

Shiddappa and Another Vs. State of Karnataka and Others

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SooperKanoon Citation : sooperkanoon.com/378593

Court : Karnataka

Decided On : Jul-28-1999

Reported in : ILR2000KAR453; 2000(3)KarLJ242

Judge : P. Vishwanatha Shetty, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 2(A)(34), 4, 24, 44 and 48-A;
[Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 28496 of 1993

Appellant : Shiddappa and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri. R.K. Hatti, High Court Government Pleader and ;Smt. Syeda Irfana Bulquees for ;Sri V.D. Ganiger, Adv.

Advocate for Pet/Ap. : Sri Ashok R. Kalyan Shetty, Adv.

Judgement :

ORDER

1. In this petition filed under Articles 226 and 227 of the [Constitution of India](#), the petitioner-landowners have called in question the correctness of the order dated 23rd of July, 1993 passed by the Land Tribunal, Hubli, granting occupancy right in respect of 3 acres 8 guntas of land in Survey No. 155/1A (old No. 20/1A) situated

at Gabbur Village, Hubli Taluk, Dharwad District, in favour of the third respondent.

2. Sri Ashok Kalyan Shetty, learned Counsel for the petitioners, challenging the correctness of the order Annexure-F, made five submissions. Firstly, he submitted that since there is no claim made by the third respondent in respect of the land measuring 3 acres 8 guntas in Survey No. 155/1A (20/1A), the second respondent-Tribunal had no jurisdiction to grant occupancy right in respect of the said land in favour of the third respondent. Secondly, he submitted that the impugned order is vitiated on the ground that the Tribunal has failed to consider the documents dated 31st of July, 1966, 23rd of September, 1964 and 6th of February, 1967, copies of which have been produced as Annexure-C, D and E respectively, along with other oral evidence adduced in the case. Elaborating this submission, he pointed out that if the contents of Annexure-C to E are taken into account, the said documents would only show that it is only 'Undu Eiduva Kararu' and not 'lease'. Sri Kalyan Shetty, in support of his plea that 'Undu Biduva Kararu' is only a mortgage, but not lease, relied upon the decision of this Court in the case of Veerappa Rudrappa Alagawadi v The Land Tribunal and Another. He further submitted that in Annexure-E, the petitioner had agreed to sell the land in question to the third respondent; and under these circumstances, the Tribunal ought to have held that the continuance of possession of the land in question by the third respondent from the date of execution of the agreement to sell, is not that of a tenant, but only as a person in possession of the land in question pursuant to the agreement to sell executed by the petitioners. Thirdly, he submitted that admittedly, the documents Annexure-C and D came to be entered into between the first petitioner and the father of the third respondent; and since the father of the third respondent died in the year 1970, the third respondent is not entitled to be registered as an occupant in respect of the land in question as there was no relationship of landlord and tenant between the petitioners and the third respondent subsequent to the death of the father of the third respondent. According to him, the application Form 7 filed by the third respondent was totally misconceived and unsustainable in law as he would not acquire the status of a tenant. Fourthly, he submitted that admittedly, the documents Annexure-C and D came to be executed only by the first petitioner in favour of the father of the third respondent; since the land in question, is an ancestral property, the

second petitioner acquired one-third share in the land in question subsequent to the death of the father of the petitioners; and under these circumstances, even if the documents Annexure-C and D are construed to be a lease of the land created by the first petitioner in favour of the father of the third respondent, the said lease cannot be binding on the second petitioner and as such, the order impugned to the extent of one-third of the second petitioner is liable to be quashed. Finally, he submitted that the order impugned is not a speaking order. According to him, the Tribunal, except referring to the statement of the parties and their witnesses, has not assigned reasons in support of its conclusion.

