

**M. Narayanappa Vs. Hemavathi**

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**Court :** Karnataka

**Decided On :** Jan-09-1987

**Reported in :** ILR1987KAR715

**Judge :** Kulkarni, J.

**Acts :** [Karnataka Land Reforms Act, 1961](#) - Sections 5, 44, 44(2), 45, 48(8), 132 and 133; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1

**Appeal No. :** CRP No. 1940 of 1984

**Appellant :** M. Narayanappa

**Respondent :** Hemavathi

**Advocate for Def. :** A.S. Mahesha, Adv. for ;S. Hanumanthaiah, Adv. for R-1

**Advocate for Pet/Ap. :** Kadidal Manjappa, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**Kulkarni, J.**

1. This is a revision by the plaintiff against the order dated 30-3-1984 passed by the Munsiff, Gowribidanur, in O.S. 135 of 1983, allowing I.A.6.

2. The plaintiff filed the suit for permanent injunction against the defendants alleging that he has been in lawful possession of the property and that the defendants have been interfering with his possession. He filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

3. The defendants resisted that application.

4. The Court below after hearing the parties, granted temporary injunction pending suit.

5. The defendants, thereafter, filed an application under Order 47 Rule 1 of C.P.C. for reviewing the said order granting temporary injunction and for framing a tenancy issue and referring the same to the Tribunal under Section 133 of the Land Reforms Act.

6. The said application was resisted by the plaintiff.

7. The Court below, after hearing the parties, reviewed the order granting ad-interim temporary injunction, allowed I.A. 6 and framed an issue as to whether the plaintiff was a tenant of the suit land or not, and referred the same to the Tribunal. The plaintiff, being aggrieved by the said order, has come up with this revision.

8. The Learned Counsel Sri Kadidal Manjappa submitted that the plaintiff did not claim to be in possession of the property as a tenant. He drew my attention to para 2 of the plaint, which reads as:--

'The plaintiff is in peaceful possession and enjoyment of the schedule property cultivating the same from last twenty years. He was the tenant under one Smt. Padmavathamma and later under one Smt. Hemavathi, the 1st defendant. The tenancy ceases after coming into force the Karnataka Land Reforms Act and the land vests with the Government. The said Hemavathi lost her right. She do not have any manner of right, title or possession interest over the property, after the coming into force of Land Reforms Act.'

According to the Learned Counsel Sri Manjappa, the plaintiff was a tenant of the suit land previously and on coming into force of the Land Reforms Act, the tenancy

had come to an end and the defendants had no right, title, or interest in the suit property and that the land had become vested in the State Government. In short, he contended that the tenancy referred to by the plaintiff was a tenancy, which was in existence prior to the coming into force of the Land Reforms Act. According to him, the plaintiff does not claim to be in possession as a tenant, even on the date of the suit. He contended that the tenancy referred to by the plaintiff in the plaint was a past tenancy. He contended that the question of past tenancy need not be made the subject matter of an issue by the Civil Court and the Civil Court is not required to refer the question of past tenancy to the Tribunal. He referred me to Section 44 of the Land Reforms Act, which reads as --

'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.

(2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely :--

(a) All rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances ;

(b) to (f) .... Not necessary.

(g) permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act ; and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and

determine and shall not be enforceable against the State Government.'

