

Basawwa and ors. Vs. Ningappa Gopalappa Uppln and ors.

Basawwa and ors. Vs. Ningappa Gopalappa Uppln and ors.

SooperKanoon Citation : sooperkanoon.com/374693

Court : Karnataka

Decided On : Oct-27-1971

Reported in : AIR1972Kant183; AIR1972Mys183; (1972)1MysLJ149

Judge : G.K. Govinda Bhat and ;B. Venkataswami, JJ.

Acts : Bombay Tenancy and Agricultrual Lands Act, 1948 - Sections 63, 70, 74, 74(1), 85-A and 85H; Bombay Tenancy and Agrucultrual Lands (Amendment) Act, 1956

Appeal No. : Writ Petn. No. 1716 of 1967

Appellant : Basawwa and ors.

Respondent : Ningappa Gopalappa Uppln and ors.

Advocate for Def. : V.S. Gunjal, Adv.

Advocate for Pet/Ap. : K.A. Swamy, Adv.

Judgement :

Govinda Bhat, J.

1. One Mall-appa was the owner of certain lands which he gifted under a deed dated 25-9-1958 to one Ghoshappa, and Revappa (Petitioner No. 11). The donor died soon after the execution of the gift deed. Respondent No. 1 Ningappa

Golappa Uppin claiming to be an heir of the aforesaid Mallappa brought C. S. No. 49 of 1959 in the court of the Civil Judge. Junior Divn. Bijapur for declaration that the gift deed executed by Mallappa was void, being in contravention of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. hereinafter called the Act. and for possession and other incidental reliefs. The donees were the defendants in the said suit. On the contentions raised by the parties, one of the issues raised was, whether the donees were agriculturists on the date of the gift deed in question. That issue was referred under Section 85-A of the Act to the Tahsildar. Sindagi for determination. The Tahsildar held that the donees were not agriculturists. Against this decision, the said donees preferred an appeal to the Asst, Commissioner who reversed the decision of the Tahsildar. Respondent No. 1 preferred a revision petition against the decision of the Assistant Commissioner before the Mysore Revenue Appellate Tribunal. Bangalore, in Revision No. 128 of 1966 (B. T. & A. L.). The Tribunal allowed the revision petition, set aside the decision of the Assistant Commissioner and restored the decision of the Tahsildar on the ground that an appeal did not lie under Section 74(1) (a) of the Act from the decision of the Tahsildar. In coming to that conclusion, the Tribunal relied on the decision of this court in Krishnabai v. Hanmanth. (1966) 1 Mys LJ 329. Ghoshappa aforesaid who was the 1st respondent before the Tribunal having died, his legal representatives who are petitioners Nos. 1 to 10 and petitioner No. 11 who was respondent No. 2 before the Tribunal have preferred the above writ petition.

2. Sri K. A. Swamy. learned counsel for the petitioners urged that the Tribunal was in error in applying the ratio of the decision in (1966) 1 Mys LJ 329 to the facts of the present case. In Krishna-bai's case, there was no reference made by the Civil Court for determination by the Tahsildar. What was done in that case was that the Civil Court had directed one of the parties to seek an adjudication on the question of the status of the donees from the Mamlatdar. Pursuant to that direction, they made an application for that purpose and were able to secure an adjudication from the concerned Mamlatdar that they were agriculturists. From that decision an appeal was taken to the Assistant Commissioner who dismissed it on the ground that the appeal was not competent. Therefore, it is clear that in the said case there was no reference by the civil court for determination of the question referred under

Section 85-A of the Act.

3. The Act was amended by Bombay Act 13 of 1956 by which Sections 70 and 74 were amended and a new section by way of Section 85-A was introduced. Section 85-A reads thus:--

'85-A. (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto. (Explanation omitted as unnecessary)'

Section 70 which provides for the duties and functions to be performed by Mamlatdar was amended by the introduction of a new clause viz.. clause (mc) under which one of the duties and functions of the Mamlatdar was to decide references under Section 85-A. Section 74 states that an appeal against the orders of the Mamlatdar and the Tribunal may be filed to the Collector in the cases enumerated in clauses (a) to (w). Clause (v) which was introduced by the Amending Act 13 of 1956 provides that an appeal may be filed from an order under Section 85-A. Therefore, it is clear that after the amendment of the Act by Bombay Act 13 of 1956. the decision of the Mamlatdar made on a reference from the Civil Court is open to an appeal under Section 74.

It was contended by Sri V. S. Gum'al, learned counsel for the first respondent that where an adjudication is obtained without a reference under Section 85-A concerning the status of a party, such an order being not appealable, it would lead to an anomalous result if it were to be held that such a decision given on reference under Section 85-A would be open to appeal. The anomaly, assuming there is any. is a creation by the Legislature. When an express provisions has been made

providing for an appeal, that provision has to be given effect to. Therefore, the view taken by the Tribunal that no appeal lay. is patently erroneous in law and therefore, cannot be supported.

4. For the reasons stated above, we allow this Writ Petition, set aside the order of the Tribunal and remit the matter to the said Tribunal for disposal on merits.

No costs.

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