

Anjanappa Vs. Byrappa

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SooperKanoon Citation : sooperkanoon.com/384230

Court : Karnataka

Decided On : Jul-05-1995

Reported in : ILR1995KAR2495; 1995(5)KarLJ459

Judge : Hari Nath Tilhari, J.

Acts : Mysore (Personal & Miscellaneous) Inams Abolition Act, 1954 - Sections 3 to 7, 10, 28 and 31(3)

Appeal No. : R.S.A. No. 591 of 1987

Appellant : Anjanappa

Respondent : Byrappa

Advocate for Def. : M.V. Seshachala, ;M.V. Vedachala and S. Mayanna, Advs.

Advocate for Pet/Ap. : M. Papanna, ;B.S. Nagaraj, ;Geetha Lyyappa and M.C. Jayakeerthi, Advs.

Judgement :

Hari Nath Tilhari, J.

1. This is the Defendants' Second Appeal arising from the Judgment and Decree dated 9th July, 1987 delivered by (Sri K. Ishwar Bhat) the Principal Civil Judge, Bangalore District, Bangalore in R.A.No. 16 of 1981 whereby the learned Civil

Judge, dismissed the Defendant's First Appeal which had arisen from the Judgment and Decree dated 31.8.1979 passed in O.S.No. 240 of 1968 by the learned Munsiff, Doddaballapur, decreeing the claim of the plaintiffs in the above mentioned suit for partition of 1/3rd share in the suit properties and affirming the Trial Court decree.

2. The following is the pedigree for the purpose of the case and Decision.

Muniyappa

|||

Byrappa Kempanna Nanjappa

(Plaintiff 1) | (Deft 1)

_____ | _____ | _____ | _____

|||| (Deft 5 & 6) |||

Pltf 2, 3, 4 & 5 Deft 2 Deft 3 Deft 4

in this suit.

3. The Plaintiffs-Respondents filed a suit for a declaration to the effect that they are entitled to their 1/3 share in the properties in the suit which have been mentioned in Schedule 'A' and Schedule 'B' to the plaint. The Plaintiffs also claimed for a decree for partition and separate possession of the aforesaid share by metes and bounds through the Commissioner. They also prayed for a decree for mesne profits from the date of the suit till the date of delivery of possession under Order XX Rule 12 CPC and for costs and for other reliefs.

4. The plaintiffs' claim has been that the properties in the suit as mentioned in the Schedules A and B to the Plaint, have been the joint family ancestral properties of the parties and that the share of the plaintiffs-Respondents has been the 1/3. The Defendants disputed the claim of the plaintiffs-Respondent with respect to the

properties of Schedule A, but as regards the properties in Schedule B are concerned, there is no dispute at present. The properties of Schedule 'B' admittedly are only their ancestral and joint family property. The defendants-Appellants' claim is that the properties of Schedule A are not the joint ancestral properties of the parties. They claim that the Plaintiffs did in no manner have any right in the properties of Schedule A to the plaint. According to the case of the defendants the properties of Schedule A have been self-acquired properties of the defendant No. 1 and of defendants 5 and 6. The defendants-Appellants' case has been that the plaintiffs and the defendants have not been the members of the undivided family at any point of time. According to the defendants, the first plaintiff had left the village some time in the year 1918 or 1919 and he was adopted by one Mariyappa, Somanathanahally. That on the basis of the pleadings, the Trial Court framed the issues as under :

1. Whether the suit is not properly valued and the Court fee paid is insufficient? .
2. Whether the plaintiffs and defendants are members of a Joint Hindu Family?
3. Whether the suit 'A' Schedule properties are the ancestral and joint family properties of plaintiffs and defendants?
4. Whether the 1st Plaintiff was adopted to one Mariyappa of Somathanahalli Village?
5. Whether the plaintiffs and defendants are in joint possession of the suit properties?
6. Whether the plaintiffs are entitled to 1/3rd share in the suit 'A' Schedule properties?
7. Whether the plaintiffs are entitled to further mesne profits?
8. Whether the suit is barred by time.
9. To what reliefs are the parties entitled?

