

**Annaiah Vs. Subbaramaiah and Others**

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**Court :** Karnataka

**Decided On :** Sep-26-1997

**Reported in :** ILR1998KAR1039; 1998(6)KarLJ159

**Judge :** Chidananda Ullal, J.

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

**Appeal No. :** Land Reforms Revision Petition No. 620 of 1990

**Appellant :** Annaiah

**Respondent :** Subbaramaiah and Others

**Advocate for Def. :** Smt. K.R. Meenakumari, High Court Government Pleader and ;Smt. S.N. Sudha for Sri G.S. Visweswara, Adv.

**Advocate for Pet/Ap. :** Sri B. Manohar ;for M/s. Shetty and ;Hegde Associates, Adv.

**Judgement :**

ORDER

1. This revision is filed by the tenant to challenge the order dated 30-8-1989 passed by the Land Reforms Appellate Authority, Hassan district, Hassan in Appeal No. LRAA RA 24/88. In passing the said order, the Appellate Authority

while allowing the appeal of the landlord had set aside the order dated 11-9-1987 passed by the respondent 3-Land Tribunal, Holenarasipura in granting occupancy right in respect of 2 items of the land while rejecting in respect of yet another item of the land.

2. I heard the learned Counsel for the revision petitioner Sri B. Manohar and the learned Counsel for the contesting respondent 1-Smt. S.N. Sudha appearing along with Sri G.S. Visweswara. I have also perused the case records.

3. The facts in brief of the case relevant for our purpose are as hereunder:

That the petitioner had filed Form 7 before the respondent 3-Land Tribunal, claiming occupancy right as against the respondent 1 herein in respect of 3 items of the land. They are 1 acre 23 guntas in Sy. No. 229/1, 1 acre 8 guntas in Sy. No. 230/2 and 20 guntas in Sy. No. 233/2. That the Land Tribunal held the enquiry in the matter of the above claim of the petitioner after causing notices to the parties who had also adduced evidence before the Land Tribunal thereafter. On appreciation thereof, the Land Tribunal had passed the order dated 11-9-1987 in case No. LRF1/74-75, whereunder, while rejecting the claim of the revision petitioner in respect of the third item of the land, granted occupancy right to him in respect of the first two items of the land.

4. That having been aggrieved with the said order, the respondent 1 herein had filed an appeal before the Appellate Authority to challenge the same. That both the parties had adduced respective side of the additional evidence both oral and documentary. The Appellate Authority having found fault with the manner in which the evidence was recorded by the Land Tribunal had recorded the evidence of the parties afresh. On appreciation of the said evidence on its own record, the Appellate Authority had passed the impugned order. In so doing, the Appellate Authority while setting aside the order of the Land Tribunal, it had rejected the claim of the revision petitioner in respect of all the items of the land.

5. The learned Counsel for the revision petitioner while taking me through the evidence on record, argued that though the petitioner had adduced both oral and documentary evidence in support of his claim for grant of occupancy right, the

Appellate Authority had rejected the evidence adduced and set aside the order of the Land Tribunal granting occupancy right even in respect of the two items of the land. The learned Counsel for the petitioner submitted that the Appellate Authority was more influenced by the circumstances that the revision petitioner while filing Form 7 on 28-8-1974 had stated therein that he was a tenant for about 15 years earlier to that application and further that if the case of the petitioner was one of tenancy, there was no good reason for him to enter into the said agreement of sale with the contesting landlord. According to Sri Manohar, the Appellate Authority had wrongly relied upon the said document to come to the conclusion that there was no relationship of tenancy between the parties. It is also the argument of Sri Manohar that when the pahani entries stood from the year 1971-72 till the year 1975-76 produced before the Appellate Authority marked as Ex. B. 1 showing therein that the petitioner was a cultivator and the mode of cultivation by him as mode '4', there was a statutory presumption available in favour of the petitioner under Section 133 of the Land Revenue Act that he was a tenant in possession of the subject land. He further argued that the Appellate Authority had totally overlooked such a statutory presumption available in favour of the petitioner, particularly when the petitioner had also examined two witnesses who were the bajudars of the subject land. Sri Manohar had also pointed out that as against the above clinching evidence adduced by the petitioner before the Appellate Authority, the other side did not adduce worthy evidence to oppose the claim of the revision petitioner. Therefore, he prayed that the instant revision be allowed by setting aside the impugned order passed by the Land Tribunal. He further prayed that the order of the Land Tribunal be restored in the process. Yet another point he had canvassed before me is that the so called agreement of sale marked as Ex. A. 1 was subsequent to the coming into force of the Land Reforms Act as the same was stated to have been executed on 7-11-1974.