3. However, Miss Syeda Irfana Bulquees, learned Counsel appearing along with Sri Ganiger, for the third respondent, supported the impugned order strongly repelling each one of the submissions of Sri Ashok Kalyan Shetty. She submitted that there is absolutely no merit in the contention of the petitioners that there is no claim made by the third respondent for grant of occupancy right in respect of the land in question. It is her submission that it is not the case of the petitioners either in the statements made by them in the course of the proceedings before the Tribunal or in the statements made by their witnesses, that there is no claim made by the third respondent in Form 7 filed by him for grant of occupancy right in respect of the land in question. She also pointed out that even in the notes of arguments filed on behalf of the petitioners, there is no contention raised that the third respondent has not made any claim in Form 7 for grant of occupancy right in respect of the land in question. She would also submit that in Writ Petition No. 13113 of 1977 filed by the third respondent challenging the order passed by the Tribunal rejecting his claim for grant of occupancy rights, the petitioners did not raise any objection contending that there is no claim made by the third respondent in respect of the land in question; and in the said writ petition, as this Court had directed the Tribunal to consider the claim of the third respondent in respect of the land bearing Survey No. 155/1A, the petitioners cannot be permitted to contend that there is no claim made by the third respondent for grant of occupancy right in respect of the land in question.

(a) Insofar as the second contention of Sri Kalyan Shetty is concerned, Miss Syeda Irfana Bulquees submitted that the Tribunal has considered the documents

Annexure-C to E and also the oral evidence adduced in the case; and on consideration of the same, the Tribunal has come to the conclusion that the third respondent is a tenant in respect of the land in question; and the finding so recorded by the Tribunal being purely a question of fact, the said finding is not liable to be interfered with by this Court in exercise of its writ jurisdiction. She further submitted that for any reason, if this Court is of the view that the Tribunal has not considered the documents Annexure-C, D and E, since the parties are already before this Court for the second time, this Court may examine the documents in question and decide the matters on merits instead of remitting the matter to the Tribunal for fresh consideration causing irreparable injury and hardship to the parties. She pointed out that the third respondent being a tenant, is entirely depending upon the land in question and he would be put to great hardship if the matter is again remitted to the Tribunal for fresh consideration.

(b) With regard to the third submission of Sri Kalyan Shetty, Miss Syeda Irfana Bulquees pointed out that since the father of the third respondent was a tenant in respect of the land in question and since it is not the case of the petitioners that they came into possession of the land in question after the surrender of tenancy in accordance with law, the third respondent, who had been cultivating the land in question along with his father, was entitled to file Form 7 claiming grant of occupancy right in respect of the land in question; and, therefore, the Tribunal has not committed any error in passing the impugned order.

(c) Insofar as the submission of Sri Kalyan Shetty that the third respondent is not entitled to claim occupancy right in respect of the land in question to an extent of one-third interest of the second petitioner in that land, is concerned, Miss Bulquees pointed out that there is no truth in the case of the petitioners that the second petitioner has interest in the land in question. It is her submission that even assuming that the second petitioner has one-third interest in the land in question, since the first petitioner, who is an elder brother of the second petitioner, who has leased the land in question as per documents Annexure-C and D and further the document Annexure-D, in unequivocal terms, states that the first petitioner is acting on behalf of the second petitioner also while executing the said document, the possession of the father of the third respondent in respect of the land in

question being a lawful possession and the continuance of the third respondent in possession of the land in question being lawful, the third respondent would be a deemed tenant within the meaning of Section 4 of the Karnataka Land Reforms Act (hereinafter referred to as 'the Act'). Therefore, she submits that there is absolutely no merit in the contention urged by Sri Kalyan Shetty.

4. In the light of the rival contentions vehemently urged by the learned Counsel for the parties, now let me examine each one of them.

5. Insofar as the first submission of Sri Kalyan Shetty is concerned, I am of the view that it is required to be stated only for the purpose of rejecting it. This Court, in Writ Petition No. 13113 of 1977 filed by the third respondent, by its order dated 2nd of June, 1983, directed the second respondent-Tribunal while quashing the earlier order passed by the Tribunal rejecting the claim of the third respondent for conferment of occupancy right in respect of the land in question, to consider his claim for grant of occupancy right in respect of the land bearing Survey No. 155/1A. It is useful to refer to the operative portion of the said order, which reads as under:

'Accordingly, this petition is allowed, the impugned order is quashed insofar as it relates to Survey No. 155/1A and the matter is remitted to the Tribunal for fresh disposal of the application of the petitioner after holding a de novo enquiry in strict compliance with the requirement of Rule 17 of the KLR Rules. No costs'.