5. The Trial Court i.e., the learned Munsiff after considering the evidence on record, held that the properties of Plaint 'A' Schedule are the joint family properties of the parties to the suit. He further found the plaintiffs-Respondents are entitled to 1/3 share in Plaint A schedule properties. The trial Court also held that the plaintiffs are entitled to mesne profits to the extent of the share. It further found that the suit is within time. The Trial Court held that the adoption has not been proved. Having recorded these findings, the Trial Court decreed the plaintiffs' claim for partition and further directed for the initiation of the proceedings for preparation of the final decree. Having felt aggrieved by the Judgment and Decree of the Trial Court, the defendant-Appellants preferred first appeal which has been dismissed by the Principal Civil Judge, Bangalore and the lower Appellate Court has confirmed the Trial Court's decree. The learned lower Appellate Court has also recorded a finding to the effect that the schedule properties are the ancestral properties and. that the plaintiffs had been enjoying and in possession of suit schedule properties and have been entitled to 1/3 share in the properties of Schedules A and B. Having felt aggrieved from the Judgment and Decree of the lower Appellate Court whereby the Trial Court's decree has been affirmed, the Defendants have come up in Second Appeal before this Court.

6. I have heard Sri M.Papanna, assisted by B.S. Nagaraj, Mrs. Geetha lyappa and Mr. M.C. Jayakeerthi, for and on behalf of the appellant and Sri M.V. Seshachala, the learned Counsel for the Respondents. On behalf of the Appellant, it has been submitted by Sri Papanna that ordinarily it may be urged that the finding recorded by the Courts below that the property in dispute is a joint family property is a finding of fact, but in the present case, the finding is vitiated by substantial error of law. Sri Papanna submitted that as per the findings recorded by the lower Appellate Court itself, there is no evidence on record to show that the land in dispute belonged to common ancestor Sir Muniyappa. He invited my attention to the observations of the learned Lower Appellate Court which is contained at page 20 of the Paper Book. He submitted that the Lower Appellate Court has come to the conclusion that the land in dispute subject matter of Schedule 'A' is ancestral property on the ground that D.W.1 has made the statement which according to the lower Appellate Court is admission of Defendant-Appellant i.e. D.W.1 that Muniyappa, the father of the first defendant and father of the plaintiff No. 1 used to

cultivate the suit lands. Sri Papanna submitted that the Lower Appellate Court has relied upon the statements of D.W.1 and D.W.2 in this regard. Sri Papanna submitted that the statements relied by Courts below could not be read as admissions with reference to the properties of Schedule A to the plaint and statement sought to be used as admission must be specific and clear to the point in dispute. Sri Papanna further submitted that when the Lower Appellate Court tried to place reliance on this oral evidence, it altogether ignored the statement of P.W.1 contained in examination-in-chief and at page 81 to the effect that Muniyappa who was the father of the plaintiff-Byrappa, the first Defendant-Nanjappa and one Kempanna, that Muniyappa had died about 30 years ago or 30 years earlier to the date of his statement being recorded by Trial Court which was recorded in 1978. He submitted that the statement of P.W.1 shows that Muniyappa had died some time in the year 1947 or 1948 while the earlier record show that land and rights therein to be granted under Inam Abolition Act, 1954 in the names of defendants-Appellants in individual capacity. Sri Papanna submitted that the finding of the learned Munsiff or that of the Appellate Court to the effect that as these are the admission of the witnesses that the Schedule lands were being cultivated by Muniyappa, during his life time and so those lands were ancestral is vitiated by the error of law as the same has been arrived after having ignored the above evidence on record. The learned Counsel for the Appellants further submitted that in view of the documents on record, the land in dispute which is the subject matter of Schedule A properties of the plaint, ought to have been held to belong to Defendants 1, 5 and 6 as per Ex. P3 to P5 and P6 and Ex.D.13 to D25 particularly in the absence of any documentary evidence evidencing or exhibiting any entry of the name of common ancestor Muniyappa. Sri Papanna invited my attention to the provisions of Section 3, Section 9-A, Section 10 and Section 28 thereof and contended that on the coming into force of this Act, the right and interest of Inamdar stood vested in the State and Inamdar ordinarily ceases to have any interest in Inam other than the one expressly stated by this Act. The learned Counsel submitted that in view of Section 3, the relationship of landlord and tenant which existed between the Inamdar and the tenants mentioned in Clause 1 of Section 3 is extinguished and under Clause (k) thereof, it has been provided that Kadim tenants, permanent tenants and quasi-permanent tenants in

