

Venkataramanappa Vs. B.N. Narashimhachar and Another

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Court : Karnataka

Decided On : May-22-2000

Reported in : ILR2000KAR2280; 2000(4)KarLJ307

Judge : M.P. Chinnappa, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 25 and 48-A; [Karnataka Land Revenue Act, 1964](#) - Sections 41, 45, 121-A, 129 and 133

Appeal No. : Land Reforms Revision Petition No. 5396 of 1988

Appellant : Venkataramanappa

Respondent : B.N. Narashimhachar and Another

Advocate for Def. : Sri B. Krishnappa High Court Government Pleader and ;Sri S.N. Byadgi, Adv.

Advocate for Pet/Ap. : Sri R. Gopal, Adv.

Judgement :

ORDER

1. The father of the petitioner late Thimmaiah was cultivating the agricultural land bearing S. No. 165/3 measuring 0-19 guntas situated at Dodda Malur Village as a tenant under the respondent 1 who was admittedly the owner during the undisputed point of time. The said Thimmaiah filed Form No. 7 in L.R.M. No. 33 of

1976-77 on the file of the Land Tribunal, Madhugiri which was rejected by it vide order dated 15-7-1986 solely on the ground that the respondent filed resumption application which came to be allowed by the learned District Judge, Tumkur. As against that order, the said Thimmaiah father of the petitioner preferred an appeal before the Land Reforms Appellate Authority, Tumkur, in LRA No. 162 of 1987. The said appeal also came to be dismissed vide order dated 30-9-1988. Being aggrieved by that order, the petitioner preferred this petition under Section 121-A of the Act.

2. Heard the learned Advocates appearing for the respective parties.

3. The learned Counsel for the respondent at the very outset vehemently argued that the scope of the revision filed under Section 121-A of the Land Reforms Act is very limited and more so when it is filed as against the concurrent findings of the authorities. In support of his argument, he placed reliance on a decision rendered by the Supreme Court in *Sita Ram Bhau Patil v Ramchandra Nago Patil (dead) by L.Rs and Another*, wherein their Lordships have held that for entertaining a revision, there must be error of law on the face of the record. Presumption which was said to arise in the record of rights was before the Deputy Collector as well as the Mamlatdar. If the authority entrusted with adjudication goes into the question and assesses the same, the decision may be right or wrong but that will not go to show that there is any error of law on the face of the record. In view of this decision, it is necessary to find out as to whether there is any error of law on the face of the record calling for interference by this Court. As stated above, both the Tribunal as well as the Appellate Authority were swayed away by the fact that the District Judge, Tumkur has passed an order for resumption of land in favour of the respondent.

4. The learned Counsel for the petitioner contended that the learned Munsiff has rejected the application of this respondent in R.L.C. No. 161 of 1968 by order dated 25-7-1970 as against that order, the respondent preferred appeal before the District Judge in L.R.T.C. No. 14 of 1970. The learned District Judge has passed an order allowing the appeal on 4-2-1971. These facts are not in dispute. The learned Counsel for the petitioner has however contended that the order came to

be passed by the District Judge without notice to the petitioner. From the perusal of the order of the District Judge it is abundantly clear that the respondents therein were not served with notice. No witness has been examined before the Appellate Authority to show that the notice was duly served on the father of the petitioner who were the respondents before the District Judge. However, that order was not questioned by the petitioner. Be that as it may, the question is as to whether there was proper surrender of possession by the petitioner or his father. To substantiate that possession was delivered, the respondent has produced Ex. R. 7, dated 8-12-1970. The petitioner has clearly stated in his evidence before the Appellate Authority that the respondent has obtained the signature on a blank sheet and the contents were not written. However, neither the attesting witnesses nor the scribe of Ex. P. 7 was examined before the Appellate Authority. However, from the perusal of this document, it appears that the father of the petitioner has agreed to surrender possession of the property. Even accepting this document for the sake of arguments, the question is whether there is a proper surrender of the property as contemplated under the Land Reforms Act involved in this case. Before that, it is also necessary to mention that after the dismissal order passed by the learned Munsiff, Madhugiri in R.L.C. No. 161 of 1968 and when the appeal was pending before the District Judge in L.R.T.C. No. 14 of 1970 Ex. R. 7 came to be executed. If this document was executed by the petitioner's father who was one of the respondents before the District Judge, nothing prevented the respondents from producing it before the District Judge to establish that the possession was already delivered to him. However, for the reasons best known to the respondents, the said document Ex. R. 7 was not produced before the learned District Judge. If this document was genuine, nothing prevented the respondent from producing the same before the Court and request the learned District Judge to pass an order on the basis of that document. On the other hand, the learned District Judge passed an order solely on the basis of the materials available on record and it was not brought to the notice of the District Judge at any point of time by the respondent to show that the possession was delivered to him and he is in possession of the property. But the fact remains that the order of the learned District Judge was not executed and possession was taken by the respondent. With this background, it is now necessary to refer to Section 25 of the Land Reforms Act which reads:

'Surrender by tenant.--(1) Notwithstanding anything contained in this Act, a tenant may terminate the tenancy in respect of any land held by him at any time by surrender of his interest therein in favour of the landlord:

Provided that such surrender shall not be effective unless it is made in writing and is admitted by the tenant before the Tribunal and is made in good faith to the satisfaction of the Tribunal and is registered in the office of the Tribunal in the prescribed manner:

Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenants as have not subscribed to the surrender.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered, if the ceiling limit referred to in Section 63 or 64, to which such landlord is entitled is not exceeded; otherwise the provisions of Sections 65 to 79 shall mutatis mutandis apply to the land or the portion thereof, which exceeds the ceiling limit as if it were surplus land'.

From the reading of sub-section (1) of Section 25, it is abundantly clear that a right is given to the tenant to terminate the tenancy of any land held by him at any time by surrender of his interest therein in favour of the landlord but the said surrender shall not be effective unless it is made in writing and is admitted by the tenant before the Tribunal and is made in good faith to the satisfaction of the Tribunal and is registered in the office of the Tribunal in the prescribed manner. Therefore, mere executing a document in favour of the landlord is not sufficient. In this case, as stated above, execution of Ex. R. 7 was not before the Tribunal and there is no finding that it was made in good faith and was satisfied regarding the genuineness. Except that he has executed Ex. R. 7 and as stated by R.W. 3 in this case, there is no other evidence to establish Ex. R. 7. Therefore, this document cannot be construed to be the one executed in compliance and to the satisfaction of Section 25(1) of the Act.

5. In similar circumstances, their Lordships of the Supreme Court in *State of Karnataka and Another v Uppegouda and Others*, held as follows:

"The object of the Tenancy Act is to protect the tenants to remain in possession and enjoy it subject to compliance of the provisions of the Tenancy Act. Contracted tenancy comes to an end and statutory tenancy sets in operation and so he would be liable for ejectment only on proved grounds of statutory contravention, the entries of revenue records are self-serving. There was no order of a competent authority of eviction of tenant for contravention of the above mentioned grounds. The proviso, though enables a landlord to obtain possession on surrender, it must be proved strictly, as several devices would be used to circumvent the beneficial provision and illiteracy and ignorance of the tenant would be taken advantage of. It is easy to have the entries made with the assistance of patwari who had exclusive custody of the records. There is no proof of eviction of the tenant. The stand taken by the landholder is not supported by legal setting'.

However, the learned Counsel for the respondent contended that in view of this Ex. R. 7 the respondent had taken possession and to substantiate that, he has produced the R of R and also the pahani for the years 1971 upto 1975 and those documents disclose that the respondent himself was actually cultivating the property. Subsequent to that date, the documents disclose that the name of the petitioner was entered. According to the respondent, he was examined before the Tribunal. The petitioner had taken possession forcibly by filing complaint to the police. It is not in dispute that prior to 1970-71, the name of the father of the petitioner was entered in the pahani and also the R of R. The respondent is working as a sheristadar in the Munsiff Court and he was posted admittedly to various places. He claims that his son who had obtained majority was cultivating the property. However, the said son was not examined before the Court. On the other hand, he has examined two other witnesses who claim to be the adjacent owners of the property. They have stated that neither the petitioner nor his father was cultivating the property as a tenant. On the other hand, they were working only as coolies. From the order of the Munsiff and also the District Judge, it is abundantly clear that upto 1970, admittedly the father of the petitioner was cultivating the property which constrained the respondent to file the petition before

the Munsiff and District Judge for resumption of possession from the petitioners. Therefore, it is clear that the father of the petitioner was cultivating the property as a tenant. Suppressing these existing facts, these two witnesses have stated that they were not cultivating the property. Added to that, the respondent himself has claimed that the petitioner's father was not cultivating the property. Thus, it is clear that the respondent suppressed the truth with a view to suggest falsehood and the same was accepted by the Tribunal as well as the Appellate Authority. From this it is clear that the authorities have not analysed the evidence in its proper perspective to come to the conclusion that the father of the petitioner was never the tenant of the property.