Therefore, as rightly pointed out by the learned Counsel for the third respondent, since the dispute between the parties centred around the land in Survey No. 155/1A measuring 3 acres 8 guntas in Writ Petition No. 13113 of 1977 filed by the third respondent challenging the order passed by the Tribunal rejecting his claim in respect of the said land and it was not the case of the petitioners in that writ petition that there was no claim made by the third respondent in respect of the land bearing Survey No. 155/1A measuring 3 acres 8 guntas, I am of the view that it is not open to the petitioners to contend that there was no claim made by the third respondent in respect of the land in question. Further, it is also not disputed by Sri Kalyan Shetty that in the course of the proceedings before the Tribunal, the petitioners did not contend that there is no claim made by the third respondent in

respect of the land in Survey No. 155/1A. The entire controversy between the parties before the Tribunal was whether the nature of the transaction is one of mortgage (Undu Biduva Kararu) or lease? This is clear from the documents Annexure-C, D and E relied upon by the petitioners themselves. Further, it is also admitted by Sri Kalyan Shetty that even in the written arguments filed before the Tribunal, the petitioners did not state that there was no claim made by the third respondent in respect of land in Survey No. 155/1A. It is necessary to point out that if such a contention was raised and the matter was pending consideration before the Tribunal for a considerable length of time, if there was any technical objection, the third respondent would have had an opportunity to amend Form 7 filed by him seeking conferment of occupancy right in respect of the land in question. Further, Form 7 sought to be relied upon by the petitioners shows that the third respondent had made a claim in respect of Survey No. 155 measuring 3 acres 8 guntas. May be that '/1A' was initially not written in Form 7.

6. Insofar as the second submission of Sri Kalyan Shetty that the nature of the transaction between the first petitioner and the father of the third respondent evidenced by means of two registered documents Annexure-C and D is only 'Undu Biduva Kararu' and not 'lease' is concerned, I must state that the said submission is without any substance. I have been taken through the said documents by Sri Shetty. Either in Annexure-C or in Annexure-D, there is no stipulation which would indicate that the possession of the land in question was handed over to the father of the third respondent on 12th of June, 1961 as a security in respect of the loan advanced to the first petitioner. On the other hand, in the document Annexure-C, it is stated in unequivocal terms that the land in question was given on rent of Rs. 150/- per year for a period of ten years commencing from 12th of June, 1961. It is useful to refer to the said stipulation in Annexure-C, which reads as hereunder:

Further, it is also stated in the said document that on the expiry of ten years period, the land should be handed over to the first petitioner. The said stipulation reads as follows:

The same document also states that the first petitioner has received the advance rent of Rs. 490/- out of rent of Rs. 1,490/- fixed for ten years. The said stipulation

reads as follows:

It is necessary to state that throughout the document, the word used is 'Lavani' (lease). It is well-settled that the word 'Lavani' used is 'lease'. If the transaction is a mortgage, the word that would have been used is . There is no stipulation or statement that the transaction in question is either 'Undu Biduva Kararu', or as sought to be made out by Sri Kalyan Shetty. In Annexure-D, dated 23rd of September, 1964, the word used again is 'lease' and in the said document, the lease period was extended from the year [1972-72] for another eight years as the father of the third respondent had agreed to pay a sum of Rs. 496/- as advance rent. However, in the document Annexure-E strongly relied upon by Sri Kalyan Shetty, the first petitioner had agreed on behalf of himself and also on behalf of the second petitioner to sell the land in question to the father of the third respondent. In the said document also, there is a recital to the effect that the land in question was given on lease ('Lavani') to the father of the third respondent. Therefore, the effect of the recitals in the said three documents would clearly show that the land in question was given on lease to the father of the third respondent on 12th of June, 1961. Further, it is admitted by the petitioners that the father of the third respondent and the third respondent continued to be in possession of the land in question. The oral evidence of the witnesses examined on behalf of the parties, in my view, also clearly supports the recitals in the documents referred to above. The entries in the Record of Rights and Pahani also show the name of the third respondent in respect of the land in question. Though Sri Kalyan Shetty would say that the order impugned is not a speaking order, in my view, the Tribunal has, in detail, referred to the statements of the parties and their witnesses and the entries in the Record of Rights and Pahani. Therefore, if the Tribunal has taken all these matters into consideration and come to the conclusion that the father of the third respondent and after his death, the third respondent, was a tenant in respect of the land in question, in my view, this Court, while exercising its jurisdiction under Article 227 of the [Constitution of India](#), will not be justified in reversing the said finding. The finding recorded by the Tribunal is supported by the recitals referred to in Annexure-C, D and E. Therefore, I do not find any error in the finding recorded by the Tribunal that the third respondent is a tenant in respect of the land in question. In the light of the said conclusion, I am of the view that the decision of