the Inam and persons holding under them and holders of minor Inam shall, as against the Government, be entitled only to such rights and privileges and be subject to such conditions as are provided for by or under this Act and any other rights and privileges which may have accrued to them in the Inam before the date of vesting against the Inamdar shall cease and determine and shall not be enforceable against the Government or such Inamdar. With respect to the tenants other than referred to in Sections 4 to 8, the learned Counsel for the Appellants contended that they were allowed and were given rights to continue as a tenant of the land in respect of which he was a tenant before the date of vesting and as per the scheme of this Section, the claims of such tenants have to be decided by the Deputy Commissioner whose orders subject to an appeal therefrom was final and on appeal being filed, the appellate order passed by the prescribed authority has been declared to be final. Sri Papanna submitted that as per the scheme of the above provisions, the rights determined by the authorities under the Act, the Defendants 1, 5 and 6 - the Appellants had been registered and declared to be entitled to continue as tenants, the same became final as the claim made by and on behalf of Plaintiff No. 1 in regard thereto with regard to the properties of Schedule A though made as alleged appears not to have been accepted by the authorities under the Act. As such, he submitted the Schedule A properties which are entered in the revenue records under the orders passed under Section 10 could not be held to be ancestral property. When the said properties had been directed and held to belong to Defendant 1, 5 and 6 i.e., to appellants as tenants thereof in their individual names and capacity and particularly when the plaintiff No. 1 had made a claim before the authorities as admitted by P.W. 2 and there is no evidence that the same has been allowed at all as these properties have been entered in the name of Defendants 1, 5 and 6. The Courts below committed an error of substantial nature as well of jurisdiction in holding the property of 'A' Schedule to be ancestral property particularly. He submitted in this view of the matter, the finding in respect of Schedule A to be ancestral properties are vitiated by error of law of substantial nature and requires to be set aside and that the decree passed in favour of the plaintiff entitling him to 1/3 share in the Schedule A properties being based on a finding which is vitiated by error of law of substantial nature and deserves to be set-aside. Sri Papanna submitted that as regard the

Schedule B properties there is no dispute of its being ancestral or joint.

7. On behalf of Respondents, Sri M.V. Seshachala, submitted that the findings to the effect that the property in dispute is a joint ancestral property is pure finding of fact and not liable to be interfered with in Second Appeal. Sri Seshachala urged that this finding is based on own admission of the defendant and defendants witness. Sri Seshachala submitted that admission of a party is the best piece of evidence on which reliance could be put by opponent to the persons making admission. In this context, Sri Seshachala made a reference to the Decision of Their Lordships of the Supreme Court in the case of NARAYAN BHAGAWANTHRAO GOSAVI BALAJIWALE v. GOPAL VINAYAKA GOSAVI AND ORS : [1960]1SCR773 . He submitted that the finding has been arrived on the own admission of the defendants' witnesses and the Courts below did not commit any mistake in arriving at a finding that the property in dispute has been the joint ancestral property of the parties. He further submitted that there was no bar to the jurisdiction of the Civil Court to consider this question as to whether the property of Schedule A was a joint ancestral property and when the present plaintiffs-Respondents put that claim that the property is a joint ancestral property coming down from the time of Muniyappa and the learned Courts below tried the case and recorded that finding and it did not commit any error of jurisdiction. In this connection, he made reference to the Full Bench Decision of this Court in the case of BOODA POOJARY v. THOMU POOJARTHY : AIR1993 Kant39 and submitted that if the principle of law laid in this case is applied and it can well be said that the claim of the plaintiffs-Respondents could be investigated by the Civil Court and the decision given by the authorities under the Inam Act particularly under Section 10 thereof, cannot be said to be final and it did not create any bar against the jurisdiction of the Court to investigate the plaintiff's claim.