9. Therefore, the plain meaning of Section 44 of the Land Reforms Act is that the lands held by or in possession of a tenant immediately prior to the date of coming into force of the Amendment Act, shall stand vested in the State Government. The Amendment Act has come into force on 1-3-1974. Therefore, all the tenancies, which were in existence up to 1-3-1974, ceased to have effect and they came to an end with effect from 1-3-1974. Therefore, no tenancy rights except the ones permitted under Section 5 of the Land Reforms Act would be in existence with effect from 1-3-74. The present case is not the one covered by Section 5 of the Act. - Therefore, even assuming for a moment that the plaintiff was a tenant prior to 1-3-1974, that tenancy had come to an end with effect from 1-3-1974. Section 44(2)(a) of the Land Reforms Act makes it clear that all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Therefore, whatever be the tenancy rights of any persons, they cease to have any effect with effect from 1-3-1974 and the land, if tenanted, becomes vested in the State Government free from all encumbrances. Thus, it follows that even if the land was a tenanted one immediately prior to 1-3-1974, it becomes vested in the State Government free from the right of tenancy. Section 44(2)(g) says that permanent tenants, protected tenants and other tenants holding such lands shall, as against the State Government be entitled only to such rights or privileges and shall be subject to such conditions as are provided by or under this Act and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person shall cease and determine and shall not be enforceable against the State Government. Therefore, the only right which a tenant has got in respect of a tenanted land is to make an application in Form-7 under Section 45, for conferment of occupancy rights. Thus this provision makes it manifestly clear that even if the tenancy was in existence prior to 1-3-1974, the plea of tenancy is not at all available to the tenant or any one after 1-3-1974. Section 45 has conferred a right on a tenant, who was holding a land immediately prior to 1-3-1974 to file an application in Form No. 7 for conferment of occupancy rights.

10. Section 48(8) reads as - -

' Where no application is made within the time allowed under Sub-section (1) the right of any person to be registered as an occupant shall have no effect.'

This makes it clear that if a person was holding a land as a tenant immediately prior to 1-3-1974 and if he does not make an application for conferment of occupancy rights, he would not have any right at all and his right to be registered as an occupant also ceases to exist. Therefore, it becomes clear that the tenancy will not be in force or in effect after 1-3-1974 because the Land Reforms Act has abolished the concept of tenancy itself with effect from 1-3-1974.

11. The plaintiff himself has stated in para 2 of the plaint that the tenancy, which is referred to by him in para 2 of the plaint, has ceased to exist ever since the coming into force of the Karnataka Land Reforms Act. He has clearly stated that the land has vested in the State Government. Therefore, the question of tenancy referred to by the plaintiff refers only to the past tenancy.

12. Section 133 of the Land Reforms Act reads, as --

'Suits, proceedings, etc., involving questions required to be decided by the Tribunal.-- (1) Notwithstanding anything in any law for the time being in force - -

(i) no Civil or Criminal Court or Officer or Authority shall in any suit, case or proceedings concerning a land decide the question whether such land is or is not agricultural land and whether the person claiming to be in possession is or is not a tenant of the said land from prior to 1st March 1974.

(ii) Such Court or Officer or Authority shall stay such suit or proceedings in so far as such question is concerned and refer the same to the Tribunal for decision;

(iii) all interim orders issued or made by such Court, Officer or Authority, whether in the nature of temporary injunction or appointment of a Receiver or otherwise, concerning the land shall stand dissolved or vacated, as the case may be;

(iv) the Tribunal shall decide the question referred to it. under Clause (1) and communicate its decision to such Court, Officer or Authority. The decision of the

Tribunal shall be final.

(2) Nothing in Sub-section (1) shall preclude the Civil or Criminal Court or the Officer or Authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in that sub-section.'

The words used in Section 133 (which are underlined by me above for the purpose of emphasis) connote the present tense. Therefore, if the plaintiff relies on an existing tenancy and if the question of existing tenancy is required to be decided, then alone the Civil Court or other authority shall stay the suit and refer the said tenancy issue to the Tribunal. Section 133 does not speak about past tenancies at all. If the plaintiff claims to be in possession as a tenant on the date of suit, then only the tenancy issue would arise and it needs to be referred to the Tribunal.

