

Paramashivaiah and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-11-1999

Reported in : 2000(1)KarLJ645

Judge : P. Vishwanatha Shetty, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 2(34), 4 and 48-A;
[Constitution of India](#) - Article 226 and 227

Appeal No. : Writ Petition Nos. 25403, 25444 and 25445 of 1999

Appellant : Paramashivaiah and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri H.N. Nagamohandas, ;Sri Jayakumar S. Patil, ;Sri G. Nagarajulu Naidu and ;Sri Mahabaleshwara Gowda, Advs. and ;Sri S. Mahesh, Additional Government Adv.

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

Judgement :

ORDER

1. The petitioners, in these petitions, have called in question the correctness of the order dated 30th of March, 1999, a copy of which has been produced as Annexure-L, passed by the Land Tribunal, Bangalore South Taluk, Bangalore,

rejecting their claim for conferment of occupancy right in respect of the land measuring 26 acres 29 guntas in Survey Nos. 72, 73, 74, 75, 82 and 83 of Chikkayellur Village, Tavarekere Hobli, Magadi Taluk, Bangalore Rural District.

2. A few facts that may be relevant for the disposal of these petitions, may be stated as hereunder:

(a) Lands bearing Survey Nos. 72, 73, 74, 75, 82 and 83 in all measuring 26 acres 29 guntas were agreed to be sold by one Basavayya @ Basavegouda in favour of one Hanumayya by means of an agreement to sell dated 10th of February, 1966. Since the said Basavayya did not perform his part of the obligation by executing the necessary sale deed, the said 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 and the said suit came to be decreed on 30th of March, 1971. Thereafter, in Execution Case No. 343 of 1971, sale deed dated 15th of November, 1971 came to be executed in favour of the said Hanumayya. Subsequent to the sale deed, on 14th of December, 1971, it appears that possession of the lands in question also was delivered to the said Hanumayya. Thereafter, the petitioners and others, on 12th of December, 1974, filed Suit O.S. No. 133 of 1974 for setting aside the judgment and decree dated 30th of March, 1971 made in O.S. No. 39 of 1969, on the file of the Court of Principal Civil Judge, Bangalore City, and also proceedings in Execution Case No. 342 of 1972 and for permanent injunction restraining the defendants in the said suit from interfering with the possession of the plaintiffs in the said suit. The said suit having been dismissed by the Court of Principal Civil Judge, Bangalore City, the same was called in question, in R.A. No. 8 of 1978, on the file of the Court of III Additional District Judge, Bangalore City. The learned District Judge, by means of his judgment and decree dated 10th of July, 1979, dismissed the said appeal confirming the judgment and decree passed by the Trial Court.

(b) In the meanwhile, during the pendency of suit O.S. No. 133 of 1974, petitioners 1, 2 and 3, who were plaintiffs 4, 3 and 2 respectively in the said suit, filed Form No. 7 claiming occupancy rights as provided under the provisions of the [Karnataka Land Reforms Act, 1961](#) (hereinafter referred to as 'the Act'). In Form No. 7, the

first petitioner had claimed occupancy rights in respect of land measuring 8 acres in Survey Nos. 72, 73 and 74; the second petitioner had claimed occupancy rights in respect of 6 acres of land in Survey Nos. 74, 73 and 72; and the third petitioner had claimed occupancy rights in respect of land measuring 8 acres in Survey Nos. 74, 75, 82 and 83 all the lands situate at Chikkayellur Village, Tavarekere Hobli, Magadi Taluk, Bangalore Rural District. The Tribunal, at the first instance, by its order dated 3rd of June, 1982, granted occupancy right in favour of the petitioners in respect of various items of lands, in respect of which they had made a claim. However, the said order came to be quashed by the learned Single Judge of this Court, by his order dated 9th of April, 1986 made in Writ Petition No. 20360 of 1982 at the instance of the land owners. In the said writ petition, the learned Single Judge also quashed Form No. 7 filed by the petitioners. However, in Writ Appeal No. 1524 of 1996 filed by the petitioners, the Division Bench of this Court, by its order dated 11th of December, 1998, while confirming the order passed by the learned Single Judge quashing the order passed by the Tribunal, modified the order of the learned Single Judge to the extent he has quashed Form No. 7 filed by the petitioners and remitted the matter for fresh consideration to the Tribunal. Thereafter, the Tribunal, by means of its order dated 30th of March, 1999, a copy of which has been produced as Annexure-L, rejected the claim of the petitioners. The said order is called in question in these petitions presented under Articles 226 and 227 of the [Constitution of India](#).

