

Basava Devadiga and Others Vs. Anandaraya Patali and Others

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Court : Karnataka

Decided On : Jan-25-1999

Reported in : ILR1999KAR2265; 1999(3)KarLJ30

Judge : Chidananda Ullal, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 4 and 48-A

Appeal No. : Land Reforms Revision Petition No. 3042 of 1990

Appellant : Basava Devadiga and Others

Respondent : Anandaraya Patali and Others

Advocate for Def. : Sri H.S. Surendra, High Court Government Pleader

Advocate for Pet/Ap. : Smt. S.N. Sudha for G.S. Visveswara, Adv.

Judgement :

ORDER

1. This revision petition is filed by the younger brother of the original applicant before the Land Tribunal and further by his L. Rs to challenge the order dated 12-1-1989 passed by the District Land Reforms Appellate Authority, Udupi (formerly D.K. District, not Udupi District), in passing whereof the said Appellate Authority while setting aside the order dated 25-7-1977 in case No. LRY. 55-219. TRI. 1651-76-77 passed by the respondent 2-Additional Land Tribunal, Udupi, rejecting the

Form No. 7 filed by the original applicant and further, allowed the appeal in part preferred by the original applicant one Chikkadevadiga, the father of the appellants 2 and 3.

2. I heard the learned Counsel for the petitioner Smt. S.N. Sudha appearing along with Sri G.S. Visveswara and the learned Government Pleader Sri H.S. Surendra appearing for the respondent 2-Additional Land Tribunal and the respondent 3-State. The contesting respondent 1, the owner of the subject land having been served with notice has remained absent before this Court. I have also perused the case records including the records of the Appellate Authority as well as of the respondent 2-Additional Land Tribunal secured by the Registry.

3. I feel it proper to narrate the facts of the case in brief.

That the elder brother of the petitioner 1 and father of the petitioners 2 and 3 one Chikkadevadiga had filed Form No. 7 on 9-12-1976 before the respondent 2-Land Tribunal claiming occupancy right in respect of 20 cents of Bagayat land (garden land) situated in Sy. No. 49/3b2 in his own name. That the respondent 2-Land Tribunal after issuing notices to the respondent 1-owner herein held an enquiry and by its considered order dated 25-7-1977 in case No. LRY. 55-219.TRI.1651-76-77 had rejected the claim of the said Chikkadevadiga on the ground that the subject land applied for by him was not an agricultural land. That, the said Chikkadevadiga had challenged the said order before this Court in W.P. No. 7476 of 1981. On constitution of the Appellate Authority (which had passed the impugned order herein), the said writ petition came to be transferred by this Court to treat the same as a deemed appeal and further to try the same. That, before the Appellate Authority, the original applicant Chikkadevadiga had also produced the certified copy of the registered lease deed registered as Document No. 835 of the year 1948 before the jurisdictional Sub-Registrar at Brahmavar, wherein it had been stated that the subject land was leased to the original applicant Chikkadevadiga and his younger brother Basava Devadiga, the petitioner 1 herein. He had also produced yet another document, the certified copy of the Commissioner's Report in O.S. No. 273 of 1979 (that suit was filed by the respondent 1-owner as against the original applicant Chikkadevadiga).

4. That the Appellate Authority on consideration of the evidence on the record of the Land Tribunal as well as on its own record had passed the impugned order. In doing that, the Appellate Authority while setting aside the order dated 25-7-1977 of the respondent 2-Land Tribunal rejecting the claim of the original applicant Chikkadevadiga outright, allowed the same in part inasmuch as it had granted occupancy right only in respect of one half of the subject land i.e., 10 cents out of the 20 cents applied for on the ground that the original applicant had right only in respect of one half of the subject land as the lease deed came to be registered by the land owner in the joint names of the original applicant Chikkadevadiga and his younger brother Basava Devadiga, the petitioner 1 herein and further held that one half of the total extent i.e., 10 cents had vested in State.