13. As already stated above, no tenancy can be deemed to be in existence on and after 1-3-1974. A suit has been filed in the year 1983. Therefore, by any stretch of imagination, it cannot be said that the tenancy was in existence or can be claimed by a person on the date of suit filed in the year 1983. Therefore, there is no question of a subsisting tenancy on the date of suit. Therefore, if by inadvertance or unnecessarily a person refer to a past tenancy in the plaint, the Civil Court cannot and need not frame a tenancy issue regarding the past tenancy and stay the suit and refer the said issue to the Land Tribunal. Section 132 bars the jurisdiction of a Court only in the matters, which are required to be settled or decided under the Act.

14 Section 112(B)(b) reads as--

'to decide whether a person is a tenant or not.'

This a further indication to show that the Tribunal has no jurisdiction to decide a past tenancy. It has got jurisdiction only to determine an existing tenancy because the word used is in the present tense. No provision in the Land Reforms Act, requiring the Civil Court to frame an issue even regarding a past tenancy and requiring the Civil Court to stay the suit and refer the issue of such past tenancy to the Tribunal has been brought to my notice.

15. The Learned Counsel Sri Mahesh, appearing for the respondents, referred me to Sangawwa and others. v. Yamanappa and another., 1980 (2) KLJ 445. In the said case, the plaintiffs brought a suit for permanent injunction against the defendants, who claim to be the owners of the land, on the basis of their possession as tenants of that land. It was a case filed by the plaintiffs claiming to be in possession of the land as tenants. The plaintiffs rested their suit on their lawful possession as tenants even on the date of suit. It was a suit O.S. 147/70, which ultimately came to this Court in second appeal. As already stated above, the tenancy rights have ceased to have any effect and have ceased to be in force with effect from 1-3-1974 only. As on the date of filing of O.S. 147 of 1970, which is the subject matter of discussion in the said ruling, the tenancy rights were in force. Therefore, this Court held with reference to the time of filing of the suit O.S. 147 of 1970 that tenancy rights claimed by the plaintiff shall have to be referred to the Tribunal and the Civil Court shall have to stay the suit. It is not a case, where tenancy rights were claimed after the Land Reforms Act came into force i.e., after 1-3-1974, Therefore, the said decision has no application to the facts of the present case. Further in the said case it is not stated that the question of past tenancy also was required to be referred to the Tribunal.

16. The Learned Counsel Sri Mahesh then referred me to Achanna Shetty and others. v. Kamala Shedthi and others., 1980 (2) KLJ 485. It is laid down in the said case, as : - -

'The question of tenancy arises not only when there is a dispute between the plaintiff and the defendant with regard to the same, but also when the defendant claims tenancy under a co-defendant ; and the issue has to be referred to the Tribunal for decision.'

The said second appeal arose out of A.S. No. 18 of 1966, which arose out of O.S. 560 of 1964. Therefore, as already stated above, the question of tenancy raised by one of the defendants in the said suit was at a time when the tenancy rights were still in existence. Therefore, as already stated above, the principle laid down in the said case also would not be applicable to the facts of the present case.

17. The Learned Counsel Sri Manjappa referred me to Radhabai Balakrishna Deshpande v. Raghavendra Hanumanth Deshpande, 1975 (2) KLJ 387. It is laid down in the said case, as - -

'The scope of the enquiry by the Tribunal under Section 112(B)(b) of the Act is, limited to the existing tenancy in dispute and not the tenancy that existed at a remote past. The latter part of Section 133(2)(a) of the Act is also of the same effect

Thus, where in a suit for declaration of title and possession of agricultural land, the defendant contended that he was a tenant of the land from 1954 to 1961 and, thereafter, became owner, pursuant to an agreement for sale and family arrangement, held that the Civil Court has jurisdiction to try the issue relating to the past tenancy pleaded by the defendant and that the same need not be referred to the Tribunal.'

