

M. Basavaiah and ors. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Apr-07-2003

Reported in : ILR2003KAR1421; 2003(3)KarLJ189

Judge : M.F. Saldanha and ;M.S. Rajendra Prasad, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48A; [Karnataka Land Revenue Act, 1964](#) - Sections 133; [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 23

Appeal No. : Writ Appeal Nos. 1015, 1016 and 4841 to 4852 of 2001

Appellant : M. Basavaiah and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : Chandrashekar Rodnavar, High Court Government Pleader for Respondents-1 and 2, ;M.P. Geethadevi, Adv. for Respondent-3 and ;Madanmohan M. Kannur, Adv. for Respondent-4

Advocate for Pet/Ap. : T.R. Subbanna, Sr. Counsel for ;Sivan and Siva Associates

Disposition : Appeals dismissed

Judgement :

M.S. Rajendra Prasad, J.

1. These appeals filed under Section 4 of the Karnataka High Court Act are directed against the order dated 6-12-2000 passed by the learned Single Judge in Writ Petition Nos. 20764 and 9972 of 1993, wherein the learned Single Judge had dismissed the writ petitions filed by the appellants thereby confirmed the order of the Land Tribunal wherein occupancy rights in respect of lands in S. Nos. 52, 53 and 67 of Mangalavarapet, Channapatna Taluk, had been granted in favour of R-3 herein, challenging the legality and validity of the order of the learned Single Judge.

2. We have heard the arguments of both sides.

3. Sri T.R. Subbanna, learned Senior Counsel for the appellants, strenuously contended that the material on record clearly shows that the order of the learned Single Judge in writ petitions is illegal and invalid. The learned Single Judge had not appreciated the facts in issue in the right perspective. The material on record clearly shows that there has been ample evidence placed on record by the appellants to show that they have been the tenants in respect of the extents mentioned in the order of the Land Tribunal passed on an earlier occasion. The learned Single Judge had also not considered the applications filed by the appellants seeking permission to lead additional evidence, in the proper perspective. The material on record also shows that no full and fair opportunity had been afforded to the appellants to substantiate their contentions before the Land Tribunal and the same has led the appellants for filing applications for additional evidence. The learned Counsel has relied upon an unreported decision rendered by this Court in W.P. No. 17880 of 1991, DD: 6-1-1998, and prayed for allowing the appeals and for remanding the case to the Land Tribunal for fresh enquiry and to afford fair opportunity to the appellants to lead any additional evidence as proposed in I.A. Nos. 1 and 2.

4. Sri Chandrashekar Rodnavar, learned High Court Government Pleader, strenuously contended that the material on record clearly shows that the order impugned in the writ petitions is legal and valid. The learned Single Judge had considered the facts in issue in the right perspective and had arrived at the right

conclusion. The appellants have failed to make out any grounds to allow the appeals as now sought. Hence, the learned Government Pleader prayed for dismissal of the appeals.

5. Smt. Geethadevi, learned Counsel for R-3, strenuously contended that the material on record clearly shows that the order of the learned Single Judge is a well-considered order. The learned Single Judge had considered the facts and circumstances of the case at length and had arrived at a right conclusion. The material on record also shows that R-3 has been the tenant of the lands in question for over five decades. The tenancy had come into existence by virtue of two registered lease deeds. The material on record also shows that the name of R-3 is shown as tenant in the revenue records in respect of the lands in question from the inception till now. In the R.T.C. for the year 1974-75, a stray entry appears showing that R-3 had been in possession of the lands in question as Manager. The documentary evidence placed on record before the Land Tribunal by R-3 proves his case beyond doubt. The appellants and others, who have nothing to do with the lands in question, had filed applications seeking registration of their names as occupants in respect of the lands in question. Patently, the appellants had not produced any documents and admittedly, there were no documents to substantiate their claim. Considering the material on record, the Land Tribunal had arrived at a right conclusion and granted occupancy rights in favour of R-3. The appellants, being dissatisfied with the order of the Land Tribunal, had approached this Court through two writ petitions and the learned Single Judge had considered the facts in issue in the right perspective and had arrived at a conclusion that there is no need for allowing LA. Nos. 1 and 2 or for remanding the case for fresh enquiry as sought for and as such, the learned Single Judge had dismissed the writ petitions. The learned Counsel further contended that there is absolutely no need for remanding the case to the Land Tribunal as now sought for by the other side for the reason that the Land Tribunal had considered the facts in issue at length in the right perspective and all the parties concerned had been given a full and fair opportunity to adduce and produce evidence and it is too late in the day for the appellants to file LA. Nos. 1 and 2 seeking permission to adduce additional evidence. The learned Counsel also contended that a party to a litigation of this nature cannot, as a matter of right, seek permission to lead