5. That, the petitioner 1 though not a party for the lis between the original applicant Chikkadevadiga on the one side and the respondent 1, the owner of the subject land on the other either before the Land Tribunal or before the Appellate Authority had resorted to the instant revision petition at the first instance to challenge the impugned order passed by the Appellate Authority as above insofar as the same related to the vesting of one half of the subject land. In filing the revision it was contended by the petitioner 1 before this Court that the subject land was taken on lease by the original applicant Chikkadevadiga and himself and that the Form No. 7 was originally filed by his elder brother Chikkadevadiga for and on behalf of himself and on behalf of the petitioner 1 herein and as such, it was erroneous on the part of the Appellate Authority to grant one half of the total extent of 20 cents of the subject land to the original applicant and further to hold that the other one half had vested in State.

6. That, after some time when the instant LRRP was pending, the petitioner 1 impleaded petitioners 2 and 3 as the necessary parties to the petition, as they being the L.Rs of the original applicant Chikkadevadiga before the Land Tribunal.

7. The learned Counsel for the petitioners Smt. Sudha had taken me through the facts of the case as above and further taken me through the impugned order passed by the Appellate Authority. She had also taken me through the order dated 25-7-1977 that came to be passed by the respondent 2-Land Tribunal, whereby it

had rejected the claim of the original applicant Chikkadevadiga in its entirety. It was vehemently argued by her that the Appellate Authority had committed an error in law inasmuch as it had not appreciated that the subject land was taken on joint lease by the original applicant Chikkadevadiga and the petitioner 1 herein under a registered lease deed executed by the original owner in the joint names of the petitioner 1 and the elder brother, the above mentioned Chikkadevadiga, as long back as in the year 1948 and as such, the Appellate Authority would have granted the occupancy right in the joint names of the original applicant Chikkadevadiga and petitioner 1 taking that the original Form No. 7 filed by his elder brother was as a 'karta' of the joint family and as such was for and on behalf of himself and the petitioner 1 herein. In that sense, she had also argued that the Appellate Authority had totally erred in law to hold that one half of the subject land i.e., 10 cents of the total extent had vested in State. She therefore prayed that the impugned order insofar as the same related to the 10 cents of the land ordered to be vested in State be set aside in allowing the Form No. 7 filed by the original applicant in its entirety in entertaining the instant revision. She also prayed that that part of the land be granted to the petitioner 1 in modification of the impugned order.

8. While adverting to the Form No. 7 dated 19-12-1976 filed by the original applicant Chikkadevadiga found at page Nos. 55 and 56 of the Land Tribunal records, Smt. Sudha also argued that the said Form No. 7 had to be read along with the registered deed of lease referred to above to hold that the said claim was made by the original applicant for and on behalf of the joint family as a 'karta' thereof. It was also her submission that in the said facts and circumstances, it was very much open for the Appellate Authority to decide as to whether the tenancy was of the individual or of the family and that it is that jurisdiction vested in it, the Appellate Authority failed to exercise and it had thus entered into an error to pass the impugned order as above. She had also cited before me the following 5 decisions in support of her argument. They are:

(1) Mudakappa v Rudrappa and Others.

In this case the Division Bench of this Court held as hereunder:

'When one person applies for registration of the lands as an occupant in his individual name and three others apply for registration of the said lands in their names along with the other applicant as joint occupants, it becomes the duty of the Tribunal to decide whether only one of them was the sole tenant of the lands in question before the appointed day or whether all of them were jointly in possession of the lands as tenants. Without deciding the said question, it would not be possible for the Tribunal to make an effective order under Section 48-A of the Act. In order to decide the said question, it becomes necessary for the Tribunal to decide whether the tenancy in question was held by one of them exclusively or by all the applicants jointly. Under Section 48-A, the Tribunal has that power having regard to the scope of that Section'.

(2) Mudakappa v Rudrappa and Others.

In this reported case the Apex Court held that the Land Tribunal has got jurisdiction to decide as to the nature of tenancy i.e., individual or joint.

(3) Booda Poojary v Smt. Thoma Poojarthi and Others.