This Court in the said Radhabai's case, has referred to Musamia Imam Haider Bax Razvi v. Rabari Govind Bhai Ratnabhai, : [1969]1SCR785 and has extracted a passage from the said decision which reads as - -

'Section 70(b) of the Act imposes a duty on the Mamlatdar to decide whether a person is a tenant, but the sub-section does not cast a duty upon him to decide whether a person was or was not a tenant in the past whether recent or remote. The main question in the present case was the claim of the defendants that they had become statutory owners of the disputed lands because they were tenants either on the 'tillers day' or on the date of the release of the management by the Court of wards. In either case, the question for decision will be not whether the defendants were tenants on the date of the suit but the question would be whether they were or were not tenants in the past. The question whether the defendants were tenants on July 29, 1956 or on May 11, 1958 was not an independent question but it was put forward by the defendants as a reason for substantiating their plea of statutory ownership. In other words, the plea of tenancy on the two past dates was a subsidiary plea and the main plea was of statutory ownership and the jurisdiction of the Civil Court cannot therefore be held to be barred in this case by virtue of the provisions of Section 70 of the Act read with the provisions of

Section 85 of the Act.'

It is further laid down in the said Supreme Court decision, as:

'In our opinion, there is nothing in the language or context of Section 70 or Section 85 of the Act to suggest that the jurisdiction of the Civil Court is expressly or by necessary implication barred with regard to the question whether the defendants had become statutory owners of the land to decide in that connection whether the defendants had been in the past tenants in relation to the land on particular past dates. We are also of the Opinion that the jurisdiction of the Civil Court is not barred in considering the question whether the provisions of the Act are applicable to the disputed land during a particular period.'

Sections 70 and 85 of the Bombay Act, which were the subject matter of discussion in the Supreme Court, are in para-materia with Sections 132 and 133 of the Karnataka Land Reforms Act. Therefore, the view that I have taken above is supported by the said Supreme Court decision and the decision of this Court in Radhabai's case, 1975 (2) KLJ 387 referred to above.

18. The view that I have taken above that the provisions of the Karnataka Land Reforms Act, i.e., Sections 132 and 133 apply only to the existing tenancy but not to the past tenancy, gets support from the ruling in Boregowda L.G v. Bangalore Development Authority and others., 1983(2) KLJ 279 Chandrakantharaj Urs, J. has stated in the said decision in para 5, as - -

'By virtue of Section 44 of the Reforms Act all tenanted lands vested in the Government with effect from the date of the Amendment Act 1 of 1974. After such deemed vesting of lands, the tenants are required to make an application in Form-7 as prescribed by the Rules framed under the Reforms Act to the Land Tribunals before a specified date and acquire registration of occupancy right and thereafter ownership on payment of occupancy price This is the scheme of the Act. The time for making such application to register themselves as occupants by tenants was extended from time to time after 1974 and the last date for preferring such application for registration of occupancy right was 30th June, 1979. It is not the case of the petitioners that they have made applications to the Land Tribunal

having jurisdiction for registration of occupancy right so far. In other words, even if one were to assume that the petitioners have been tenants from a long time on the lands in question, they have lost their right. In the result by operation of Section 44 of the Act, if the lands were tenanted, the lands in question have vested in the State Government and the State Government should be presumed to be the owner. In the instant case, possession appears to have been given to the Special Land Acquisition Officer of the Bangalore Development Authority.'

It is further stated in para 7, as - -

'None can have any quarrel with the proposition advanced by Sri Subba Rao that the Land Tribunals alone are competent to determine the tenancy rights. But that does not mean that the Land Tribunals must be vested with such power even after the expiry of 30th June, 1979. This, assuming that the petitioners were tenants prior to 1979-80 or 1980-81 as the case may be as evidenced by Annexures F and G.'

19. In *Basappa v. Land Tribunal, Bagalkot Talq, and others.*, 1978 (1) KLJ 48, it has been stated, as - -

'Where the 3rd respondent made an application for grant of occupancy, the Tribunal cannot grant occupancy in favor of 2nd respondent, who was not an applicant for registration of occupancy. In view of Section 48(8) the Tribunal has no jurisdiction to grant occupancy right to a person who has made no application within the time allowed by Section 48A(1) of the Act. Where the person, who would otherwise be entitled to claim occupancy right under Section 45 read with Section 48A had made no application in the manner provided to the Tribunal having jurisdiction, such person loses the right to claim occupancy right.'