8. The learned Counsel for the Respondents submitted that the findings recorded by the Court below that the property Schedule A and B are the ancestral properties does not suffer from any error of law or jurisdiction and the said findings are concurrent findings of fact binding on the Second Appellate Court and need not be interfered with.

9. I have applied my mind to the contentions made by the learned Counsel for the parties and I have gone through the records.

10. It is no doubt true that as regards the findings of fact, ordinarily this Court in exercise of its jurisdiction under Section 100 does not interfere. No doubt it is one of the trite principles of law under Section 100 of the Code of Civil Procedure that howsoever grossly erroneous the finding of fact may be, it cannot be interfered with in Second Appeal unless and until the same is vitiated by error of law of substantial nature. In other words, the finding of fact cannot be interfered with merely on the ground of mis-appreciation of the evidence. But mis-appreciation of evidence stands on a different footing and has to be differentiated from the cases where it is found that the case is based on misreading of the evidence or where the finding has been arrived at after having ignored certain material or material evidence on record. The finding of fact where it is initiated by error of law in the sense that the finding has been arrived at on the basis of conjectures and surmises or that it has been arrived at without considering and without application of mind to the relevant piece of evidence on record or it is otherwise vitiated by error of law of substantial nature, the finding of fact can be interfered with. The illustrations mentioned are not exhaustive. The cases in which the principle of law in this regard has been explicitly laid down upon are : AIR1958 All54 Abdul Shakur and Ors. v. Kotwaleswar Prasad and Ors., : [1963]3SCR604 V. Ramachandra Iyer v. Rama Linga Chetty and : AIR 1988 SC1858 Dilbagrai Punjabi v. Sharath Chandra.

11. Keeping in view the basic principles as laid down in these Cases, I proceed to examine the contentions of the learned Counsel for the parties. It is also well settled principles of Hindu Law that when the property recorded in the name of some one and the documents relating thereto are in his name then irrespective of person having been a member of the Joint Hindu Family property is to be taken to be his property; when some other person claims that property to be Joint Hindu Family property, the burden is on him to allege the specific case as to on what basis he claims that property to be the joint family property whether it is ancestral property coming at the time of ancestor or whether it is his case that the property had been acquired by the joint family nucleus or it has been thrown in the common

stock. No doubt as contended by the learned Counsel for the respondent that though there is presumption of jointness amongst father and son and that presumption of jointness with lesser degree operates among brothers themselves. But there is no presumption in law that every joint family possesses and must be possessed of joint family property. It is also well settled that even a member of the Joint Hindu Family can acquire and have his separate property. Therefore, the burden is on the person who alleges a particular property to be joint family property to prove it. In the present case, I find the Lower Appellate Court has found that there is no documentary evidence on record on the basis of which it could be inferred or found that the property of Schedule A is coming down from common ancestor Muniyappa. The documents on record clearly show the property in dispute which is the subject matter of Schedule A of the plaint, is exclusively and separately recorded in the individual names of Defendants 1, 5 and 6 i.e., the appellants and the documents do show that the rental was paid by those persons in whose name these properties have been recorded, The learned lower Appellate Court after having referred Ex.P.3 to P5 observed that as far as Plaint 'B' Schedule property, it is described as or ancestral property of the plaintiffs whereas there is different description as to the nature or rights, Nanjappa, Kempanna and Anjanappa in respect of Plaint 'A' schedule property shown in Ex.P.3 to P.5. It is not shown that these lands were ancestral properties or of Nanjappa, Kempaiah or Anjanappa. It is merely described as Reading the documents and keeping in mind the difference in the nature of the rights described in Exs P3 to P5 and P6, there is some ground to contend that the lands in Exs P3 to P5 namely suit 'A' Schedule properties did not possibly belong to the common ancestor. Perusal of these findings of the Court which is based on perusal of Ex.P3 to Ex.P6 clearly discloses that whatever the properties were ancestral namely the properties of Schedule B they were described as ancestral properties in the documents. But the properties of Schedule A were not mentioned therein as ancestral properties of Nanjappa, Kempanna and Anjanappa. Thus as per the description of the rights, it is definitely clear that the properties of Schedule A did not come down from common ancestor - Muniyappa.