the Supreme Court in the case of Fuzhakkal Kuttappu v C. Ehargavi and Others, strongly relied upon by Sri Kalyan Shetty is of no assistance. Sri Kalyan Shetty has not been able to point out even a single recital in Annexure-C, D and E, which would show that the nature of the transaction is a mortgage and not a lease.

7. Now, the other question is whether the third respondent is not entitled to seek grant of occupancy right in respect of the land in question, as contended by Sri Kalyan Shetty? Even on this question also, I am of the view that there is no merit in the submission of Sri Kalyan Shetty. If the transaction in question is considered as a lease, the father of the third respondent would undoubtedly be a tenant in respect of the land in question. If the father of the third respondent was a tenant in respect of the land in question, unless the petitioners come into possession of the land in question in accordance with law, the petitioners cannot deny the claim of the third respondent, who succeeds to the leasehold interest of his father as his legal heir. It is also necessary to point out that once the land in question is a tenanted land as on 1-3-1974, Section 44 of the Act provides that all such lands vest with the State Government. The effect of the said provision is that all the tenanted lands statutorily vest with the State Government.

8. Now, the only other question that remains to be considered is whether in respect of one-third interest of the second petitioner, the Tribunal was not justified in conferring occupancy rights on the third respondent, as contended by Sri Kalyan Shetty. Here also, I do not find any merit in the submission of Sri Kalyan Shetty. Admittedly, the petitioner is the brother of the second petitioner. The land in question was given on lease as per Annexure-C, dated 12th of June, 1961. Since then, the father of the third respondent, during his lifetime, and the third respondent along with his father and after his father's death, has been cultivating the land in question. It is not the case of the petitioners that the possession of either the father of the third respondent or the third respondent, is not lawful. Further, if the first petitioner, who is the elder brother of the second petitioner, in the course of the management of the land in question, has leased the land in question to the father of the third respondent, the possession of the third respondent, in my opinion, is a lawful possession. The document Annexure-E clearly states that even the agreement to sell was entered into by the first

petitioner with the father of the third respondent on behalf of the second petitioner. Section 4 of the Act provides that the person, who is in lawful possession and cultivation of the agricultural land, is a deemed tenant. It is useful to refer to relevant portion of Section 4 of the Act, which read as hereunder:

'4. Persons to be deemed tenants.--A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not.--

(a) member of the owner's family,

.....!'

Further, Section 24 of the Act clearly provides that the tenancy rights are heritable. The said section reads as follows:

'24. Right of tenant to be heritable.--Where a tenant dies, the landlord shall be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death'.

Therefore, in my view, even assuming that the second petitioner has one-third interest in the land in question, the father of the third respondent and the third respondent will be lawful tenants within the meaning of Section 4 of the Act.

9. In the light of the discussion made above, I do not find any merit in this petition and, therefore, the petition is liable to be rejected. Accordingly, it is rejected.

10. However, no order is made as to costs.

11. Sri R.K. Hatti, learned Government Pleader, is permitted to file his memo of appearance within four weeks from today.