

Basana Gowda and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Nov-13-1999

Reported in : ILR2000KAR335; 2001(2)KarLJ527

Judge : Chidananda Ullal, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 48-A; Karnataka Land Reforms Rules, 1974 - Rule 19; [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition NO. 27763 of 1992

Appellant : Basana Gowda and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri M.N. Ramanjaneya Gowda, Additional Government Adv. and ;Smt K.R. Meena Kumari, Adv., ;for Sri P. Subbarao

Advocate for Pet/Ap. : Sri H. Kumaraswamy and ;Shri Chandrachooda, Adv.

Judgement :

ORDER

Chidananda Ullal, J.

1. The petitioners-landowners herein had filed a Civil Petition in No. 1133 of 1991 with a prayer to call for the records in Appeal No. LRA 270 of 1988 on the file of the District Land Reforms Appellate Authority, Dharwar and further to register the same as a writ petition. That is how the instant writ petition came to be registered by this Court. In the above said appeal, the petitioners herein had challenged the order dated 23-4-1988 in case No. KLR:SR:ADG:24 passed by the respondent 2-LandTribunal, Hubli. In passing the same, the Land Tribunal had granted occupancy right in respect of 6 acres 75 cents in Block No. 675 of Adaragunchi Village, Hubli Taluk.

2. The facts are quite interesting and the same are as hereunder:

3. That, the respondent 3 had filed Form No. 7 on 13-8-1974 claiming occupancy right in respect of 6 acres 75 cents of land in Block No. 675 described himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi as against the original owner one Khana Gowda son of Ningegowda of Adaragunchi Village, the father of the petitioners herein. It appears that the true name of the respondent 3 is Mohammadsab Hazresab Sheth Sanadi Uruf Chennapur as it has been described in the instant writ petition. That one Nannesab, a witness examined before the Land Tribunal, had deposed that the respondent 3 had cultivated the land for some time and thereafter he abandoned the subject land and that thereafter one Mohammadsab Hussainsab Mundinamani, a close relative of the said Nannesab continued the tenancy. The above said Nannesab, who had been examined in support of the case of the respondent 3 before the Land Tribunal stated in his evidence that on abandoning of his tenancy, he introduced the respondent 3 whom, he had also described as Mohammadsab Hussainsab Mundinamani to the original owner Khana Gowda and that thus the respondent 3 had become the tenant by paying gutha to the said Khana Gowda.

4. That, the petitioners herein had disputed the name of the respondent 3 as he had described in his Form No. 7 and for that reason, they contended before the Land Tribunal that there was some impersonation by the respondent 3 in filing Form No. 7. They also dented the claim of the respondent 3. That, the Land Tribunal at the first instance had granted occupancy right to the respondent 3

describing him as Mohammadsab Hussainsab Mundinamani Sheth Sanadi by its order dated 22-10-1981 and that order came to be challenged by the petitioners herein in W.P. No. 33703 of 1981 and this Court allowed the said writ petition on the ground that there was irregularity in the matter of holding the tenancy proceedings and directed the Land Tribunal to hold de novo enquiry in the matter of the claim of the respondent 3. In the said writ petition, the petitioners had also contended that the name of the respondent 3 was not Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi inasmuch as they have contended that the respondent 3 had not only made a false claim but also impersonated the original tenant by name Mohammadsab Hussainsab Mundinamani.

5. That, as stated above, the respondent 3 had examined, in the second round himself and one Nannesab claiming to be the original tenant in support of his claim, whereas the petitioners herein had examined as well as yet another witness by name Basavanagowda son of Chennabasappa Thotada. That, the petitioners herein had also produced the documents from Baroda Bank, sale deed in respect of Block No. 115 of Budarasingi Village, the records from the Karnataka Electricity Board and voters list pertaining to the election to the Market Committee, Mandal Panchayat etc., to demonstrate before the Land Tribunal that the original name of the claimant was not as he had described himself in Form No. 7. That the Land Tribunal had passed the impugned order by a majority decision to grant the occupancy right to the respondent 3. However, the Chairman of the Land Tribunal had given a dissenting note to say that in the village records, the subject land was shown to be under cultivation of one Mohammadsab Hussainsab Mundinamani from the year 1951-52 to 1970-71 and that the landowners got the subject land released from the tenancy right and had cultivated the subject land themselves and as such as on 1-3-1974 the subject land was not a tenanted land and therefore did not vest in the State. Hence, the Chairman of the Land Tribunal had opined for rejection of the claim of the respondent 3.