This fact has to be taken note of that Schedule B properties which are ancestral properties as admitted between the parties are also cultivating lands as well. The

learned lower Appellate Court when it read the admission of D.W.1, D.W.2 and D.W.3 as admission of the plaintiff to the effect that the suit properties were being cultivated from time of Muniyappa did not apply its mind and did not take into consideration these two aspects of the matter. Really it ignored it and if it ignored it, that will be a case not of mis-appreciation of the evidence but of illegality or error of law in the course of deciding the question. The matter which came into consideration before the Courts below are : That according to own admission of P.W.1, Muniyappa had died some time in the year 1948 or earlier. According to own statement of P.W.1, his death had taken place 30 years earlier to 1978 the date of deposition which brings to 1948. The second matter which escaped the notice of the Courts below while considering this admission and impact of this admission is that Schedule B properties which are cultivated properties had been of the time of Muniyappa and earlier and if these two material facts would have been taken into consideration while considering the alleged admission of P.Ws.1 to 3, the picture would have been very clear namely that witnesses have stated that the properties suit of Schedule B were really admitted to have been cultivated by Muniyappa and his children and appears to clearly explain their admission. It is nodoubt true and it is well settled principles of law that admission of a party is the best evidence on which an opposite party can rely and that admission is binding unless either it is shown to be incorrect or it is explained or it stands explained by the facts and circumstances of the case itself. That in the present case if the alleged admission, if it is an admission in the proper context of the facts particularly the admitted facts of the case that Schedule B properties were no doubt ancestral property there could be nothing wrong in the statement of D.Ws and can be taken to refer to those agricultural lands of Schedule B. As regards the Schedule A properties, the evidence on record reveals that these lands are entered and recorded and as submitted by the Counsel for the appellant under the orders of the Deputy Commissioner under Section 10 of the Mysore (Personal and Miscellaneous) Inams Abolition Act, 1954, the applications were made by plaintiff No. 1 as well as by Defendants 1, 5 and 6 and under the orders of the Special Deputy Commissioner, the lands of Schedule A were ordered to be recorded in the names of original defendant No. 1 - father of the present appellant No. 1 and in favour of Defendants 5 and 6 who are the Appellant Nos. 6 and 7 and the orders

were passed on the application of the first plaintiff along with his claim and his claim appears to have been dismissed and hence he had come to this Court praying that the order of the Special Deputy Commissioner are not final, The land prima-facie and beyond doubt can be said to be belonging to Defendants 1, 5 and 6. It will be profitable to refer to certain provisions of the Inams Abolition Act. Under this Act, Section 3 of the Act provides for consequences of the vesting of an Inam in the State. Section 3, the material portion whereof reads as follows :

3. CONSEQUENCES OF THE VESTING OF AN INAM IN THE STATE - (1) When the notification under Sub-section (4) of Section 1 in respect of any inam has been published in the Karnataka Gazette, then notwithstanding anything contained in any contract, grant or other instrument or in any other law for 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) xxx xxx xxxb) all rights, title and interest vesting in the inamdar including those in all communal lands, cultivated lands, uncultivated lands, whether assessed or not, waste lands, pasture lands, forests, mines and mineral quarries rivers and streams, tanks and irrigation works, fisheries and ferries shall cease and be vested absolutely in the State of Karnataka free from all encumbrances.

c) the inamdar shall cease to have any interest in the inam other than the interests expressly saved by or under the provisions of this Act.

d) to h) xxx xxx xxxi) the relationship of landlord and tenant shall as between the inamdar and a Kadim tenant or permanent tenant or quasi permanent tenant, be extinguished.

j) the relationship of superior holder and inferior shall as between the inamdar and the holder of a minor inam, be extinguished,

k) Kadim tenants, permanent tenants and quasi-permanent tenants in the inam and persons holding under them and holders of minor inam shall as against the Government, be entitled to such conditions as are provided for by or under this Act, and any other rights and privileges which may have accrued to them in the

inam before the date of vesting against the inamdar shall cease and determine and shall not be enforceable against the Government or such inamdar.

