

Mallappa Bharamappa Madar Vs. Basavanthappa

Mallappa Bharamappa Madar Vs. Basavanthappa

SooperKanoon Citation : sooperkanoon.com/378478

Court : Karnataka

Decided On : Jan-25-1994

Reported in : ILR1994KAR804; 1994(2)KarLJ116

Judge : Rajendra Babu and ;Venkataraman, JJ.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 26

Appeal No. : W.A. No. 13769 of 1991

Appellant : Mallappa Bharamappa Madar

Respondent : Basavanthappa

Advocate for Def. : Mohan Shanthanagoudar, Adv. for R1 and ;K. Vishwanath, HCGP for R2

Advocate for Pet/Ap. : F.V. Patil, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Rajendra Babu, J

1. This Petition is directed against an order made by the Land Tribunal, declaring Respondent No,1 as the tenant in respect of land comprised in Sy.No. 37 on the

Western side measuring about 1 acre 20 guntas in Aladakati village in Hirekerur Taluk. That order arose out of Form No. 7 filed by Respondent No. 1 in terms of Section - 48A of the Karnataka Land Reforms Act (hereinafter referred to as 'Act'). On an earlier occasion the Tribunal had held that the first respondent was not a tenant in respect of the land in question, by its order dated 23.5.1977, against which a Writ Petition was filed before this Court and this Court by an order made on 29.6.1983 quashed that order and remitted the matter for fresh consideration. Since the Tribunal had relied upon a document 'Agauva Lavani Patra' to hold that Respondent No. 1 is not a tenant, it was asked to decide the rights arising under the said document, in favour of Respondent No. 1, and whether he would be a tenant as on 1.3.1974. The Tribunal on the examination of the matter found that the revenue records disclosed that the first respondent had been cultivating the land in question. They also took into consideration the statements made before them and also an order made on 30.11.1978, that he had obtained possession from respondent No. 1 pursuant to an order made by the Taluka Executive Magistrate under Karnataka Debt Relief Act, 1976, who treated the transaction as 'Agauva Lavani Patra' to be a mortgage and redeemed the petitioner of the debt. Taking that factor into consideration, the Tribunal found as on 1.3.1974 respondent No. 1 was in possession of the land in question and the copy of the 'Agauva Lavani Patra' also discloses that the first respondent had been cultivating the land in question as tenant from 1963 till date. On that basis it held that the land was a tenanted land continued to be so even after 'Agauva Lavani Patra' was entered into between the parties and came to the conclusion the first respondent must be held to be a tenant.

2. The impugned order is attacked by the petitioner on two grounds - firstly it is contended that the 'Agauva Lavani Patra' had(SIC) executed on 21.5.75 and that after this transaction the lease in favour of the first respondent merged with the rights arising under this 'Agauva Lavani Patra' transaction and therefore the lease was no longer in subsistence and hence the Tribunal could not have held as on 1.3.1974 the first respondent was a tenant in respect of the land in question. It was brought to our notice that by an order dated 30.11.1978 it held that the petitioner was a debtor in terms of the Karnataka Debt Relief Act and the debt stood extinguished and he was redeemed of the mortgage and therefore, it is contended

that the right of lease got merged in the right of mortgage and the mortgage was redeemed on 30.11.1978 and the possession also taken of by the petitioner of the land in question, the first respondent would not take advantage of Section 25 of the Karnataka Land Reforms Act.

3. It is next contended that the lands in question are service inam lands governed by The Karnataka Village Offices Abolition, Act, 1961, and the rights thereto are regulated by that Act and hence the Tribunal had no jurisdiction to make the order in question.

4. In order to appreciate the contention advanced on behalf of the petitioners it is necessary to refer to the recitals in the document which is styled as 'Agauva Lavani Patra' in some detail. In that document it is stated after the preamble that for purpose of household expenses and as he had to discharge certain hand loans and also to discharge the loan obtained from a Society for the purpose of the marriage expenses of his daughter, he obtained a sum of Rs. 100/-per year between 1972 and 1983 for a period of 11 years towards the land already under cultivation of the first respondent from 1963 onwards. After giving the description of the land it is stated that possession has to be delivered in March 1983. There is no recital regarding treating the amount as loan at all. The petitioner also states as having received the amount thereto.