3. Sri Suman, learned Counsel appearing for the petitioners, challenging the correctness of order at Annexure-L, submitted that the finding recorded by the Tribunal that the petitioners are not tenants in respect of the lands in question, is totally erroneous and suffers from errors apparent on the face of the record. Elaborating this submission, he pointed out that the finding recorded by the learned District Judge in R.A. No. 8 of 1978 while considering Issue No. 6 and the affidavit filed by the land owners before this Court in Contempt Petition CCC (Civil) No. 842 of 1997, show that the petitioners continued to be in possession of the lands in question; and, therefore, the petitioners must be held as 'deemed tenants' within the meaning of Section 4 of the Act. In support of this submission, the learned Counsel relied upon the decision of the Supreme Court in the case of Mohan Balaku Patil and Others v Krishnoji Bhaurao Hundre (dead) by L.Rs, and

that of this Court in the case of Thimmaiah and Others v Smt. Khatumbi and Others and Venkatappa Ningappa v State of Karnataka and Others .

4. However, Sri Nagamohandas and Sri Mahabaleshwar Goud, learned Counsel appearing for the contesting respondents, strongly supporting the order passed by the Tribunal, submitted that on undisputed facts, the petitioners are not entitled to claim occupancy right in respect of the lands in question on the ground that they are deemed tenants. It is their submission that since admittedly the petitioners are claiming right title and interest in respect of the lands in question through their father 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 petitioners and others for cancellation of the said decree having been dismissed, the petitioners are not entitled to claim the status of the deemed tenants. Sri Nagamohan Das, in Support of his submission, relied upon the decision of this Court in the case of Chokkannagari Narayanappa v Land Tribunal, Chintamani and Another .

5. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the only question that would arise for consideration in these petitions, is whether the petitioners are deemed tenants in respect of the lands in question and as such, they are entitled for conferment of occupancy rights

6. It would be convenient to refer to Section 4 of the Act, before I proceed to consider the question that would arise for consideration in these petitions. The said section reads as hereunder:

'4. 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 the 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'.

From reading of Section 4 of the Act, which states who is a 'deemed tenant', it is clear that 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 the owner's family, or (c) a mortgagee in possession. Therefore, the emphasis is, to become a deemed tenant, the cultivation by a person of a land belonging to another must be 'lawful cultivation'. In other words, a trespasser or a person who is in illegal possession of a land belonging to another on the date of coming into force of the Act i.e., on 1-3-1974, cannot be treated as a deemed tenant for the purpose of Section 4 of the Act. The cultivation of a land belonging to another person can be lawful if the cultivation is with the consent or permission of the land owner. Possession must be permissive possession. Any forcible occupation of a land belonging to another and cultivation of such land against the will and wish of the land owner, cannot be considered as lawful cultivation. The entry and continuance in possession of a land belonging to another, by a person and cultivation of the same contemplated within the meaning of 'lawful cultivation', is legal possession and cultivation. Therefore, in my view, on undisputed facts, the petitioners are not entitled to claim that they are deemed tenants in respect of the lands in question. The undisputed facts that are staring on the face of the petitioners, are--(1) that the decree passed against the father of the petitioners,

Basavayya for a direction to execute a sale deed in favour of one Hanumayya, who is the father of contesting respondents 3(a) to (h) in respect of the lands in question in terms of the agreement to sell dated 10th of February, 1966 executed by the father and uncle of the petitioners; (2) the execution of the sale deed dated 15th of November, 1971 by the Court Commissioner pursuant to the decree dated 30th of March, 1971 made in O.S. No. 39 of 1969; (3) the dismissal of suit O.S. No. 133 of 1974 filed by the petitioners to set aside the sale of the lands in question and for a decree for permanent injunction restraining the contesting respondents from entering upon the lands in question by the Court of Principal Civil Judge by means of his judgment and decree dated 13th of January, 1978; and (4) confirmation of the judgment and decree made in O.S. No. 39 of 1969 by the learned District Judge in R.A. No. 8 of 1978. Therefore, the undisputed facts disclose that there was a judgment and decree against the father and uncle of the petitioners for specific performance of the terms of the agreement to sell the lands in question dated 10th of February, 1966 wherein the father and the uncle of the petitioners had agreed to sell the lands in question to the father of the contesting respondents and thereafter, in execution of the said decree, the sale deed dated 15th of November, 1971 was executed by the Court Commissioner in favour of the father of the contesting respondents. Subsequently, suit O.S. No. 133 of 1974 filed by the petitioners along with others (petitioners were plaintiff Nos. 4, 3 and 2), as observed by me earlier, also came to be dismissed. The said decree has become final. Under these circumstances, I am unable to understand as to how it is permissible for the petitioners to claim tenancy rights in respect of the lands in question. It is necessary to point out that merely on the ground that in O.S. No. 133 of 1974, it was found that the petitioners were in possession of the lands in question on the date of the filing of the suit, it is not possible to accept the contention of Sri Suman that the petitioners are deemed tenants in respect of the lands in question. What is the nature of the possession of the petitioners referred to in O.S. No. 133 of 1974, I will advert to it a little later. The petitioners, who have been throughout claiming right adverse to the interest of the contesting respondents and their predecessors-in-title, both in respect of the title and possession, in my view, under no stretch of imagination, can be considered as deemed tenants within the meaning of Section 4 of the Act. Their possession, if