6. As against the above argument, the learned Counsel appearing for the contesting respondent 1-Smt. Sudha argued that the impugned order passed by the Appellate Authority in rejecting the claim of the revision petitioner was just and proper and very well based on the material evidence on record. In the course of her argument she had also drawn my attention to Ex. A. 1, which according to her was executed by the respondent 1 and his three other sons in favour of the

petitioner. When it was pointed out to her that the said document does not bear the signature of the petitioner herein, prompt came the reply that the revision petitioner in his evidence had conceded that there was such a transaction between him on the one side and the respondent 1 on the other. Therefore, according to her, Ex. A. 1 was a genuine document and there is nothing for the Court to doubt about the execution of the same in favour of the revision petitioner. To counter the argument of Sri Manohar that there was statutory presumption available with regard to the pahani entries, Smt. Sudha argued that the pahani entries were in fact challenged by the respondent 1 before the Tahsildar and the fact thereto was spoken to by the son of the respondent 1 who had been examined as a witness for and on behalf of the appellant 1 before the Appellate Authority; that apart, she also submitted that in the evidence of the respondent 1 he had also asserted that the subject lands were not leased at any point of time and that the possession of the subject lands were made over to the revision petitioner only after execution of Ex. A. 1 on 7-11-1974. Yet another aspect she had highlighted before me is that even if it was true that the pahani entry was made in the name and favour of the petitioner in the year 1971, there was no notice to the respondent 1 and as such, the same could be looked into. For the aforesaid reasons she prayed that the revision petition be dismissed.

7. Now in the light of the above submissions made, the point for my consideration is whether the impugned order passed by the Appellate Authority is based on material evidence on record or not and whether the same is called for to be interfered with by this Court or not in the instant revision.

8. The Appellate Authority while considering the evidence on the record of the Land Tribunal had rejected the same on the ground that the same was not recorded properly, particularly when the cross-examination of the witnesses were recorded by the Land Tribunal and that nothing could be made out therefrom and it is for that reason the Appellate Authority had recorded the evidence of the parties. When the petitioner had examined himself and two other witnesses in support of his case for grant of occupancy right, the respondent 1 had adduced his side of the evidence by getting his son examined before the Appellate Authority. I have also gone through the evidence recorded by the Appellate Authority very much

available, on the records. I have noticed therein that all the parties were also meticulously cross-examined by the respective side. The evidence of the petitioner before the Appellate Authority is in consonance with his claim and that in support of the assertion for grant of occupancy right; he had also examined two other witnesses and the said witnesses had also deposed before the Appellate Authority that the revision petitioner was cultivating the land for about 30 years. In addition to the said evidence, the revision petitioner had also produced the pahani extracts to show that all the three items of the land were under his cultivation and the pahani entries from the year 1971-72 to the year 1975-76. In passing the impugned order, the Appellate Authority had observed that the revision petitioner had not produced the pahanis for the period earlier to the year 1971-72 to show that he was cultivating the subject land as a tenant. In my considered view, there was no necessity for the revision petitioner to produce all the pahani entries to demonstrate that he was cultivating the subject land all through. What is important is that the revision petitioner had to produce the pahani entries to show that he was cultivating the subject land as on 1-3-1974 and for the period earlier to that. That apart, it is also borne on record that even on an inspection held by the Land Tribunal, the petitioner was found to be in possession of the subject land. The learned Counsel for the respondent 1 argued that the pahani entries had come into existence in the revenue records without there being any notice to the respondent 1 and therefore, the same could not be looked into. I do not think such an argument can be entertained by me in view of the Division Bench ruling of this Court reported in Laxmi Shedthi and Another v Udupi Taluk Land Tribunal and Others, wherein the Division Bench of this Court held that in the absence of an evidence adduced before the Land Tribunal to discredit the entries in the records of rights, the Tribunal was bound to take into consideration the legal presumption available thereunder Section 133 of the Land Revenue Act. In the above decision, the Division Bench of this, Court held as hereun-der:

'Karnataka Land Reforms Act,1961, Section 48A -- Order of Tribunal -- Requirements.

In the absence of any evidence adduced by the applicant before the Tribunal to discredit the entries in the Records of Rights, the Tribunal is bound to take into

consideration the legal presumption arising thereunder. The mere subjective satisfaction of the Tribunal cannot sustain its adjudication. The Tribunal must give its reasons for discarding the legal presumption arising under Section, 133 of the Land Revenue Act. If it fails to do so, it amounts to failure to take into consideration relevant material in deciding the issue of tenancy disputed before it.