In this case the Full Bench of this Court held that the Tribunals have jurisdiction to go into all questions bearing upon the application for grant of occupancy right on the basis of tenancy and further to decide all the controversies having bearing upon the claim and it had also held that there was no conflict among Mudakappa's case.

(4) Guruvappa K. and Another v Smt. Manjappa Hengsu and Others.

In this case the Division Bench of this Court held that under Section 112(b) of the Land Reforms Act, the Tribunal has got jurisdiction and decide whether a joint family is or is not a tenant and that the word 'person' includes joint family as the word 'person' is not defined in the Act.

(5) Y.R. Veeranna v State of Karnataka and Others.

In the above said case, the Supreme Court held that a Form No. 7 filed by the applicant as a co-owner is maintainable for and on behalf of the family.

9. To sum up her argument, Smt. Sudha prayed that the impugned order passed by the Appellate Authority insofar as the same related to the order to vest 10 cents of the land be set aside and the same be conferred in the name of the petitioner 1 herein in allowing the Form No. 7 applied for by the original applicant Chikkadevadiga by taking the same as the one made for and on behalf of the joint family in allowing the instant revision.

10. The learned Government Pleader on the other side supported the impugned order passed by the Appellate Authority. According to him, the petitioner 1 herein being not the applicant before the Land Tribunal for grant of occupancy right in respect of any part of the subject land originally applied for by Chikkadevadiga has got no locus standi to resort to the instant revision before this Court. According to him, the Appellate Authority had rightly interpreted the joint tenancy created under the registered deed of the year 1948 and rightly conferred occupancy right in respect of one half of the land out of the total extent of 20 cents in the survey number and further rightly held the other half had vested in State. According to him, the instant revision does not merit any consideration. He therefore prayed that the revision petition be dismissed.

11. I have carefully considered the whole gamut of the case as it had been put up by the original applicant Chikkadevadiga, both at the first instance before the Land Tribunal and also at the second before the Appellate Authority and further as put up by the petitioners herein in this revision. As I have observed, the original applicant Chikkadevadiga the elder brother of the petitioner 1 and the father of the petitioners 2 and 3 herein had filed Form No. 7 on 9-12-1976 claiming occupancy right in respect of the entire extent of 20 cents of bagayat land in Sy. No. 49-3b2 and in filing the same, he had put forth his sub claim as against the respondent 1- land owner contending that he was cultivating the same for about 20 years on 'alve geni' basis and the land was situated in Chantharu Village of Udupi Taluk of Dakshina Kannada District. On perusal of the said Form No. 7, I am not left with any doubt that the same was filed by him for and on behalf of himself and not for and on behalf of the Joint Family that claimed to be consisted of himself and the petitioner 1 herein, no matter that before the Appellate Authority he had filed a registered geni karar of the year 1948 showing the tenancy in respect of the land,

both in his name as well as in the name of the petitioner 1 herein. Ever in the evidence before the Land Tribunal he had deposed that it is he who was cultivating the land and he further prayed for grant of occupancy right in his own name, that in his evidence he had deposed before the Land Tribunal that the land set out in his declaration was under his cultivation for 30 years on 'geni' basis. But strangely enough, the Land Tribunal at the first instance had rejected the claim of the original applicant mainly on the ground that in the statement of the respondent 1 before it, the respondent 1 had stated that the subject land was not an agricultural land.

12. That, before the Appellate Authority, the original applicant in filing the appeal to challenge the said order of the Land Tribunal produced the original registered lease deed of the year 1948 and further produced the Commissioner's report in O.S. No. 273 of 1979 on the file of Principal Munsiff, Udupi, wherein it had been stated therein that on the subject land there were fruit bearing coconut trees and the fruit bearing mango trees and finally on appreciation of the evidence, both oral and documentary before the Appellate Authority, the Appellate Authority had granted occupancy right in respect of one half of the. subject land mainly on the interpretation that in the registered lease deed the original applicant had right only in respect of one half of the entire extent of 20 cents and therefore held that the other one half of the land under his occupation had to vest in State and thus directed the jurisdictional Tahsildar to take over the said land unto State.

