dispute. They did not seek injunction restraining respondents 3(a) to (h) not to dispossess them forcibly in view of their tenancy rights. They were claiming title to the land and not the tenancy. The plea of tenancy or deemed tenancy is clearly an afterthought to defeat the rights of respondents 3(a) to (h).

17. For the reasons recorded above, we conclude that the learned Single Judge was right in holding that the appellants were not deemed tenants in respect of the land in question. We further agree with the Single Judge that the authorities relied upon by the Counsel for the appellants are not applicable to the facts of the present case. The point involved in those cases was different than the point involved in the present case.

18. The point raised by the Counsel for the appellants is thus answered in the negative and held that the appellants, on the given facts and circumstances of the

present case, cannot be held to be 'deemed tenants' within the meaning of Section 4 of the Act. Dismissed. No costs.

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