

H.P. Abdul Khadar Vs. Hammad Beary and Others

H.P. Abdul Khadar Vs. Hammad Beary and Others

SooperKanoon Citation : sooperkanoon.com/373606

Court : Karnataka

Decided On : Sep-08-1997

Reported in : ILR1998KAR889; 1998(1)KarLJ539

Judge : Chidananda Ullal, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 2(2), 38(1) and 121-A; Karnataka Land Reforms Rules, 1974 - Rule 9-A(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115; Karnataka Land Reforms Act, 1962 - Sections 121-A

Appeal No. : Land Reforms Revision Petition No. 378 of 1990

Appellant : H.P. Abdul Khadar

Respondent : Hammad Beary and Others

Advocate for Def. : Sri K. Chandrashekhar, Adv. and ;Smt. K.R. Meena Kumari, High Court Government Pleader

Advocate for Pet/Ap. : Sri B.L. Acharya, Adv.

Judgement :

ORDER

1. This revision petition is filed by the owner to challenge the order dated 15-9-1989, in Appeal No. LRA/H/70/86-MAN, passed by the Land Reforms Appellate Authority, Mangalore. In passing the impugned order, the Appellate Authority while

dismissing the appeal of the revision petition had confirmed the order of the Land Tribunal dated 14-3-1986 in No. LRT949/84-85, granting right of ownership to the respondent 2 under Section 38 of the Land Reforms Act.

2. I heard the learned Counsel for the revision petitioner, Sri B.L. Acharya and the learned Counsel for the contesting respondents 1 and 2, Sri K. Chandrashekhar. The respondent 3, Land Tribunal and the respondent 4, State are represented by the learned High Court Government Pleader, Smt. K. R. Meena Kumari.

3. The brief facts of the case are as hereunder:

That the revision petitioner herein had filed a suit in Original Suit No. 177 of 1980 on 29-7-1980 as against the contesting respondents 1 and 2 for their ejectment, before the Court of Munsiff at Karkal; that the respondents 1 and 2 had thereafter filed Form 2-A under Section 38 of the Land Reforms Act (henceforth in brief as 'Act') for grant of ownership right in respect of 5 cents of land in Survey No. 35/15 of Kaleangadi village; that the Land Tribunal registered a case in the matter of claim of the respondents 1 and 2 in two different cases in No. LRT:948-949:84-85; that the Land Tribunal did not record any evidence and based on spot inspection, the respondent 3, Land Tribunal while rejecting the claim of the respondent 1 had granted ownership right to the respondent 2. It appears that the said order passed by the Land Tribunal was by the majority opinion of the members excluding the Chairman.

That, having been aggrieved thereto by the said order granting ownership right to the respondent 2, the revision petitioner herein had filed an appeal before the Appellate Authority and the Appellate Authority having found that the Land Tribunal did not record the evidence of both sides, had recorded the evidence of the parties before it. When the revision petitioner had examined through his power of attorney holder, PW-1 and examined four other witnesses, the respondents 1 and 2 examined themselves and the respondent 2 examined herself and examined yet another witness by name, Bhoja Poojari in support of her case before the Appellate Authority; that the Appellate Authority on appreciation of the evidence on its records in the absence of the evidence on the records of the Land Tribunal had passed the impugned order, whereby it had conferred the ownership

right to the respondent 2 in respect of the subject land.

Having been aggrieved thereto the revision petitioner is before this Court.

4. The learned Counsel for the revision petitioner, Sri B.L. Acharya while taking me through the facts of the case and further evidence on record of the Appellate Authority submitted that the Appellate Authority had passed the impugned order granting ownership right to the respondent 2 without properly appreciating the material evidence on record. He further argued that the Appellate Authority had not addressed itself the point whether the respondent 2 was cultivating the subject land as on 1-1-1979 or not. In this regard, Sri Acharya had pointed out that in the evidence of the respondent 2 before the Appellate Authority, though she claimed that she was an agricultural labourer, she had not stated from what date she was working as an agricultural labourer. It is also his submission that when the respondent 2 had not clearly asserted from what date she was working as agricultural labourer it was erroneous on the part of the Land Tribunal to grant the ownership right; referring to the evidence given by an independent witness by name, Bhoja Poojari, Sri Acharya pointed out that the said witness had stated on oath before the Land Tribunal that the respondent 2 was an agricultural labourer for about 7 to 8 years. In this context, Sri Acharya has drawn my attention to the date on which the respondent 2 was examined before the Appellate Authority. The said date of recording of evidence of Bhoja Poojari was on 9-12-1988 and if that is so according to him the respondent 2 was an agricultural labourer either in the year 1981 or in the year 1980.