additional evidence and Rule 9 of the Land Reforms Appellate Authority Rules clearly lays down specific grounds for allowing an application of this nature and the appellants have not been able to make out any of the said grounds to allow the applications. The learned Counsel also contended that a matter of this nature cannot be remanded to the Land Tribunal by mere asking by a party and unless it is demonstrated before the Court, that non-allowing of the application for additional evidence would result in injustice. The learned Counsel further contended that in the case on hand, the appellants have failed to show any such special circumstances for allowing LA. Nos. 1 and 2 or the appeals. The learned Counsel relying on the ratios laid down in *Ashwinkumar K. Patel v. Upendra J. Patel and Ors.*, : AIR 1999 SC1125 , *Smt. Gurusiddamma v. Hanumanthappa and Ors.*, 2002(1) Kar. L.J. 478 : ILR 2002 Kar. 612, *Bhimeshwara Swami Varu Temple v. Pedapudi Krishna Murthi and Ors.*, : AIR 1973 SC1299 , *Govindaswamy Gowda v. Siddappa and Ors.*, 2000(3) Kar. L.J. 478 : ILR 2000 Kar. 1434, *Ramchandra Keshav Adke (dead) by L.Rs v. Govind Joti Chavare and Ors.*, : [1975]3SCR839 , *M.N. Muddiah Setty v. State of Karnataka and Ors.*, : ILR 1989 KAR1516 and *Smt. Basavua v. Parameshwarappa Mallappa Haiti and Ors.*, 2003(3) Kar. L.J. 184 : ILR 2003 Kar. 205 prayed for dismissal of the appeals.

6. We have carefully perused the material on record and have given our anxious thoughts over the rival contentions raised at the Bar.

7. Before proceeding further, it is felt necessary to mention a few facts which are necessary for disposal of the appeals.

It is an undisputed fact that the lands in S. Nos. 52, 53 and 67 of Mangalavarapet at Channapatna Taluk are agricultural lands belonging to R-4 herein. It is also not disputed that the said lands are tenanted lands. R-3, Siddegowda submitted Form 7 before the Land Tribunal seeking grant of occupancy rights in respect of 17 acres 20 guntas in all. The appellants, 14 in number, along with 9 others had also submitted separate Form 7 seeking grant of occupancy rights in respect of the same lands. The Tribunal, in the first instance, had rejected the claim of R-3 and granted occupancy rights to the appellants herein mainly relying upon the spot inspection report. The said order was challenged before this Court by R-3 in writ

proceedings. This Court allowed the writ petition and remanded the case to the Land Tribunal for fresh enquiry and disposal in accordance with law. After remand, the parties at issue had let in evidence and on 14-5-1986, the Tribunal upheld the claim of R-3 and rejected the claim of the appellants and 9 others. At this stage itself, it is necessary to mention that five of the rival claimants out of 23 persons, by name M.T. Narayana Gowda, Channaiah, Basavaiah, Honnamma and Channaiah had given statements before the Tribunal that they were working as coolies and they have no concern over the lands and the other two applicants by name Narayana Swamy and Thimmaiah did not appear before the Land Tribunal at all. Accordingly, the claim of these seven persons had been rejected by the Land Tribunal, Feeling aggrieved by the order of the Land Tribunal, the present appellants, 14 in number, had filed appeal before the Land Reforms Appellate Authority in A.L.R.A. No. 355 of 1987. During pendency of the appeal, the Karnataka Land Reforms Appellate Authority came to be abolished and as such the same got converted into Writ Petition Nos. 1248 and 1249 of 1986. The learned Single Judge, after hearing both sides, dismissed the writ petitions and also interlocutory applications for additional evidence and thereby confirmed the order of the Land Tribunal in granting occupancy rights as prayed by R-3. Feeling aggrieved by the said orders, the appellants have come up with these appeals challenging the legality and validity of the order impugned.

8. In view of the grounds urged by both sides at the time of hearing, the facts in issue fall into a very narrow compass. As per the claim of the appellants, they had not been given a full and fair opportunity before the Land Tribunal in substantiating their claim. Accordingly, LA. Nos. 1 and 2 have been filed and virtually the appellants seek for allowing I.A. Nos. 1 and 2 so that they could lead additional evidence as proposed before the Tribunal. On the contrary, R-3 specifically contends that the material on record clearly shows that he has been the tenant of the lands for over five decades and his name is shown in the revenue records as tenant and the Tribunal has very well considered the matter and had also afforded opportunity to both sides to lead evidence as they desired. Just because their claim had been rejected by the Tribunal, the appellants have come up with these applications only with a view to protract the proceedings and to create undue complications. The learned Single Judge, on considering the material on record,

had negated the contentions of the appellants. Now, we will have to examine the material on record to see whether the order of the learned Single Judge calls for any interference by us.

9. We also feel it necessary to mention the gist of the applications. LA. No. 1 is an application filed under Rule 9 of the said Rules for permission to lead additional evidence by way of cross-examining R-3 and another witness by name Prahladarao, who had been examined. I.A. No. 2 is another similar application for permission to produce certain documents as detailed in that application.