Sub-sections 4 to 6 deal with Kadim tenants, permanent tenants and quasi-permanent tenants to be registered as occupants provided that they should be registered as occupant of the holdings. Section 6 deals with quasi-permanent tenants to be registered as occupants on certain conditions. Section 7 of the Act provides that the lands and buildings to vest in the holder of a minor inam to which the act is applicable. Section 8 provides that the holders of minor inams to which the Act is not applicable can be registered as holders of minor Inam lands included in their holding.

Section 9-A of the Act deals with other tenants of Inamdar. Section 9-A reads as under :

Every tenant of the Inamdar other than the tenants entitled to be registered as occupants under Sections 4, 5 and 6 shall with effect on and from the date of vesting and subject to the provisions of Chapter-III-A be entitled to continue as a tenant of the land in respect of which he was a tenant immediately before the date of vesting.

Section 10 of the Act provides for determination of claims under Sections 4, 5, 6, 7, 8 and 9. Section 10 of the Act as it then existed reads as under :

The Tribunal shall examine the nature and history of all lands in respect of which a Kadim tenant, a permanent tenant, a quasi permanent tenant, the holder of a minor inam or an inamdar claim to be registered as occupant under Sections 4, 5, 6, 7 and 9 or the holder of a minor inam claims to be registered as holder under Section 8 or in respect of which any person claims to be continued as tenant under Section 9-A as the case may be and decide in respect of which lands the claims should be allowed.

12. Sub-section 2 of Section 10, Sub-section 3 are not relevant for our present purposes.

No doubt it may be mentioned that Section 10 had been amended in 1979 by substituting the expression the Deputy Commissioner and by omitting the expression, or 'in respect of which any person claims to be the tenant under Section 9-A'. For the present we are concerned with the position as it was prior to 1979. So unamended Section is material. Section 28 and Chapter 3-A makes certain provisions which are applicable to the tenants continued under Section 9-A. Section 28 which is contained in Chapter IV provides for appeal from orders under Section 11(1) to the prescribed authorities and it provides that the decision of the authority in appeal shall be final.

Section 31 Sub-section 3 of the Act further provides that 'save as otherwise provided in this Act no order passed by the Deputy Commissioner or by the Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid or to be questioned in any Court of Law.'

13. A reading of these provisions clearly shows that the order of the Deputy Commissioner passed under Section 10 of the Act in Appeal under Section 28 has been declared to be final and the said orders are not liable to be cancelled or questioned in any Court of Law. This Section attaches the finality to the orders passed under Section 10 of the Act subject to appeal under Section 28 and the orders in appeal are to be declared altogether. It debars any proceedings for cancellation of those orders or for questioning the legality or otherwise of the order in the Court of law. Perusal of Sub-section 1 of Section 31 also gives a supporting hand to the view I am taking. Sub-section 2 of Section 31 confers a power on the High Court that it may either suo motu or on application by any party, call for the records and examine the records of any order passed or proceedings taken by the Deputy Commissioner (with exception to those referred to Section 28) or by the Special Tribunal under the Act in order to satisfy itself as to the legality, regularity or propriety of such order, decision or proceeding and pass such order in reference thereto as it thinks fit. The use of expression except those referred to Section 28 in Sub-section 2 further shows that the order of the Deputy Commissioner under Section 10 is not revisable. Only appeal remedy is provided. Once the appeal is decided from the order of the Commissioner that has become final and Sub-section 3, the jurisdiction of the Court of Law, is ousted in the