13. The learned Counsel for the petitioner vehemently argued that the Appellate Authority had totally failed to appreciate that the original application made by Chikkadevadiga was on behalf of the family as he was the 'karta' of the joint family of himself and of the petitioner 1 herein and according to Smt. Sudha that would have been done by the Appellate Authority when the registered lease deed was also produced before it showing the name of the original applicant as well as the name of the petitioner 1 herein as joint-tenancy holders. According to her, it is that exercise the Appellate Authority had failed to do despite the evidence adduced by the original applicant before the Appellate Authority and it is because of that the Appellate Authority had come to an erroneous finding that one half of the subject land had vested in State. It was also argued by her that in the said facts and

circumstances, the Appellate Authority would have granted the occupancy right either in the names of the original applicant and the petitioner 1 herein granting 10 cents each or in the alternative granted the same i.e., 20 cents in the joint names of the original applicant and further in the name of the petitioner 1.

14. But such an argument appears to be totally artificial and fallacious for it was nobody's case either before the Authority of the first instance i.e., the Land Tribunal or for that matter before the Appellate Authority at the second that the original applicant Chikkadevadiga had filed Form No. 7 for and on behalf of the joint family consisting of himself and the petitioner 1 as it has been now argued by the learned Counsel for the petitioners. As I pointed out as above, the Form No. 7 originally applied for by the father of the petitioners 2 and 3 was for and on his own behalf and on behalf of none else; much less for and on behalf of the joint family of himself and the petitioner 1 herein. For that matter, even before the Appellate Authority, it was the consistent case of the original applicant Chikkadevadiga that it is he who was cultivating the subject land for 20 years earlier to his application and in support of that contention of his, he had also produced the revenue records to show that it is he and he alone who was cultivating the subject land all through.

15. It is pertinent to observe here that even that case of the original applicant put forth before the Appellate Authority was not in any way challenged by the respondent 1-land owner, as his one line case both before the Land Tribunal as well as before the Appellate Authority was that the subject land was not an agricultural land at all. But that case of the respondent 1 had been well met with by the original applicant before the Appellate Authority in producing the Commissioner's Report in O.S. No. 273 of 1979, referred to above, wherein it had been shown therein that on the subject bagayat land fruit bearing coconut trees, jackfruit trees and mango trees were grown. It is to be noted here that respondent 1-land owner was also a party to the said suit and the Commissioner's Report; let apart, even in filing Form No. 7 before the Land Tribunal, the original applicant had clearly set out therein that the subject land was a bagayat land thereby he meant that the subject land was a garden land. Furthermore, in the revenue records too the subject land was described as bagayat land or garden land. As a matter of fact, it is that aspect of the case well understood and appreciated by the Appellate

Authority and it is for that reason, the Appellate Authority had conferred occupancy right to the original applicant to an extent of 10 cents out of the total extent of 20 cents in the survey number in question.

16. It is conspicuous to note here that the petitioner 1 was not a party to the tenancy proceedings either before the Land Tribunal at the first instance as well as in the appeal proceedings before the Appellate Authority and he had not filed any Form No. 7 before the respondent 2-Land Tribunal putting forth his claim; furthermore, he had come into picture for the first time only in the instant revision petition before this Court, that too, probably, because of the circumstances that the original applicant Chikkadevadiga had died on 19-1-1989 when the impugned order came to be passed by the Appellate Authority on 12-1-1989. I should not miss in this context to mention that the petitioner 1 herein at the first instance had resorted to the revision petition in his own name, no matter that he was not at all a party before both the authorities below as pointed out as above and the petitioners 2 and 3 the L.Rs of the original applicant Chikkadevadiga were sought to be impleaded as additional petitioners only subsequently on the ground that he was the manager of the joint family of himself and the original applicant Chikkadevadiga and that the petitioners 2 and 3 were necessary parties for adjudication of the proceedings. It appears to me therefore that the act of the petitioner 1 in filing the petition at the first instance in his own name and further behind the back of the petitioners 2 and 3 and subsequently getting the petitioners 2 and 3, the L. Rs of the original applicant impleaded to the instant revision as petitioners 2 and 3 was not without any purpose, for, probably he was quite aware at the later stage that the revision petition in his exclusive name was of no consequence and relief to him.