10. The learned Counsel for R-3, in the course of her lengthy arguments, has produced one registered lease deed dated 19-6-1944 executed in favour of R-3 by Venkategowda. She has also relied upon another registered lease deed dated 27-2-1963 executed in favour of Siddegowda. Form 11 filed by the landladies Smt. Sakkubai and Smt. Ramabai, dated 29-10-1974 shows that Siddegowda had been the tenant of the lands. The pahani extracts in respect of the said, lands patently show that Smt. Sakkubai as the kathedar, the said lands are tenanted lands, and Venkategowda alias Buddegowda is shown to be in possession of the said lands. At this stage, it is also necessary to mention that the name of R-3 is shown in R.T.C. extracts for the year 1974-75 only as the Manager. The learned Counsel also produced a number of letters addressed to Venkategowda alias Buddegowda and patently they relate to payment of guttige. The parties had also let in oral evidence before the Land Tribunal. Patently, the appellants, in the course of their statements, had submitted before the Tribunal that they had no documents to substantiate their claim. The main thrust of the appellants is that they want to cross-examine R-3 and another person by name Prahladarao as seen in I.A. No. 1. Patently, they have been examined on earlier occasions and it is not made clear as to what had been the extraordinary reason for not cross-examining the said witnesses. So far as I.A. No. 2 is concerned, the appellants have sought for permission to produce the tax paid receipts, record of rights and a mahazar and sketch prepared by the surveyor.

11. From the material on record, it is seen that the name of R-3 has been shown to be in possession of the lands in question right from inception and even during the

crucial year i.e., 1973-74. All of a sudden, the name of R-3 also came to be shown as Manager in the R.T.C. extract. It is seen from the Full Bench judgment of the Apex Court in Bhimeshwara Swami Varu Temple's case, supra, that the presumption that arises from the entries in the revenue records for a large number of years in respect of ownership and possession of land with certain person does not stand rebutted by mere stray entries in favour of others when the evidence is of uncertain character and is inadequate. From the material on record, it is seen that for the year 1974-75, the word 'Manager' also appears along with the name of R-3. The insertion of word 'Manager' had been for the first time and that too not for the crucial year, but for a subsequent year. During the course of proceedings before the Tribunal or before this Court, it is not explained as to how such a word came to be inserted in the revenue records. Moreover, the provisions of Section 133 of the Karnataka Land Revenue Act attaches a presumption in respect of entries in the revenue records. In view of these aspects and having regard to the ratio laid down in the said decision, in our opinion, this stray entry is not sufficient to turn the tables in favour of the appellants.

12. It is also necessary to mention that the Land Tribunal had given a full and fair opportunity to both sides to lead evidence and all the parties concerned have exhausted their opportunity. Moreover, in I.A. No. 1, it is not made clear as to in respect of what fact in issue, the said witnesses are required to be cross-examined. So far as I.A. No. 2 is concerned, it is necessary to mention that all the documents mentioned in the application relate to a period subsequent to 1973-74. As such, their production before the Tribunal as additional evidence would not be useful for effective adjudication of the rights of the parties. Moreover, no specific grounds have been made out for allowing these two applications. In other words, the contents of these applications do not satisfy the requirements of law.

13. At this stage, it is also necessary to mention that the High Court, while considering the writ petition or writ appeal of this nature, has every right to pass an order for remand of the case for fresh enquiry as required under law and more particularly whenever applications for additional evidence are allowed. It has to be borne in mind that the Court cannot afford to order for remand of the case merely because there has been a prayer to that effect and cannot also allow applications

for additional evidence just because the applications are filed to that effect. In other words, it is a settled principle of law that the parties concerned cannot seek these reliefs as a matter of right and the Court, on considering the material on record, if it arrives at a conclusion that there has been miscarriage of justice or it would advance the ends of justice, could allow such applications. At this stage, it is also necessary to mention that this Court, in the decision of Smt. Basavva's case, *supra*, has held that remands for academic reasons or remands for the sake of remands are not situations that pass judicial scrutiny. It is seen from another decision of this Court in M.N. Muddiah Setty's case, *supra*, wherein this Court has held that unless it is shown that there has been manifest injustice, the Court cannot afford to allow applications seeking permission to lead additional evidence filed under Rule 9 of the Karnataka Land Reforms Appellate Authority Rules.

14. In view of the facts and circumstances of the case and the stand taken by both sides and the documentary and oral evidence placed on record, in our opinion, the Land Tribunal had considered the claim of all the parties concerned in the right perspective and had rightly rejected the applications of the appellant and had granted occupancy rights in favour of R-3. The learned Single Judge had also considered the facts in issue in the right perspective and had arrived at a right conclusion. We do not see any grounds at all to interfere with the order of the learned Single Judge. We also do not find any merit either in the appeals or in I.A. Nos. 1 and 2.

15. For the foregoing reasons, the appeals are dismissed and the orders impugned in the appeals are hereby confirmed.