

The Corporation of the City of Bangalore

Vs

B. T. Kampanna

Civil Appeal No. 623 of 1975

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

20.08.1976

JUDGMENT

RAY, C.J. -

1. This appeal by special leave is from the judgment dated June 25, 1974 of the Karnataka High Court.
2. The principal question in this appeal is whether Section 107 of the Karnataka Land Reforms Act, 1961 applies to the land in suit which was leased to the respondent.
3. A large plot of land comprising an area of about 20 acres popularly known as "The Chamaraja Sewage Farm" situate in the city of Bangalore belongs to the appellant corporation. The appellant leased to the respondent by a registered lease dated September 14, 1953 the aforementioned land for a period of 5 years on an annual rent of Rs. 13,555. The respondent by notice was called upon to hand over possession of the land immediately after the expiry of the period of lease. The respondent failed to deliver possession. The reason why the appellant required that land is that the corporation proposed a scheme for the development and construction of a new township on that area.
4. The respondent filed a suit for the grant of a permanent injunction restraining the appellant from interfering with the possession. The court upheld the contentions of the appellant that the lease had terminated by efflux of time. The respondent's suit was dismissed. An appeal was preferred. The appeal was dismissed on August 21, 1964.
5. The appellant then instituted the suit in appeal claiming possession from the respondent. The appellant contended that the respondent was a trespasser and claimed damages for unauthorised occupation. The respondent contended that he was still a tenant. The respondent claimed protection under the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 being Act No. 15 of 1961. Section 3 of the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 provided for a prohibition against eviction.
6. The appellant obtained a decree in the suit. The decree directed the respondent to deliver possession. The respondent preferred an appeal. The High Court remanded the matter to the trial Court for assessment of damages.
7. Upon remand the respondent applied for the amendment of the written statement. The respondent claimed protection under the Karnataka Land Reforms Act, 1961. It may be stated here that the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 ceased to be in force in March,

1966. That is perhaps why the respondent made an application for amendment of the written statement on February 2, 1973. The respondent contended relying on Section 133 of the Karnataka Land Reforms Act, 1961 that the suit should be stayed by the civil court and should be referred to the tribunal for decision. Section 112(B)(b) of the Karnataka Land Reforms Act, 1961 confers power on the tribunal to decide inter alia whether a person is a tenant or not. The respondent contended that he was a person who was deemed to be a tenant.

8. The appellant opposed the application for stay of the suit by the civil court and referring to the tribunal for decision under the Karnataka Land Reforms Act, 1961. The trial Court held that the land belonging to the appellant was exempted from the application of the provisions of the Land Reforms Act. The trial Court dismissed the application of the respondent.

9. The respondent presented a revision petition to the High Court. The High Court reversed the decision of the trial Court and directed the trial Court to refer such of the issues which are required to be decided by the tribunal.

10. Counsel for the respondent contended that the respondent is a tenant within the meaning of the word "tenant" defined in Section 2(34) of the Karnataka Land Reforms Act, 1961. "Tenant" is defined to mean an agriculturist who cultivates personally the land he holds on lease from a landlord and includes (i) person who is deemed to be a tenant under Section 4 of the Karnataka Land Reforms Act, 1961. Section 4 of the Karnataka Land Reforms Act, 1961 states that 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, or (c) a mortgagee in possession. It was, therefore, said that the respondent could raise the contention whether the respondent was a tenant or not. It was next contended that Section 8 of the Karnataka Land Reforms Act, 1961 speaks of rent and rent is referable to tenant and therefore a dispute as to tenancy would be within the ambit of the Karnataka Land Reforms Act, 1961.

11. Section 107 of the Karnataka Land Reforms Act, 1961 states that subject to the provisions of Section 110 nothing in this Act, except Section 8 shall apply to lands, inter alia, (iii) belonging to or held on lease or from a local authority. There is no dispute that the land was given on lease by the local authority. There is also no dispute that the land belongs to the local authority. There is also no dispute that the lease was determined by efflux of time. The question whether the respondent is a tenant or deemed to be a tenant does not at all arise because the tenancy came to an end. The respondent thereafter was a trespasser.

12. Section 107 of the Karnataka Land Reforms Act, 1961 makes it quite clear that the only provision which applies, inter alia, to lands belonging to or held on lease or from a local authority is Section 8. No other section of the Land Reforms Act applies to these lands. Section 8 of the Karnataka Land Reforms Act, 1961 deals with rent. The suit in the present case was not for recovery of rent. The suit is for recovery of possession and for damages, for unauthorised occupation of the respondent. Section 8 of the Karnataka Land Reforms Act, 1961 is not applicable. Therefore, no question can be referred for determination by the tribunal under Section 133.

13. The Mysore Tenants (Temporary Protection from Eviction) Act, 1961 came into effect on December 13, 1961. The Mysore Tenants (Temporary Protection from Eviction) Act, 1961 remained in force till the month of March, 1966. The respondent could not draw any support from that Act for protection against eviction. The land in question was outside the applicability of the

Mysore Tenants (Temporary Protection from Eviction) Act, 1961. Further, the Act ceased to be in operation in 1966 and no question could be referred for determination as to whether the respondent was a tenant under the Mysore Tenants (Temporary Protection from Eviction) Act, 1961 or not. The trial Court in the present case rightly said that it could not be said that there was any dispute as to tenancy.

14. The respondent had filed a suit where he claimed to remain in possession. The suit of the respondent was dismissed. The appellant all along contended that the lease dated September 14, 1963 (sic 1953) for a period of 5 years expired by efflux of time. The appellant claimed possession on the ground of unauthorised occupation and claimed damages against the respondent, who was a trespasser.

15. The High Court was clearly in error in referring to the tribunal under the Karnataka Land Reforms Act, 1961 determination of the plea taken by the respondent that he was protected by the Mysore Tenants (Temporary Protection from Eviction) Act, 1961. Counsel for the respondent did not support the judgment on that ground.

16. Counsel for the respondent contended that Section 133 of the Karnataka Land Reforms Act, 1961 excludes jurisdiction of civil court in suit for possession where the defendant claims to be a tenant. The plea of the respondent is utterly unsound. Section 133 of the Karnataka Land Reforms Act, 1961 cannot apply to lands which are held by a person on lease from the local authority or where the lease had expired and the local authority sues for possession on the ground that there is unauthorised occupation. No provision of the Karnataka Land Reforms Act can be relied upon to contend that there should be protection against recovery of possession by the local authority.

17. For the foregoing reasons the judgment of the High Court is set aside. In view of the fact that no costs were allowed by the High Court, there will be no order as to costs.

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