any, will not be a lawful possession. Further, it is also necessary to notice that it is not their case in O.S. No. 133 of 1974 that there was relationship of landlord and tenant between the petitioners and the contesting respondents. They have not set up a case of deemed tenancy in the said suit. However, as noticed by me earlier, during the pendency of the suit, the petitioners had filed Form No. 7 claiming occupancy rights in respect of the lands in question. The predecessors-in-title of the petitioners and the petitioners having failed before the Civil Court, cannot be permitted to nullify the decree passed by the Civil Court which has reached finality in the third round of litigation before the Tribunal. It is also necessary to notice that suit O.S. No. 133 of 1974 came to be filed subsequent to the coming into force of the Act. Further, I do not find any merit in the submission of Sri Suman that in the light of the finding given by the Civil Court in O.S. No. 133 of 1974 and R.A. No. 8 of 1978 that the petitioners were in possession of the lands in question, the petitioners' cultivation of the lands in question is that of deemed tenants. The very finding given by the Principal Civil Judge in O.S. No. 133 of 1974 while considering Issue No. 6 itself is sufficient to reject the claim of the petitioners that they are deemed tenants. At Paragraph 10 of the judgment, the learned Civil Judge has found that the father of respondents 3(a) to (h) was in possession between the years 1969 and 1974. He has further found that the petitioners and others in the suit were in possession of the lands in question only during the year 1974-75 and 1975-76. Again, at paragraph 15 of the judgment, he has found that possession of the plaintiffs in the said suit, i.e., the petitioners and others, was patently illegal.

It is useful to extract the observations made in paragraphs 10 and 15 of the judgment, which read as hereunder:

'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 land holders 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 Hanumaiah are defendants 2 to 5 were never in possession of the suit lands. The defendants on the other hand have contended that T. Hanumaiah 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 Hanumaiah was in possession and that after his death his children are in possession of the suit lands. The defendants have produced the R.T.C. extracts for the period from 1970-71 to 1973-74, to prove that Hanumaiah was in possession of the suit lands. Exs. D. 15 to D. 26 the RTC extracts show that the suit lands were in the possession of Hanumaiah from 1970-74. The evidence of the plaintiffs witnesses that Hanumaiah was never in possession of the suit lands cannot be believed not only in view of the entries in the R.T.C. 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 Hanumaiah 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 Hanumaiah must have been in possession of the suit lands between 1969-1974. The fact that after the death of Hanumaiah 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 Hanumaiah'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 plaintiffs 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 Hanumaiah 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'.

