

Mr. Mohammed. Vs. Smt. Devaki and ors

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Court : Karnataka

Decided On : Nov-10-2010

Judge : Arali Nagaraj J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Section 48 ;

Appeal No. : W A NO. 2234 OF 2010 (LRJ)

Appellant : Mr. Mohammed.

Respondent : Smt. Devaki and ors

Advocate for Pet/Ap. : SRI P.P HEGDE . ADV

Judgement :

1. The appellant has challenged in this appeal the order passed by the learned Single Judge who has set aside the order passed by the Land Tribunal, Udupi and remanded the matter back to the Land Tribunal for fresh consideration and in accordance with law.

2. The subject matter of the appeal is the lands bearing Sy Nos. 144/3B measuring 1 acre 50 gutas and Sy.No.221/IB measuring 16 cents of Hejamadi village. Udupi District. The appellant claims that he is a chalageni tenant in the said land under one Ganga Hengsu, d/o Thunde Hengsu who is the wife of Krishnappa Hejamadi.

He filed the application in form No.7 on 30-6-1979 as per Annexure-D under Section 48 of the Karnataka Land Reforms Act. 1961 (for short the 'Act') seeking conferment of occupancy rights. In the form No.7. He has shown Ganga Hengsu as owner of the property. The 'tribunal issued notice to her. Recorded statement of both the parties and thereafter proceeded to pass the order granting occupancy rights in favour of the appellant. It is clear-- from the order of the Land Tribunal. although the applicant (appellant) has not produced any records to produce to substantiate the tenancy, in view of the consent given by the respondent i.e., Ganga Hengsu in her statement before the Tribunal, the Tribunal unanimously conferred occupancy rights in respect of said two lands in favour of the appellant.

3. The first respondent herein Devaki filed the W.P.No. 12362/2008 challenging the said order of the Land Tribunal. It is her case that the said property belongs to her under partition decree and the said property has fallen to her share exclusively. The order of the Land Tribunal is passed without notice to her and on coming to know of the same, she was constrained to file the said writ petition for setting aside the said order as the same is against her interest.

4. The writ petition was opposed on the ground of delay and laches. However, the learned Single Judge, in the facts of the case, set aside the order of the Land Tribunal and remanded the matter to the Land Tribunal for fresh inquiry after giving notice to her. Aggrieved by the same, the appellant is before this Court.

5. We have heard the learned counsel for the appellant. As it is clear from the order of the Land Tribunal, no material was placed before the Land Tribunal to show that the land in question really belonged to Ganga Hengsu. Similarly, no documents were produced before the Land Tribunal to show that the appellant was cultivating the said lands as on 1-3-1974 as tenant. Unless the lands in question are tenanted lands, lands do not vest with the Government. Consequently, the Tribunal would not get any jurisdiction to entertain and confer occupancy rights under Section 48 of the Act. Because Ganga Hengsu admitted tenancy of the appellant, the Tribunal, without application of mind, without verifying whether the lands in question are tenanted lands and without verifying whether the respondent has interest in the lands, has proceeded to pass the said order.

The material] on record discloses that in the City Civil Court at Bombay, in a suit filed by one Hengsu in O.S.No.6882/1964 for partition and separate possession, in which subject matter of these proceedings was the subject matter of the suit, decree has been passed. In terms of the partition decree mutation entries have been made as is clear from Annexure C which is produced by the appellant herself wherein the name of Devaki is entered in the cultivator's column. In column No.9, it is clearly mentioned the source of title as partition decree. It is in those circumstances, when prima facie, first respondent has shown to be the owner of the property under the decree passed by the Civil Court and her name continues to be entered till 2007 in the mutation register, without notice to her if her property is granted by the Land Tribunal to the appellant, it cannot be sustained.

Therefore, the learned Single Judge was justified in setting aside the order passed by the Land Tribunal and remanding the matter to the Land Tribunal for fresh consideration. Therefore, we do not see any merit in this appeal and accordingly, this writ appeal is dismissed.

In view of the dismissal of the appeals on merits, none of the office objections raised need to be rectified.

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