20. Therefore, what is contemplated by Sections 133 and 132 of the Land Reforms Act is that if there is any existing tenancy right i.e., existing even after 1-3-1974, then the Civil Court shall have to frame a tenancy issue and refer that issue to the Tribunal. As already stated above, no tenancy except the ones recognised by Section 5 of the Act, can be deemed to be in existence with effect from or after 1-3-1974. Therefore, when no tenancy right can be said to be existing after 1-3-

1974, the question of framing a tenancy issue in suits filed after 1-3-1974 does not arise and therefore the question of referring such an issue to the Tribunal does not arise at all.

21. As already stated above, the plaintiff has clearly stated in para 2 of his plaint that he was a tenant under one Smt. Padmavathamma and later under one Smt. Hemavathi the first defendant, and that the tenancy ceased after coming into force of the Karnataka Land Reforms Act and the land vested in the State Government. The tenancy referred to by the plaintiff refers only to a past tenancy, which has ceased to be in existence with effect from 1-3-1974. Sri Kadidal Manjappa submitted that the plaintiff had not even filed an application in Form No. 7 under Section 45 of the Land Reforms Act for conferment of occupancy rights. Therefore, the question of existing tenancy does not arise at all in this case. Therefore, under these circumstances, the lower Court committed an error in framing a tenancy issue and referring the same to the Tribunal

22. Further Order 47 Rule 1 of the Code of Civil Procedure reads, as --

(1) Any person considering himself aggrieved - -

(a) by a decision on a reference from a Court of Small Causes from which an appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed, or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.'

The explanation to Rule 1 reads as --

'The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.'

Therefore, if any review is sought under Rule 1 of Order 47 of the Code of Civil Procedure, the following ingredients must be established :

- i) On the ground of the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the party or could not be produced by him at the time when the decree was passed or order made; or
- ii) on account of some mistake or error apparent on the face of the record ; or
- iii) for any other sufficient reason.

It is not the case of the defendants that any new or important matter or evidence was not available at the time when the order of temporary injunction was granted by the Court below. It is not the case of the defendants that after exercise of due diligence, they came to know, for the first time at the time of filing of the review application, about Sections 132 and 133 of the Land Reforms Act. It is not a case of some mistake or error apparent on the face of the record. No other sufficient reason for reviewing the order has been made out.

23. The Learned author Sri Mulla in his Code of Civil Procedure, 13th Edition, has stated on page 1672 as - -

'A mere error of law is not a ground for review under this rule. It must further be an error apparent on the face of the record'.

A mere wrong interpretation of a provision of law and even taking a wrong view of law does not give any ground for review within the meaning of Order 47 Rule 1 of the Code of Civil Procedure. It is well recognised that the Courts can decide the cases both rightly and wrongly. Even if the decision is a wrong one even on a point of law, it is equally binding on the party. The parties cannot make a grievance that the Court has given a wrong decision on a question of law and they cannot ask the

Court to review it on the basis that its decision on point of law is wrong. If a wrong decision i.e., a decision either on fact or on law has become final, it does not give any cause of action for reviewing the decision. Therefore, even on a plain reading of Order 47 Rule 1 of the Code of Civil Procedure, it was not open to the Court below to entertain a review application I.A.6 and to review its order. Therefore', the Court below committed an error in allowing I.A.6 and reviewing its order granting temporary injunction.

24. Therefore, viewed from any angle, the order passed by the Court below cannot be sustained and thus it is set aside. The revision is allowed. I.A.6 filed by the defendants in the Court below is dismissed. The issue raised regarding the tenancy is deleted and if the same is already referred to the Tribunal, the trial Court is directed to recall the same.

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