cancellation or modification of the order. Under this Act, a complete forum has been provided for the determination of the claim under Section 9-A and once the order in respect of claim under Sections 4, 5, 6, 8, 9 and 9-A has been passed after determination of the claim, the order is only subject to right of appeal under Section 28 and if appeal is filed order or appeal is final otherwise, the order of the Commissioner is final. Therefore, if a person claims or if he has desire to claim that the property like the one in the present case which is recorded in the name of Defendants, 1, 5 to 6 individually has been or held was in the representative capacity or as the Manager of the family, then the proper course for that person was to put the claim before the Deputy Commissioner and the Deputy Commissioner could decide that matter. Whether the property was acquired and the tenancy rights were being conferred in the capacity of the representative of the joint family, such claims have never been put by the plaintiffs-Respondents before the Deputy Commissioner under Section 10 instead he also filed his claim in his individual capacity. The claims of the plaintiffs was not allowed because had the claim been allowed, the plaintiff would have asserted like that and would have filed those documents in this case. It has been admitted by the witnesses of the plaintiff that plaintiff had moved the application before the Special Deputy Commissioner under Section 9. Once this is the position, in my opinion, when the Special Forum has been provided for decision of those rights under the Act and when Section 31(3) specifically declared that the order passed by Special Deputy Commissioner cannot be challenged in any Court of Law except under the machinery provided under the Act, the order has become final and binding on the parties and that the Court below had no jurisdiction to take a view contrary. The Decision referred to above by the learned Counsel for the Respondents - Sri M.V. Seshachala, the case of Booda Poojary v. Thomu Poojathy is a case under Section 48-A, with reference to the provisions of the Karnataka Land Reforms Act, it is not directly on the provisions of Sections 9, 9-A, 10, 26 and 31(3) of the Inam Abolition Act. Even otherwise the principle that has been laid down at page 1374 is to the effect that the Civil Court cannot decide a question or issue relating to the tenancy. In this regard, the jurisdiction is specifically conferred on the Tribunal in regard to grant of occupancy rights to a tenant, it is the Tribunal alone which is competent to go into the question of tenancy and decide whether the occupancy rights should or should

not be granted to an applicant. The Full Bench further observed that this being the position, an application made by a person exclusively claiming grant of occupancy rights as a tenant and another person making a rival claim of tenancy and grant of occupancy rights as a individual or on behalf of a joint family or for the benefit of a joint family can be considered only by the Tribunal and not by the Civil Court. This appears to have been laid down keeping in view the trite principle of law of interpretation that where a power to do certain act or power to take certain decision has been conferred on specific officers or specified authorities or specified forum, then that power cannot be exercised by any person or authority other than the one specified under the Act (See TAILOR v. TAILOR, 1076 I Chapter D 426, NASIR AHAMAD v. KING EMPEROR, AIR 1936 PC 253 and STATE OF UP. v. SINGHALA SINGH. fn the case of U.P. v. Singhala Singh, : [1964]4SCR485 , after having referred to the Decision of the Privy Council in Nazeer Ahamad's case, Their Lordships of the Supreme Court have been laid down that 'when a statute confers a power on Judicial Officer, that power can be obviously exercised only by those officers. No other Officer can exercise their power which has not been given to them.' Their Lordships of the Supreme Court in the case of MUDAKAPPA v. RUDRAPPA, ILR 1994 KAR 2327, after having referred to the various provisions of the Karnataka Land Reforms Act, observed that

A forum was created and the forum is enjoined to enquire into not only the nature of the land but also the entitlement for registration as a tenant. When inter se rival claims for tenancy rights have been set up, it has been empowered with jurisdiction to decide that question as to who is the tenant in possession of the land prior to the date of vesting and entitled to be registered as a tenant with the State Government and its decision shall be final. The Civil Court's jurisdiction under Section 9 of CPC by necessary implication therefore stood excluded.

It is also seen that the word tenant, Tribunal and the Joint Family have been defined under the Act. If one of the members of the family cultivates the land, it is for and on behalf of the joint family. Under these circumstances, pending suits when the question arose whether the Appellants or the joint family is a tenant, the question should be decided by the Tribunal alone under Section 48-A read with

Section 133 and not by Civil Court. It is needless to mention that the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine the rival claims, it should record the evidence and decide the matter so that its correctness could be tested either in appeal or by the Judicial Review under Article 226 or under Article 227 as the case may be. But that cannot by necessary implication be concluded that the rival claims have been made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject to the decision once over by the Civil Court. It is clear from Section 48-A (5) and Section 112-B (bbb) read with Section 133, the decision of the Tribunal is final under Section 133(iii). It is therefore difficult to accept the contention that the rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the Civil Court.