6. Now before this Court when the matter had come up for hearing, the petitioners on the one side and the contesting respondent 3 represented by his power of attorney on the other had filed a compromise petition under Order 23, Rule 3 of the CPC, 1908 read with Article 226 of the [Constitution of India](#) numbered as I.A.

No. IV by the Registry and in filing the same, they both had set out the compromise to say that the respondent 3 being a tenant is in actual possession of the western portion of 2 acres of land in Block No. 675, he be granted with that extent of land by way of occupancy right and that the remaining part of the land i.e., 4 acres 17 guntas be released to the petitioners-landowners, since the respondent 3 was not entitled to for that part of the land and as such he be granted with the said portion of the land under his possession, whereas the rest of the land be treated as not vested in the State under Section 44 of the Land Reforms Act.

7. Having dealt with the facts in a way in detail I now take up the respective contention put forth by the learned Counsel for the petitioner, Sri Kumaraswamy on the one side and the learned Counsel for the contesting respondent 3, Smt. Meena Kumari appearing along with Sri P. Subba Rao and the learned Additional Government Advocate, Sri M.N. Ramanjaneya Gowda.

8. The learned Counsel for the petitioner, Sri Kumaraswamy had argued that the respondent 3 was guilty in suppressing the material facts that his name was Mohammadsab Hazaresab Sheth Sanadi Uruf Chennapur, since in filing Form No. 7 he had falsely described himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi and that the respondent 3 did that only to put forth false claim in respect of the subject land, though he was not a tenant at all. He had also argued that the respondent 3 had not produced any worthwhile material firstly to show that his name was Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi and secondly that he had not produced any worthwhile material to show that he was cultivating the land in question as a tenant. While advertng to the material evidence on record, Sri Kumaraswamy had also pointed out that on the other hand, the petitioners herein had produced documentary evidence such as KEB records, voters list, copy of the sale deed etc., to show that the name of the respondent 3 was Mohammadsab Hazresab Sheth Sanadi Uruf Chennapur and not ashe had described himself in filing Form No. 7. Furthermore, had also submitted that no documentary evidence worth the name was produced by the respondent 3 in support of his case for grant of occupancy right, he further argued that all that he had done before the Land Tribunal was to examine himself and

examine yet another witness by name Nan-nasab, who also rendered support to the version of the case of the petitioner that it was Mohammadsab Hussainsab Mundinamani, the original tenant and that Nannesab being the interested witness of the respondent 3 had tried to give false evidence to say that the respondent 3 himself was Mohammadsab Hussainsab Mundinamani and as such he himself was the tenant, who was cultivating the subject land. Therefore, he prayed that the impugned order passed by the Land Tribunal be quashed, alternatively he also argued that the I.A. No. IV compromise application be allowed to modify the impugned order in terms of the compromise petition.

9. The learned Counsel for the contesting respondent 3, Smt. Meena Kumari on the other side while supporting the impugned order passed by the Land Tribunal argued that in examining himself and further yet another witness by name Nannesab, the respondent 3 had proved his case for grant of occupancy right. She also submitted that the Land Tribunal had rightly granted the occupancy right in favour of her party. She prayed that the instant writ petition be dismissed or in the alternative the impugned order be restricted to 2 acres of the land as per compromise entered into by the parties in I.A. No. IV.

10. The learned Additional Government Advocate on the other side while supporting the impugned order, opposed the allowance of the compromise petition, I.A. No. IV.