6. Admittedly, pahani and also the R of R were in the name of the petitioner's father. It is understandable as to how the name of the respondent was shown for the years 1971-72 to 1975 without there being any proceedings drawn by the competent authority, the Tahsildar. The petitioner has specifically stated in his evidence that no notice was served on him to change the mutation in favour of the respondent. Therefore, it is clear that no notice was served on the petitioner before changing the names of the father and also the petitioner in the R of R and pahani. Under those circumstances, the possibility of the respondent getting the names changed and getting entered his name during the relevant period cannot be ruled out. That being the case, presumption as provided under Section 133 cannot be applied in favour of the respondent. From the records, it is also clear that even now the petitioner is in possession of the property. In the absence of materials to show that the possession was resumed by the respondent in accordance with law, the Tribunal and the Appellate Authority ought to have allowed the application.

7. The learned Counsel for the petitioner further argued that it is necessary for the tenant to establish that during the year 1973 or immediately preceding to that, he was in possession of the property. It is not sufficient to establish that much prior to 1974, he was in possession of the property and in support of his argument he also placed reliance on a decision rendered by the Full Bench of this Court in Balesha Rama Khot and Others v Land Tribunal, Ckikodi and Others. In that case, it is held that if the tenant is not in possession of the land immediately prior to 1st March,

1974, he is not entitled for registration of occupancy right in respect of the land. The tenant who was lawfully entitled to cultivate the land personally immediately prior to the commencement of the Amendment Act, but was wrongfully or illegally prevented from doing so is not entitled to registration of occupancy right under Section 45 of the Act. It is also held that the Act provides procedures to recover possession from an unauthorised occupancy by a person entitled to such possession. (Sections 41, 121 and 129). A tenant who has been wrongfully or illegally prevented from cultivating may request the Land Tribunal to defer consideration of his application till possession is restored to him and if he recovers possession, may ask the Tribunal to proceed with his application.

8. Relying on this decision, the Counsel for the respondent submitted that the documents disclose that he was dispossessed. That being the case, the Tribunal and the Appellate Authority were right in holding that the petitioner is not entitled to be registered as a tenant. This argument would have been accepted if there was evidence to show that in actual fact, the petitioner was dispossessed legally or illegally and the petitioner has failed to make necessary application for possession of the land, etc. But as stated above, there is absolutely no evidence to show that the petitioner was out of possession as on the date of making application in Form No. 7. Therefore, this argument of the learned Counsel for the respondent is liable to be rejected.

9. However, he has submitted that it is for the petitioner to establish that he is in possession of the property as on the date of filing the petition and in support of this argument, he also placed reliance on a decision rendered by the Single Bench of this Court in Vilas alias Gundu Ananthacharya v State of Karnataka , wherein it is held that only lands in possession and cultivation of tenants on or about 1-3-1974 vest in State Government with right to tenant to seek conferment of occupancy rights. Lands in possession of tenants some time or some years before 1-3-1974 are not vested in State Government. In this case as stated above, admittedly petitioner was in possession as in 1970 and also there is no material to show that he has been dispossessed subsequent to 1970 and the so-called Ex. R. 7 also cannot be accepted as it does not comply with the requirement of Section 25. Therefore, the tenant is deemed to be in possession of the property and such

being the case, it was the responsibility of the respondent to establish that the tenant was dispossessed. Under those circumstances, I hold that the order passed by the Tribunal confirmed by the Appellate Authority calls for interference as both the authorities failed to consider the evidence in its proper perspective. On the other hand, the finding is perverse and not in accordance with law.

10. For the foregoing reasons, this revision petition is allowed. The order of the learned Appellate Authority impugned in this revision petition confirming the order passed by the Land Tribunal are set aside holding that the petitioner is entitled to be registered as tenant in respect of the land bearing No. 165/3 measuring 19 guntas situate in Dodda Malur Village.

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