

Puttegowda Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-10-1980

Reported in : AIR1980Kant102; ILR1980KAR160; 1980(1)KarLJ281

Judge : D.M. Chandrashekhar and ;P.P. Bopanna, JJ.

Acts : Karnataka Land Reforms Act, 1962 - Sections 44(1) and 45; [Transfer of Property Act, 1882](#) - Sections 111

Appeal No. : Writ Appeal No. 772 of 1979

Appellant : Puttegowda

Respondent : State of Karnataka and ors.

Advocate for Def. : G.S. Vishveswara, Adv.

Advocate for Pet/Ap. : B.T. Parthasarathy, Adv.

Judgement :

Bopanna, J.

1. This is a tenant's appeal from the order of Swami allowing the writ petition filed by the landlords who are respondents 3 and 4 herein and quashing the order of the Land Tribunal, Hunsur, which had granted him occupancy rights in 2 acres of wet land in Survey No. 298, Hussainpura Nala village, Hunsur Taluk.

2. The relevant facts briefly stated are these: The appellant was the tenant of the land aforesaid since the time of the landlord's father, Siddappa. After the Karnataka Land Reforms Act, 1961 (in short, 'the Act'), came into force, he filed an application under Section. 48A of the Act judgment of K. A. Swami, reported in : AIR1979 Kant211 . Act for grant of occupancy rights in that land. In his application (produced as Exhibit-C with the writ petition), he had claimed tenancy of that land over a period of 25 years. In the statement of objections before the Land Tribunal, respondents 3 and 4 contended, inter alia, that the appellant was not the tenant of that land in view of his surrender thereof in accordance with the provisions of Section 25 of the Act, as it stood in the year 1969, that in terms of the order of the Land Tribunal dated 22-12-1969 (produced as Exhibit-B with the writ petition) made under that section, the appellant was neither in possession of the land nor cultivating the same and that after the death of Siddappa, father of the landlords herein, there was a partition of family properties in the year 1973 under which- this land fell to the share of respondent-3 who has been cultivating it personally since then and up to the time of partition her brothers were cultivating it personally.

3. The case of the appellant before the Land Tribunal was that he never made any statement before the then Land Tribunal to the effect that he was surrendering that land nor did he get any notice from that Tribunal and that even assuming that there was an order of the Land Tribunal permitting surrender, he did not avail himself of such permission and surrender but continued to be in possession thereof as tenant paying Wars and levy. His plea regarding continuance of his tenancy as on 1-3-1974 was fully corroborated by the evidence of the cultivators of adjacent lands. The landlords rested their case on the order of the Tribunal permitting surrender, the entries in the record of rights for the period of 1970 to 1977 and the oral evidence of Shivappa, brother of respondent-3, Nanjegowda, husband of respondent-3 and Revanna, also a relation.

4. The Land Tribunal found that the appellant had not acted on the permission to surrender and delivered possession of the land to the landlords: that the oral evidence of the landlord's witnesses suffered from contradictions; that it was not shown that the Tahsildar had delivered possession of the land from the appellant to the landlords and that the appellant's evidence duly corroborated by two

adjacent landholders and the spot inspection demonstrably proved the appellant's possession as a tenant as on 1-3-1974. In that view, the Tribunal granted occupancy rights to the appellant.

5. Aggrieved by this order, the landlords contended inter alia before the learned single Judge that:

(1) the order of the Tahsildar (Exhibit-B) determined the relationship of landlord and tenant between the appellant and respondent 3;

(2) there was actual surrender by the appellant pursuant to Exhibit-B and even otherwise the appellant was a trespasser being a tenant at sufferance and therefore he was not a tenant entitled to occupancy rights; and

(3) the finding of the Land Tribunal was vitiated by non-consideration of the presumption arising under Section 133 of the Karnataka Land Revenue Act from the entries in the record of rights extract (Exhibit-J filed with the writ petition).

These contentions found favour with the learned single Judge and he allowed the petition of the landlords. Hence this tenant's appeal.