11. On going through the impugned order and the evidence adduced by the respective side, I had an impression that both the petitioners on the one side as well as the contesting respondent 3 - applicant on the other hand not placed true facts of the case either before the Land Tribunal or for that matter before this Court. As I have seen when the respondent 3 in filing Form No. 7 on 13-8-1974 had claimed himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi and further claimed the occupancy right in respect of the entire extent i.e., 6 acres 17 guntas of land, the petitioners herein in opposing the claim of the respondent 3 denied the very case of the respondent 3 for grant of occupancy right, not even in respect of part of the land. Somehow having gone through the entire records of the Land Tribunal, I had a genuine impression that neither of the

versions of the parties before the Land Tribunal nor for that matter before this Court were true and that the parties were not truly presenting the respective side of the case, probably both the sides might have thought that was not in the interest of either.

12. The learned Counsel for the petitioner, Sri Kumaraswamy vehemently argued that the original name of the respondent 3 was Mohammadsab Hazresab Sheth Sanadi Uruf Chennapur whereas he had falsely claimed himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi. I found some force in the argument of Sri Kumaraswamy and for that reason, I have gone through the material evidence on record in detail, particularly when the documentary evidence such as KEB receipts, voters list, village records pertaining to the cultivation in S. No. 10/1 of Budarasingi Village wherein the respondent 3 had been described as Mohammadsab Hazresab Sheth Sanadi Uruf Chennapur. In the light of the documentary evidence and further in the light of the original evidence adduced before the Land Tribunal by the petitioner, I was convinced to hold that the original name of the respondent 3 was Mohammadsab Hazresab Sheth Sanadi Uruf Chennapur as contended by the petitioners both before the Land Tribunal as well as before this Court. By going through the entire records of the Land Tribunal, I have to observe that the respondent 3 had called himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi, for the simple reason that the revenue records pertaining to the subject land and further the land acquisition records for acquisition of the 30 guntas of land out of the total extent of 6 acres 17 guntas, the name of the cultivator was shown as Mohammadsab Hussainsab Mundinamani. Incidentally it is also in the evidence that for considerably long time one Mohammadsab Hussainsab Mundinamani was a tenant and that he died in and around 1945 and despite that the name of the said Mohammadsab Hussainsab Mundinamani appeared in the revenue records all through till Form No. 7 came to be filed by the respondent 3 before the Land Tribunal. As I see, the respondent 3 with the intention to take the advantage of the said revenue entries presented himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi. The respondent 3 might have thought that he could get the entire extent of 6 acres 17 guntas of land in question in filing Form No. 7 by calling himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi. However, I was

also convinced to hold that the respondent 3 might have filed Form No. 7, he being a tenant in respect of the same part of the subject land belonging to the petitioner's father.

13. The learned Counsel for the petitioner, Sri Kumaraswamy had argued that in filing Form No. 7, the respondent 3 had impersonated the original tenant, Mohammadsab Hussainsab Mundinamani, for as one can see, in filing Form No. 7 the respondent 3, had borrowed the name of the original tenant by addition to his own sir name 'Sheth Sanadi' only to link up the same with the revenue records as well as the records in the acquisition case, for in respect of entire extent of the subject land as stated above, the name of the above said Mohammadsab Hussainsab Mundinamani had appeared as a cultivator in the cultivators' column for long, no matter that he died somewhere in and around the year 1945. That argument of Sri Kumaraswamy cannot be accepted for the reason that in filing Form No. 7 all that the respondent 3 did was to add up the suffix 'Sheth Sanadi' to the original tenant's name. The question of impersonation would have arisen had the respondent 3 in filing Form No. 7 had applied for occupancy right in the exclusive name of Mohammadsab Hussainsab Mundinamani. But unfortunately for the petitioners herein that was not the position, for the respondent 3 who himself had filed Form No. 7 by adding up suffix 'Sheth Sanadi' to the name of the original tenant. Therefore, I am of the view that the respondent 3 did file Form No. 7 putting forth his claim in respect of the subject land in filing Form No. 7, of course, there was some mischief in doing that as he tried to assimilate the name of the original tenant, since both the respondent 3 and the original tenant had common name 'Mohammad Sab' to begin with.