5. In APPASAHEB v. LAND TRIBUNAL, 1981(1) KLJ Sh.N. No. 76, a document provided for payment of a sum of Rs. 100/- per year for a period of 10 years to the executant and the person in whose favour document was executed could continue to be in possession of land and cultivate the same. A Division Bench of this Court held that the transaction was not a security towards debt but a lease. The mere use of the word 'Agauva Lavani' is not conclusive of as to the form of the transaction. The term of transaction and surrounding circumstances will have to be taken note of. Whether it is a mortgage or lease, whether the transaction refers to payment of rent in advance and the recital of delivery of possession at the end of a particular period, it cannot be considered to be a mortgage as held in GURUSIDDAIAH v. LAND TRIBUNAL, 1979 (2) KLJ 176. Considering the extent of land and that it is wet land, and the fact that Respondent No. 1 is cultivating

lands as a tenant from 1963 it must be held that the transaction is a lease and not mortgage. We are further fortified in our view by the Decision of this Court in MARTHANDA RAO SHANKAR RAO PATIL AND 7 ORS. v. THE LAND TRIBUNAL, HAVERI BY ITS SECRETARY SPECIAL TAHSILDAR, HAVERI AND ANR, ILR (Karnataka) 1977(1) 648. and in BISTAPPA v. PUTTAPPA, 1980(2) KLJ 283 holding that the expression 'Agavu Lavani' conveys the meaning that the transaction is an advance lease transaction. Such expression is commonly prevalent in the erstwhile Bombay-Karnataka area.

6. The recitals in the document referred to earlier by us will make it clear that the transaction is in reality an advance lease transaction and not a mortgage deed. We do not think that inspite of the Decisions of this Court, Taluka Executive Magistrate could have taken a different view. Therefore, this finding itself is sufficient to uphold the order made by the Land Tribunal.

7. Nevertheless in view of the order made by the Taluka Executive Magistrate, we would like to examine the question raised by the petitioner as to whether there has been any merger of rights of mortgage and lease in view of the 'Agauva Lavani Patra' document entered in into between the parties and whether the right as lessee stood extinguished. Section-26 of the Karnataka Land Reforms Act makes it clear that if any land is mortgaged by a landlord by way of a usufructuary mortgage to a tenant cultivating such land, the tenancy of such land shall be in abeyance during the period the mortgage subsists. After the expiry of the said period it shall be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created. The rights as a lessee was not lost at all, intact it merely reflects the legal position as explained by the Supreme Court in GAMBANGI APPALASWAMY NAIDU AND ORS. v. BEHARA VENKATARAMANAYYA PATRO, : [1985]1SCR651 , which refers to an earlier Decision of the Supreme Court in SHAH MATHURADAS MAGANLAL & CO. v. NAGAPPA SHANKARAPPA, : [1976]3SCR789 . These two Decisions make it clear that both rights as mortgagee and lessee could be held at the same time in respect of the same land and those rights could be simultaneously held, one right is neither higher nor lesser than the other. If that is so, the provision of Section-26 of the Act could be understood as to mean that the tenancy does not

cease on the creation of the usufructuary mortgage.

8. In that view of the matter, the order made by the Taluka Executive Magistrate made under the Karnataka Debt Relief Act, will not come in the way of the Tribunal holding that the petitioner continues to be the tenant even as on 1.3.1974. In that view of the matter, we do not find any merit in this submission made on behalf of the petitioners in this regard.

9. As regards the other question raised, the matter is directly covered by the Decision of this Court in STATE OF KARNATAKA v. GOWRAMMA, : ILR 1993 KAR3469 , as to the applicability of the Karnataka Village Offices Abolition Act in relation to inam lands. It is also covered by the Karnataka Land Reforms Act. This Court clearly stated that the Tribunal gets jurisdiction to grant occupancy rights under the Act in favour of the lessee in respect of land governed by the Karnataka Village Offices Abolition Act only if it is established that the land was lawfully leased and the lease was subsisting as on 1.3.1974, in case both these conditions are fulfilled. Even assuming for a moment that if the lands are covered by the Karnataka Village Offices Abolition Act, that does not preclude the rights of the first respondent as a lessee, if in fact he was holding lands as a tenant as on 1.3.1974. Whatever rights accrue to the petitioner under the Karnataka Village Offices Abolition Act, will ultimately enure to the benefit of the first respondent.

In that view of the matter we do not find any merit in this contention either. Hence this Petition is dismissed. Rule discharged.

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