5. Sri Acharya had also canvassed before me that the claim of the respondent 1 as well as the respondent 2 was filed only after petitioner filed the original suit before the Court of the Munsiff, Karkala in Original Suit No. 177 of 1980 and therefore his submission is that the same was an afterthought only to stall the proceedings in the suit and the same was with an ulterior motive and that there was no substance or merit in the claim of the respondents 1 and 2 before the Land Tribunal to claim ownership right in respect of the subject land under Section 38 of the Act.

6. While advertng to the evidence adduced by the revision petitioner before the Appellate Authority, Sri Acharya submitted that the revision petitioner had successfully proved his case before the Appellate Authority that neither the respondent 2 nor for that matter the respondent 1 was an agricultural labourer and that they both had filed Form 2-A claiming falsely ownership right in respect of the subject land. Sri Acharya also submitted that the respondent 2 was a beedi roller and was never working as an agricultural labourer and that the revision petitioner to prove that fact had also examined the contractor under whom the respondent 2 was rolling beedi. He pointed out that the said witness, AW-2 had deposed that the respondent 2 was known to him and that she was working as beedi roller under him from the year 1979 to the year 1982 and that the said witness was a contractor working under Prakash Beedi Works. It is also borne on record of the Appellate Authority that the revision petitioner had also examined the Supervisor, Prakash Beedi Works as AW-3 before the Appellate Authority.

7. For the aforesaid reasons, Sri Acharya submitted that the Appellate Authority had erred in granting ownership right to the respondent 2 in passing the impugned order. Therefore, he prayed that the impugned order be set aside and further prayed that the application of the revision petitioner for grant of ownership of the respondent 2 be rejected.

8. As against the above argument addressed by Sri Acharya, the learned Counsel appearing for the contesting respondents 1 and 2, Sri Chandrashekhar argued that the impugned order passed by the Appellate Authority is just and proper and that the same is based on proper appreciation of the evidence adduced by both sides before the Appellate Authority. While taking me through the evidence of the respondent 2, Sri Chandrashekhar submitted that the respondent 2 had asserted in her evidence that she was working as an agricultural labourer under Lokaiah Poojari and others and that the said assertion on the part of the respondent 2 in her evidence was well supported by the evidence of yet another witness examined by name, Bhoja Poojari. Sri Chandrashekhar while referring to the evidence adduced by the said witness, argued that the evidence of the respondent 2 was well supported by the said evidence. According to Sri Chandrashekhar, the evidence of the said independent witness has to be believed, for there was no

reason to doubt the veracity of the evidence given by the said witness. While referring to the impugned order under challenge, Sri Chandrashekhar pointed out that the Appellate Authority had rightly appreciated the said witness, Bhoja Poojari.

9. Sri Chandrashekhar had also relied upon three decisions of this Court in *D.M. Ramachandra Rao v State of Karnataka and Another*, wherein the learned Single Judge of this Court held that when both the Land Tribunal and the Appellate Authority, on appreciation of evidence on record before it had recorded a finding of fact that petitioner was not cultivating the lands on the relevant date, having regard to the inconsistency in the oral evidence led by him, this Court exercising revisional jurisdiction should not interfere with that finding of fact unless the conclusions of the authorities below have been based its findings on conjectures and not on evidence.

10. The other decision, Sri Chandrashekhar relied upon is *Racha Naika v State of Karnataka and Others*. In para 17 of the said judgment, the learned Single Judge of this Court held as hereunder:

'The Appellate Authority on consideration of oral and documentary evidence has come to the conclusion that the petitioner is not a tenant and is not entitled to occupancy right. This finding of fact is that of the final Court of fact. The scope of revision under Section 121A of the Act is limited and does not extend to re-appreciation of fact. In the decision in *Thimmamma v Siddarangaiah*, this Court has held that 'it is thus clear that the scope of revision under Section 121A of the Act is limited and does not extend to re-appreciation of facts.

11. The last decision Sri Chandrashekhar relied upon is *Syed Sadiq and Others v State of Karnataka and Others*. In the said decision, the learned Single Judge of this Court held that the revisional power of this Court under Section 121A is not the same as that of the First Appellate Court and that the scope of the revisional power under Section 121A of the Act is wider than that of Section 115, Civil Procedure Code and that Section 121A of the Act confers revisional jurisdiction on the High Court for the purpose of satisfying itself as to the legality of the order passed by the Appellate Authority as well as for examining and satisfying itself as to the regularity of the proceedings. The learned Single Judge in the said

case held as hereunder:

'There is no doubt the jurisdiction of this Court under Section 121A is not the same as that of the 1st Appellate Court. It is circumscribed by the conditions specified in the Section. The scope of the revisional powers under Section 121A of the Karnataka Act 10 of 1962 (that is, Karnataka Land Reforms Act) is wider than the scope of this Court under Section 115 of the Code of Civil Procedure. The Section 121A of the Act confers revisional jurisdiction on the High Court for the purpose of satisfying itself as to the legality of the order passed by the Appellate Authority as well as for examining and satisfying that proceedings have been taken regular, that is, regular procedure has been followed. In other words, if the order suffers from illegality or the proceedings suffer from irregularity in opinion of the High Court, the High Court has got jurisdiction to interfere with the order and to set aside that order and then pass further orders... Illegality refers to breach of law, that is, if authority has acted in exercise of jurisdiction, in breach or violation of some committed illegality or illegally when the authority or Court in exercise of its jurisdiction has committed certain errors of procedure in the course of the trial and decision of the case and that error is material in the sense that is ultimately decision on merit. The said error of procedure can be said and termed to be irregularity and material irregularity. It is well-settled principle of law that a finding of fact is to be recorded by a Court on the basis of admissible and relevant material on record and not on the basis of conjecture and surmises. If a Court of Law, original or appellate, while exercising its powers records a finding relying on certain inadmissible evidence or relying on a document not proved or execution of which has not been established, it can no doubt be said to be a case of exercise of jurisdiction by the Court or Tribunal illegally and with material irregularity. In the same way if Evidence Act prescribes a mode of proof of document by oral evidence and prescribes what evidence is to be considered as direct evidence to prove, but the Court of Law acts to be contrary, the Court may be said to exercise jurisdiction irregularly as well as in breach of law. But a simple error of appreciation of evidence or erroneous finding arrived at by a Court or Tribunal on the basis of misappreciation thereof cannot be termed to be one entitling exercise of revisional jurisdiction. Therefore, each case has to be tested on the above yardsticks'.

12. For the aforesaid reasons, Sri Chandrashekhar prayed that the instant revision petition be dismissed.

13. Now the short points those arise for my consideration in the instant revision petition are as hereunder:

(i) Whether the respondent 2 had proved before the Appellate Authority that she was an agricultural labourer as on 1-1-1979?

(ii) Whether the impugned order passed by the Appellate Authority is in any way erroneous and called for to be interfered with in the instant revision petition?

14. Regarding Point No. (i): It is not in dispute that the respondent 1 as well as the respondent 2 had filed Form 2-A under Section 38 of the Act for grant of ownership right in respect of the subject land after revision petitioner had filed a suit before the Court of Munsiff, Karkal. It is relevant to point out at this stage that both the respondent 1 as well as the respondent 2 had filed Form 2-A independently for grant of ownership right in respect of the subject land and that both of them filed such forms on the plea that both of them were agricultural labourers. That the Land Tribunal in passing the impugned order at the first instance while rejecting the claim of the respondent 1 had granted ownership right to the respondent 2 and that the Land Tribunal had passed such an order not by holding any enquiry worth the name but only after holding spot inspection of the subject land. Hence before the Appellate Authority, the revision petitioner on the one hand and the respondent 2 on the other had adduced respective side of their evidence. I have also to point out here that in the evidence of the respondent 2 adduced before the Appellate Authority, she had deposed that she was working as an agricultural labourer. It is also in her evidence that she was rolling beedi to assist her sister-in-law. If the entire evidence of the respondent 2 is closely scrutinised, it appears to me that in no part of her evidence she asserted that she was an agricultural labourer on the relevant date i.e., 1-1-1979; added to it, Bhoja Poojari who was examined as a witness in support of her case, had clearly stated that the respondent 2 was an agricultural labourer for about 7 or 8 years, obviously that should be earlier to the date of evidence and that his evidence was recorded on 9-12-1988. If it is true that the respondent 2 was an agricultural labourer 7 or 8

years earlier to the said date of evidence, obviously that would take back to the year 1980 or 1981. It is to be taken note here that it is in the year 1980 the revision petitioner had filed a suit before the Court of Munsiff at Karkal for her ejectment and also for ejectment of her husband, the respondent 1.

15. The Appellate Authority in the course of the impugned order had also observed that the point before it for consideration was whether the respondent 2 was an agricultural labourer as on 1-1-1979 or not. As I pointed out as above that in the evidence adduced by the respondent 2 and yet another witness, Bhoja Poojari, if she had not proved her case that as on 1-1-1979, she was an agricultural labourer, the natural cause for the Appellate Authority was to hold that the respondent 2 had failed to prove that fact to her disadvantage and peril.

16. The learned Counsel for the respondents had cited three decisions referred to above, before me in support of his contention that the revisional power of this Court is limited so as to find out whether there was any illegality in the impugned order or any irregularity was committed either by the Land Tribunal or for that matter by the Appellate Authority in the matter of proceedings before the said authorities below. As I pointed out the Appellate Authority had reached an erroneous conclusion virtually not based on the evidence either on the records of the Land Tribunal or on its own record; therefore, it appears to me that the impugned order cannot stand the scrutiny of this Court under Section 121A of the Act, for the said conclusion reached by the Appellate Authority is totally without any evidence on record.

17. In that view of the matter, I find that the impugned order passed by the Appellate Authority cannot sustain in law and therefore liable to be set aside. In the result, I pass the following:

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com