14. Manoeuvring and out beating the opponent is our way of litigation, as we see day in and day out in our Courts. I have since taken notice of that situation to decide the case in hand. Parties shrewd as they are, sometimes they themselves do recourse to that and many a time they do that on advice and that advice may come from any quarters known or unknown. In the instant case too, both the sides were in no way less in that all through, as I have observed, the way they conducted themselves before the Land Tribunal. Ultimately the duty of the Court is to find out the truth, to separate the grain from the chaff, to do justice between the

parties before it, than to punish for all that they do knowingly or unknowingly to outbeat their opponents, of course in extreme cases of bad conduct of the parties, the Courts have to come down unhesitatingly heavily when the judicial conscience of the Court is pricked. The instant case is not that kind of case to bracket and as such, my attempt here is only to find the truth. I think, I am successful in doing that here; so I proceed.

15. Now the question before me in the writ petition is what was the true version of the case and to what extent the impugned order be held good. According to me, the true version of the case was put up by neither of the parties before the Land Tribunal till the impugned order came to be passed, for the reasons best known to them. However, on careful reading of the evidence on record and further on reading of the compromise petition numbered as I.A. No. IV now before this Court, I have come to the following conclusions:

(a) That the name of the respondent 3 is not Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi, but his name is Mahammadsab Hazresab Sheth Sanadi Uruf Chennapur.

(b) That the respondent 3 was a tenant only in respect of 2 acres of land out of total extent of 6 acres 17 guntas of land and he continued to be in possession of the same bounded on east by the remaining part of the land in Block No. 675, west by Budarasingi Village boundary, north by remaining part of the land in Block No. 675 and south by the land bearing S. No. 674 as set out in the compromise petition i.e., numbered as I.A. No. IV. That I say not only on the basis of the compromise petition but also on the basis of the evidence adduced by the petitioners' witness by name Ramappa Basappa, for in his statement before the Land Tribunal he did not state that the respondent 3 was not a tenant and all that he had deposed before the Land Tribunal was that he was not knowing that the respondent 3 was a tenant and that he did not see him paying gutha to the petitioners. Furthermore, it is also in the evidence on record that the respondent 3 was also served with a notice by the Land Acquisition Officer in respect of acquisition of 30 guntas of land in block number in question acquired by the State for the purpose of formation of Bangalore-Pune Road. It is to be noted in this

context that, had the respondent 3 was not on the land, he would not have been served with such a notice by the Land Acquisition Officer at all.

(c) That the petitioners have falsely claimed before the Land Tribunal that the respondent 3 was not at all a tenant in respect of the land only for reason, firstly that the respondent 3 had falsely claimed himself as Mohammadsab Hussainsab Mundinamani alias Sheth Sanadi and secondly that, the revenue entries as well as the records in the land acquisition, the name of the original tenant, Mohammadsab Hussainsab Mundinamani, who admittedly died in and around the year 1945 were entered and that his name continued to appear both in the revenue records as well as in the land acquisition records as a cultivator as late as in the year 1971-72.

(d) In filing I.A. No. IV-compromise petition, for the first time the respondent 3 had truly claimed himself as Mohammadsab Hazresab Sheth Sanadi alias Chennapur and the same is in tune with the oral and documentary evidence such as voters list, KEB receipts, copy of the sale deed etc., produced by the petitioners before the Land Tribunal.

16. In view of the real and true versions of the case had emerged more fully in filing compromise petition I.A. No. IV by the parties, I feel that the impugned order passed by the Land Tribunal is liable to be quashed insofar as the same related to the grant of occupancy right in respect of 4 acres 17 guntas of land since the impugned order came to be passed by the Land Tribunal in respect of the entire extent of 6 acres 17 guntas of land by untrue presentations by both the contending parties.

17. In that view of the matter and further to do substantial justice between the parties, I pass the following:

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