17. Now in the above peculiar circumstances, the questions that arise for my consideration are:

(i) Whether the impugned order passed by the Appellate Authority in granting occupancy right to the original applicant in respect of one half of the total extent of 20 cents in the subject survey number and further ordering for vesting of the other half of the land in the State is just and proper?

(ii) Whether the other one half of the land has to be granted to the petitioner 1 herein by way of occupancy right in pursuance of the original application filed by Chikkadevadiga in allowing the instant revision as argued by the learned Counsel for the petitioner Smt. Sudha?

18. I now take up the above two points together for my consideration as herebelow:

The undisputed facts between the parties are that the entire extent of 20 cents of land in question was cultivated by the original applicant Chikkadevadiga all through, no matter that the 'alve geni' came to be executed by way of registered deed in the year 1948 in the joint names of the original applicant Chikkadevadiga and the petitioner 1 herein and that the RORs in respect of the land stood all through in the name of the original applicant Chikkadevadiga; that the said Chikkadevadiga had applied for grant of occupancy right in Form No. 7 showing the land as 'bagayat land' in his own name, that when the Land Tribunal had rejected the claim of the original applicant at the first instance he alone had preferred the appeal before the Appellate Authority; that in O.S. No. 273 of 1979 the original owner, the respondent 1 herein had filed original suit in O.S. No. 273 of 1979 before the Principal Munsiff's Court at Udupi, as in that the said Chikkadevadiga alone was a defendant.

19. From the above undisputed facts, it is clear that the petitioner 1 was neither an applicant before the Land Tribunal nor for that matter the original applicant was pursuing his claim either before the Land Tribunal or for that matter before the Appellate Authority in the joint names of himself and the petitioner 1 herein. Therefore, it is difficult for me to accept the argument of the learned Counsel for the petitioners Smt. Sudha that the petitioner 1 was also a claimant before the Land Tribunal as the land in question was jointly leased to the original applicant Chikkadevadiga and the petitioner 1. Such an argument would have been very well accepted by me had the petitioner 1 was also an applicant before the Land Tribunal or in the alternative the claim made by the original applicant Chikkadevadiga was also in the joint names of himself and the petitioner 1. But unfortunately for the petitioner 1, that was not at all the case either before the Land

Tribunal or before the Appellate Authority either by the original applicant Chikkadevadiga or for that matter the contesting respondent 1-land owner. Therefore, I have got no hesitation to hold that the petitioner 1 cannot make out a case for grant of occupancy right in his name in respect of the other one half of the subject land that was directed to be vested in the State as done by the Appellate Authority in passing the impugned order, for in my considered view, even if the petitioner 1 had any right on the subject land he had lost once and for all as he had failed to put forth his claim before the Land Tribunal by filing Form No. 7. That being the position, the petitioner 1 cannot improve himself to put forth his claim for conferment of the occupancy right in respect of one half of the subject land in filing the instant revision before this Court, even by enjoining the petitioners 2 and 3, the L.Rs of the original applicant as he did. Hence, I do not have any hesitation to reject the argument of Smt. Sudha that the petitioner 1 too had to be construed as claimant along with the original applicant Chikkadevadiga, the father of the petitioners 2 and 3 with the filing of the original Form No. 7 by the said Chikkadevadiga before the Land Tribunal. I hereby do accordingly.

20. Now the question is whether the Appellate Authority was justified in ordering vesting of one half of the land in the State in passing the impugned order on the ground that the original applicant had tenancyright only in respect of one half of the subject land as the registered lease deed was in the joint names of himself and petitioner 1. To me it appears that there is no justification for such a direction; the reason being that in respect of the other one half of the land i.e., 10 cents out of the total extent of 20 cents in the survey number, the original applicant was equally entitled to for grant of occupancy right in his own name by application of Section 4 of the Land Reforms Act which deals with the topic 'deemed tenancy' in a way.