14. That following the principle of law as emerging from above quoted observation it emerges that as regards the claims under Sections 4, 5, 6 or 9-A of the Inam Abolition Act, a Special Forum has been provided under the Act and it has been given the power to decide the claims for registration of tenants under Section 10. The decision of Special Deputy Commissioner under Section 10 has been subjected to right to appeal. An appellate order has been made final. It has not been kept open for exercise of the revisional jurisdiction under Section 31. Section 30 Sub-section 3 declared that such orders passed by the Deputy Commissioner cannot be cancelled or cannot be questioned in a Court of Law. So there is by necessary implication bar against challenge to the finality of the order by way of Civil Court. The Judicial Review may open under Article 226 or 227 but finality of that order cannot be challenged in a collateral proceedings such as the present suit.

15. In this view of the matter, in my opinion it was not open to the Civil Court to give a decision contrary to that of Special Deputy Commissioner. Further the admission that has been relied upon cannot be said to be with reference to the properties of Schedule A. It is well settled principles of law that admission should be clear and specific and must point out to the facts or points in dispute and must relate to the dispute. The dispute between the parties has been to the effect that whether the properties described in Schedule A have been ancestral property. In

the present suit, the suit properties were those contained in Schedule B and Schedule A properties. From the deposition of D.W.1 it is not clear that it is with reference to the Schedule property A. So it is not specific with reference to the property namely properties of the Schedule A and when with reference to the property namely properties of Schedule A it is not clear that it is with reference to properties Schedule A, it cannot be treated as admission to Schedule A properties. Plaintiff B properties which are also suit properties are joint ancestral of the time of Muniyappa and that statement can be said to be with reference thereto. In this view, I am of the opinion that the admission which firstly stands explained by the facts of the case on record and that is not specific with respect to the Schedule A properties and further because at the time the properties of Schedule A came to be recorded in the name of Defendants 1, 5 and 6 Muniyappa was not alive. These factual, legal, circumstantial position emerging from record have been ignored by the first Appellate Court when it recorded a finding with respect to schedule properties. It is well settled principles of law that if finding of fact has been arrived after ignoring substantial evidence oral, documentary or circumstantial on record or if it is based on misreading of the evidence, then that finding has got to be held to be vitiated and error of law. When we exclude such the statement alleged admission on this basis documentary evidence, Ex.P. 3, 5, 6 read in the light of the provisions of the Inam Abolition Act, clearly proves that the land which is subject matter of Schedule A property which has been exclusively in the name of Defendants 1, 5 to 6 has not been joint ancestral property of the parties, instead it has been exclusive property of the person in whose name it has been recorded. Thus the Courts below committed error of law in holding Schedule A property to be joint and ancestral. The properties of Schedule A to plaintiff are held to be exclusive property of the defendants-Appellants and as such the decree passed by the Courts below is being hereby modified to the extent that the claim of the plaintiffs-Respondents with respect of partition of 1/3 share in respect of plaintiff A schedule property is liable to be dismissed. The decree passed in favour of the plaintiff-Respondent with respect to Schedule B shall remain intact as it is. The Second Appeal is thus allowed and the decrees of the Courts below are modified as mentioned above. The decree of the Courts below decreeing the plaintiff-respondents suit for declaration and partition of Schedule B property is maintained

shall remain intact but for the declaration or partition of Schedule A property is being herewith set-aside. The parties to bear their own costs. As per the order of this Court contained in the order sheet dated 9.3.1993, the Counsel for the appellants were allowed to cut and remove the standing trees on the suit schedule property which is the subject matter of the dispute in appeal namely Suit Schedule A property on depositing of Rs. 23,500/-. The appellants had deposited the said amount on 16.3.93 as per the order sheet and that amount has not been withdrawn by the Respondent and that amount which has been deposited by the appellants is yet in deposit with Court. As the Appeal has been allowed with reference to Schedule A properties, the deposit made by the appellants are liable to be refunded with whatever the amount earned interest if any and as such the appellant is allowed to withdraw and get refunded the sum herewith.

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