The said finding was affirmed by the learned District Judge in R.A. No. 8 of 1978. Therefore, what follows from the finding recorded by the learned Civil Judge, as observed by me earlier, is that the said Hanumaiah had come into possession of the land in question and continued to be in possession of the lands in question during the years 1969 to 1974 and thereafter, during the year 1973-74 and 1974-75, the plaintiff-petitioners were in possession of the lands in question. Therefore, if the finding is taken into account, it is clear that the petitioners have failed to establish that they were in possession of the lands in question as on 1-3-1974. Even otherwise, since the finding recorded in O.S. No. 133 of 1974 by the learned Civil Judge, which was affirmed in appeal, is that the possession of the petitioners was illegal, the said finding has reached finality. Therefore, the petitioners cannot claim that the cultivation of the lands in question was a lawful cultivation within the meaning of Section 4 of the Act. They are bound by the finding given in the said suit. In the light of the said finding, the petitioners are estopped from pleading that their cultivation of the lands in question was lawful. It must be remembered that the object of the Act is to confer occupancy rights in favour of the agriculturists, who have been cultivating the lands as agricultural tenants. The provision relating to 'deemed tenancy' found in Section 4 of the Act should not be understood and interpreted to nullify the decrees obtained before the competent Civil Court. The rights of the parties, which have been settled by virtue of the decree passed by the Civil Court, should not be lightly nullified at the instance of the parties, who blow hot and cold. In a matter like this, when the Tribunal, on consideration of the evidence on record, has found that the petitioners are not tenants in respect of the lands in question and negated their claim, in my view, it will not be appropriate for this Court to interfere with the finding recorded by the Tribunal in exercise of its jurisdiction under Article 227 of the [Constitution of India](#), to support a claim made by the parties which, prima facie, appears to be unrighteous. The decision of this Court in the case of Chokkannagari Narayanappa, supra, fully supports my view that a person cultivating the land claiming it as his own, is not lawfully cultivating the land belonging to another. It is useful to refer to paragraphs 9 and 10 of the judgment, which read as hereunder:

'9. Section 4 intends to protect the interest of persons lawfully cultivating the land. In *Commissioner of Income-tax, Bombay v Bombay Corporation*, 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 B.M. Krishnamurthy 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 'deemedtenant'. 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 land owner 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'.

7. In the light of the above conclusion, I am of the view that the petitioners are not deemed tenants in respect of the lands in question. Now, let me refer to some of the decisions relied upon by the learned Counsel for the petitioners.

(a) In the case of Mohan Balaku Patil, supra, the question that was for consideration before the Supreme Court was whether Mohan Balaku Patil was a tenant in possession and cultivation of the land in question or not. The landlord while admitting the possession and cultivation of the land in question by the tenant, put forward a plea that the applicant, who had filed Form No. 7, was not a tenant in respect of the land, which was the subject-matter of dispute in the said case. The Supreme Court, in the light of the finding recorded by the Tribunal that the applicant was in possession and cultivation of the land as on 1-3-1974 and his possession was also admitted by the landlord, took the view that the presumption in favour of the entries in the Record of Rights and Pahani stood rebutted and the Land Reforms Appellate Authority and the High Court were not justified in interfering with the finding recorded by the Tribunal. In my view, the observation made by the Supreme Court in the said decision has no application to the facts of

the present case.

(b) In the case of Thimmaiah, referred to above, the question that had arisen for consideration was, whether the applicant, who had filed Form No. 7, was a tenant in possession and cultivation of the land prior to the mortgage of the land by the land owner to the applicant? In that background, the observation was made by the Court at paragraph 4, to which my attention was drawn. It reads as hereunder:

'4. According to the above provision every person who is lawfully cultivating any land belonging to another person should be deemed to be a tenant if such land is not cultivated personally by the owner. But, to this rule there are three exceptions, namely, if the person so cultivating the land happens to be-(i) a member of the owner's family; or (ii) a paid servant; or (iii) a mortgagee-in-possession. Therefore, the clear meaning of the provision is that except persons belonging to the above three excepted categories every other person cultivating the land personally would be deemed to be a tenant under the provisions of the Act'.

In my view, the observation made by this Court in the case of Thimmaiah, *supra*, has to be understood with reference to the facts of that case and cannot be applied to a case where the applicants were claiming title and possession in respect of the land in question in their own right and where they have lost before the Civil Court and where the Civil Court had categorically recorded a finding that their possession was illegal.

(c) The principle laid down by this Court in the case of Venkatappa Ningappa, *supra*, in my view, also has no application to the facts of the present case. That was a case where the tenant was claiming that he was a tenant in respect of the land for which he had filed Form No. 7, even prior to the date of the agreement to sell entered into between him and the landlord. In that context, this Court took the view that the rights of the petitioner in that case, who became a tenant during the year 1965-66, were protected in spite of the fact that the petitioner had entered into an agreement with the landlord for the sale of the land which was the subject-matter of dispute in the said petition. Therefore, the learned Counsel for the petitioners cannot derive any assistance from the said decision.

8. In the light of the discussion made above, these petitions are liable to be dismissed. Accordingly, they are dismissed.

9. However, no order is made as to costs.

10. Sri S. Mahesh, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from today.

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