21. In this context, I feel it proper to quote Section 4 of the Land Reforms Act. The same reads 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) a member of the owner's family, or

(b) a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession:

Provided that if upon an application made by the owner within one year from the appointed day

(i) the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal, or

(ii) the Tribunal refuses to make such declaration but its decision is reversed on appeal.

Such person shall not be deemed to be a tenant'.

22. In the instant case in hand, it is not in dispute that the entire extent as a whole was cultivated by the original applicant Chikkadevadiga himself as the RORs in respect of the same stood all through in his name and that in filing Form No. 7 he had applied for the grant of occupancy right in his own name in respect of the entire extent of land. It may look artificial, nevertheless in a peculiar situation in hand, if the above provision of law in Section 4 of the Land Reforms Act is applied to the said undisputed facts, to me it appears that the original applicant himself was entitled to for grant of occupancy right in respect of the other one half of the land too by the Appellate Authority by treating him as a deemed tenant in respect of the other one half of the subject land.

23. In that view of the matter, it also appears to me that the Appellate Authority had entered into an error in granting occupancy right to the original applicant only in respect of one half of the land and further directing that the other one half of the land be vested in State and to be taken over from him by the jurisdictional revenue authority.

24. Therefore, for the aforesaid reasons, I am of the considered view that the Appellate Authority in passing the impugned order had entered into an error

inasmuch as it had denied the occupancy right in respect of the other one half of the land to the original applicant totally overlooking the deemed provision under Section 4 of the Land Reforms Act, beneficial to the original applicant.

25. The learned Counsel for the petitioner Smt. Sudha vehemently argued to save the situation to the advantage of the petitioner 1 to have one half of the land conferred to him by way of occupancy right. This I do not think this Court can do in the above set of facts and circumstances of the case. She had also cited 5 decisions in support of her case mainly that the petitioner 1 has also to be conferred with occupancy right in respect of the other half of the land that was directed to be vested in State by the Appellate Authority in passing the impugned order.

26. I have carefully gone through the said decisions. By going through the same, I do not think any one of the decisions is of any help or assistance to the case of the petitioner 1. Such a conclusion I have reached for the reason that the petitioner 1 was not all a claimant before the Land Tribunal at the first instance and that the original applicant Chikkadevadiga being the cultivator himself in respect of the entire extent of land had applied for grant of occupancy right in his exclusive name and more importantly the lis between the parties all through and till the instant revision petition was filed before this Court was between the original applicant Chikkadevadiga on the one side and the respondent 1-land owner on the other.

27. In the result, I pass the following order:

(i) The impugned order dated 12-1-1989 in case No. LRA 997 of 1988 insofar as the same related to the vesting of one half of the land i.e., 10 cents out of the total extent of 20 cents in the survey number in question is set aside.

(ii) It is hereby held that the impugned order passed by the Appellate Authority in the matter of grant of occupancy right to the original applicant Chikkadevadiga stands good, but in respect of the entire extent of 20 cents of land as applied for by him and not in respect of 10 cents of land only as held by the Appellate Authority.

(iii) The Form No. 7 filed by the original applicant stands allowed in its entirety in allowing the instant revision to enure to the benefit of the revision petitioners 2 and 3, his L.Rs.

(iv) the respondent 2-Land Tribunal is hereby directed to cause for issuance of Form No. 10 in the exclusive names of the revision petitioners 2 and 3 in respect of the entire extent of land in question as they are the successors-in-title of the original applicant Chikkadevadiga, if necessary after issuing notices to the parties concerned.

28. The revision petition stands allowed in part and in the above terms, inasmuch as revision petition insofar as the same related to petitioner 1 stands dismissed, whereas insofar the same related to petitioners 2 and 3 stands allowed. No cost.

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