Documents subsequent to 1-3-1974 should be construed as evidence postlitem motam. A local inspection can only disclose the facts as on that day and cannot indicate conclusively who was cultivating the land immediately prior to 1-3-1974.

It all depends on whether the circumstances justify presumption retro.

Further, there must be an application of the mind by the Tribunal to the relevant and material facts in deciding the fact in issue.'

9. If the evidence on record is looked into in the light of the above Division Bench ruling of this Court, I am not left with any doubt that the petitioner was a tenant in respect of the subject land and that he was entitled to for grant of occupancy right in the hands of the Appellate Authority.

10. The learned Counsel for the respondent 1 had strongly relied upon Ex. A. 1 which is stated to be an agreement of sale executed by the respondent 1 and his three sons in favour of the petitioner. The Appellate Authority had also placed strong reliance on the same for denying the claim of the revision petitioner. But unfortunately, to the said document, the petitioner was not at all a party; furthermore, even that stamp paper was not produced by the revision petitioner. In the said circumstances, it appears to me, that the Appellate Authority wrongly relied upon the said document to hold that the petitioner had entered into such an agreement of sale in his favour executed by the respondent 1 and his three sons. However, I do not rule out that there might be some monetary transactions between the parties, particularly when the agreement in question had come into existence on 7-11-1974, much later to 1-3-1974.

11. In the course of passing the impugned order, the Appellate Authority had also observed that in filing the Form No. 7 on 28-8-1974, the revision petitioner had

stated therein that his tenancy had commenced about 15 years earlier to that date and if the said facts were reckoned, the tenancy of the petitioner under the respondent 1 commenced when he was about 15 years. The said circumstance appears to have overweighed with the Appellate Authority, for it had observed that such a situation could not be believed. In this context, it appears to me that the Appellate Authority had mislaid itself to observe so, for it had totally overlooked the social circumstances in which the revision petitioner was living, the educational level and further the level of his worldly understanding. On perusal of the records, I have observed that the petitioner was almost an illiterate person and he did not know beyond affixing his signature in Kannada and hence it is not difficult for one to appreciate that the revision petitioner was a rustic villager and he being so, was not worldly wise. In the said circumstances, it is no wonder that while filing Form 7 on 28-8-1974, he had stated therein that his tenancy had commenced 15 years earlier to that date. All the more, in the evidence before the Appellate Authority he had stated that when his tenancy had commenced he was about 20 years. I do not understand why the Appellate Authority could not appreciate that reality of life vis-a-vis the petitioner in the matter of putting forth his claim in filing the Form 7 in the above fashion.

12. If we consider the overall evidence on the record of the Appellate Authority, I do not think the Appellate Authority was justified in passing the impugned order to set aside the grant of occupancy right by the respondent 3-Land Tribunal. Of course, the Land Tribunal had rejected the claim of the revision petitioner in respect of the other item of the land i.e., 20 guntas in Sy. No. 233/2. The revision petitioner had also not challenged the said order of the Land Tribunal insofar as the same related to the rejected part of that claim. In that view of the matter, I am of the view that the impugned order passed by the Appellate Authority is not sustainable, for the Appellate Authority had fallen into error in law, in totally overlooking the statutory presumption available to him under Section 133 of the Land Revenue Act vis-a-vis the pahani entries in his name showing him as a cultivator cultivating the land on crop share basis, since mode of cultivation is shown therein as 'Mode 4'. Hence, it is imperative for this Court to set aside the impugned order while exercising the revisional jurisdiction of this Court under Section 121A of the Land Reforms Act.

Hence, the impugned order dated 30-8-1989 in case No. LRAA RA 24/88, whereby the Appellate Authority while allowing the appeal of the respondent 1 had set aside the order of the Land Tribunal dated 11-9-1987 granting occupancy right to the petitioner, is liable to be set aside and accordingly, hereby set aside. It is hereby held that the revision petitioner was a tenant in respect of the subject land and he was entitled to for grant of occupancy right.

13. With the above conclusions I reached, the order dated 11-9-1987 passed by the Land Tribunal in case No. LRF.1/74-75 is liable to be restored and accordingly hereby stands restored.

14. The Land Tribunal is therefore directed to issue the registration certificate in respect of the said two items of the, land in pursuance of its order dated 11-9-1987 in the light of the orders herein passed.

15. The revision petition therefore succeeds and accordingly allowed.

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