6. We will first deal with contentions Nos. 2 and 3 since they rest on the factual appreciation of the evidence on record. On the question of possession by the appellant of the land in dispute, notwithstanding the order permitting surrender, the finding of fact recorded by the Tribunal that the appellant was in possession even after such order, is well sustained by his unimpeachable evidence. The further finding of the Tribunal that the affidavit of the appellant in support of the application for permission to surrender, was given by him at the landlords' insistence and that there was no surrender as such, is also not open to challenge. We may notice that the landlords also initiated the resumption proceedings under Section 14 of the Act as it stood then. The case of the landlords is that in that proceedings an application for permission to surrender under Section 25 of the Act, was made by the appellant duly supported by an affidavit. Resumption and surrender are proceedings different from each other under different sections of the Act. The appellant's case in this Court was that he did not receive any notice from the then

Land Tribunal - apparently meaning that there was no notice of resumption proceedings but all the same Siddappa, the original landlord, took his affidavit by falsely representing that he would be getting the land for himself. The affidavit (produced as Exhibit-A in the writ petition) is in English and it is not the cue Of the landlords that the appellant was conversant with English, Nor is there any endorsement in the affidavit to the effect that its contents had been duly translated in the language known to the appellant and-read to him Hence the finding of the Tribunal that the appellant had not acted on the permission to surrender by delivering possession of the land to the landlords, appears to be well founded and the evidence on record in support of this finding effectively rebuts the presumption arising from the entries in Exhibit-J under Section 133 of the Act. Further the contradictions in the evidence of the landlords' witnesses regarding cultivation of the lands by the landlords after the alleged surrender by the appellant, throw serious doubt about the genuineness of these entries.

7. The learned single Judge relied on *Maneksha Ardeshir v. Manekji Edulilji Mistry* : [1975]2SCR341 and S. 44(1) of the Act in support of his finding that the order of surrender determined the relationship of landlord and tenant. We will take up Section 44(1) of the Act first.

Sub-section (1) of Section 44 of the Act reads:

'Vesting of land in the State Government - (1) All lands held by or in the possession of tenants (including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government.'

It enumerates the types of land that vest in the State Government as on 1-3-1974. The learned single Judge has found that the lands not surrendered notwithstanding the permission to surrender, do not find a place in Section 44(1) and so such lands are not tenanted lands for granting occupancy rights under Section 45 of the Act. In our view, the words 'lands held by' (Underlined by us) are wide enough to cover lands not surrendered in spite of permission to do -so

but in possession of the tenant immediately before 1-3-1974, and therefore, the construction put on Section 44(1) the learned single Judge, does not appear to us to be correct. Even the decision of the Supreme Court under the Bombay Tenancy and Agricultural Lands Act referred to above, does not support the view taken by the learned single Judge. That 'was not a, case in which tenant continued to be in possession of the land after obtaining permission to surrender. The deletion of Section 25 as it stood then by Amendment Act 1 of 1974. Without providing for a saving clause for the operation of surrender orders obtained by landlords under the earlier provision lends supports by the tenant does not put an end to the relationship of landlord and tenant.

Further, it may also be noticed that under Section 111 of the T. P. Act, tenancy of immoveable property is determined, inter alia, by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, or, by implied surrender.

As stated in Halsbury's Laws of England Volume 23 (3rd Edn.) at page 635, delivery of possession by the tenant to the landlord and his acceptance of possession, are essential to effect the surrender. In the present case, it has not been proved that the appellant had delivered possession of the land notwithstanding grant of permission to surrender- As we have found that the appellant was in possession even after the grant of permission to surrender, he must be held to have continued to be a tenant and was entitled to grant of occupancy right, and therefore the question of remand also does not arise,

8. For these reasons, the appeal is allowed, the order of the learned single Judge is reversed,. the writ petition of the landlords is dismissed and the order of the Land Tribunal stands restored. No costs.

9. After the pronouncement of the Judgment, the learned counsel for respondents 3 and 4 made an oral application for grant of a certificate of fitness to appeal to the Supreme Court.

10. In our opinion, no substantial question of law of general importance which needs to be decided by the Supreme Court, arises in this case, and accordingly

the certificate prayed for is refused.

11. Appeal allowed.

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